

North

Slope

Opposition

Brief

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BEFORE THE LOCAL BOUNDARY COMMISSION
OF THE STATE OF ALASKA

IN RE: THE DETACHMENT FROM THE NORTH
SLOPE BOROUGH OF TERRITORY
WITHIN AND ADJACENT TO THE
NANA REGION

BRIEF IN OPPOSITION TO PETITION FOR DETACHMENT

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INTRODUCTION

A. ROLE OF THE LOCAL BOUNDARY COMMISSION

The Constitution of the State of Alaska, Article X, Section 12, endows the Local Boundary Commission with broad authority to consider and present to the Legislature proposed local government boundary changes.

The Alaska Legislature has specified how the Local Boundary Commission shall exercise its constitutional powers and functions (AS 44.47.565 - 583). Among other matters, the Alaska Legislature has mandated that "The Local Boundary Commission shall...develop proposed standards and procedures for changing local boundary lines." (AS 44.47.567(a)(2) formerly 44.19.260(a)).

The Alaska Supreme Court has ruled that the Local Boundary Commission must adopt appropriate standards and procedures before exercise of its authority to propose boundary changes is proper and that Local Boundary Commission proposals for boundary changes adopted in the absence of appropriate standards and procedures may be voidable. U.S. Mining and Smelting v. Local boundary Commission 489 P.2d 140 (1971); Port Valdez Company, Inc. v. City of Valdez. 522 P.2d 1147 (1974).

The Local Boundary Commission has adopted regulations that incorporate standards and procedures for action on petitions for municipal incorporations and petitions for local governmental boundary changes. (19 AAC 10.010-10 AC 10.840). These regulations provide standards for (1) incorporation, dissolution, merger and consolidation of municipalities; (2) annexations to cities and organized boroughs; and (3) detachments from cities, unified municipalities and organized boroughs. The regulations also provide procedures (1) for incorporation, merger or consolidation of municipalities; and (2) for boundary changes requiring legislative review or by local action or by step annexation.

Commissioner Notti has submitted a petition for a local governmental boundary change by detachment of territory from an established borough. This detachment is a boundary change requiring legislative review. Therefore, the standards for detachment from organized boroughs (19 AAC 10.225 - 19 AAC 10.250) and the procedures for boundary changes requiring

legislative review (19 AAC 10.450 - 19 AAC 10.620) govern Local Boundary Commission review and action upon the petitioner's petition.

At its discretion, the Local Boundary Commission may impose additional appropriate regulatory standards and procedures (e.g., standards for municipal incorporation (19 AAC 10.240(b))). These additional standards and procedures cannot compromise, nullify or supercede its adopted regulatory standards and procedures for detachment of territory from organized boroughs.

In order to approve the present detachment petition, the Local Boundary Commission must find that the Commissioner's petition for detachment fulfills all the regulatory standards for detachment from an organized borough, regardless of any other standards the Local Boundary Commission may choose to apply. For example, the Local Boundary Commission cannot approve this petition for detachment merely because the altered boundaries would better satisfy standards for incorporation of boroughs as previously applied to the North Slope Borough or as prospectively applied to some future borough incorporation petition that may be submitted by NANA region residents.

The regulations governing petitions for detachments from organized boroughs set specific standards for review of such petitions. These standards do not provide for detachment in order to redistribute local government tax bases; to perfect boundaries of existing boroughs or proposed boroughs; to promote economic development; or to promote the feasibility of new governments. In view of the Court's ruling in U.S. Smelting and Mining v. Local Boundary Commission, supra, the Local Boundary Commission does not have blanket authority and discretion to consider and propose local governmental boundary changes to the legislature. As Justice Robinowitz stated at page 144.

"Absent known standards governing the changing of local boundary lines, the legislature's ability to make rational decisions as to whether to approve or disapprove proposed local boundary changes of the commission is seriously handicapped.

The Local Boundary Commission is mandated to adopt regulations and, having adopted regulations, is bound to operate within its adopted regulatory framework. The legislative mandate that the Local Boundary Commission adopt standards and procedures was meant to prevent, not promote,

Local Boundary Commission decisions based on standards not specified in regulation.

An analysis of this regulation in conjunction with a reading of 44.47.567(a) and the U.S. Smelting case reflects an inherent conflict. The court stated at p. 142 that "the language employed by the legislature made the exercise of the Commission's discretion under AS 44.19.260(b) conditioned upon the development of standards and procedures for changing local boundary lines under AS 44.19.260 (a)(2)." If in fact the Commission can consider other factors under 19 AAC 10.830 (b), the legislature has lost its ability to make a reasoned and rational decision regarding the Commission's actions.

Having reviewed the framework within which the Local Boundary Commission can act, and before proceeding with the response to the petitioner's brief, there are vital considerations which should be addressed. First the issue of due process to the North Slope Borough.

B. DUE PROCESS

As the Alaska Supreme Court stated at p. 413 in Mukluk Freight Lines, Inc. v. Nabors Alaska Drill, Inc (Alaska 516 P.2d 408, 1973) quoting K & L Distributors, Inc. v. Murkowski, 486 P.2d 351 (Alaska 1971) "The safeguard which due process assures is that...we will review to assure that the trier of fact was an impartial tribunal, that no findings were made except on due notice and opportunity to be heard, that the procedure at the hearing was consistent with a fair trial, and that the hearing was conducted in such a way that there is an opportunity for a court to ascertain whether the applicable rules of law and procedure were observed..."

"The review of factual determinations becomes a review to find whether the decision has passed beyond the lowest limit of the permitted zone of reasonableness to become capricious, arbitrary or confiscatory."

Before the Commission has even held its hearings, there has been a failure to observe due process guarantees i.e.,

1. An impartial tribunal

The North Slope Borough has already raised the issue of Commission member Greist, a NANA shareholder, employee and member of the Board of Directors of the NANA Regional Corporation, continuing to sit on the Commission while it considers this detachment decision. Contrary to the

opinion given the Commission by Mr. Pubini that Mr. Greist has no conflict, the common law and the cases show that even the appearance of a possible impropriety gives rise to a conflict of interest. As was stated in Attorney General Opinion #15, (Attachment A) dated December 3, 1982, "unless and until the legislature puts a different body of enacted law in its place, the common law of conflict of interest...prescribes the standards of conduct which must be followed by all state officials..."

Under the common law, decisions in reference to conflicts of interest are to be founded on reason, natural justice, consideration of fitness and propriety and justice.

As stated in Attorney General's Opinion No. 15, supra, "Public service demands total fidelity to the public interest at all times"...the potential for abuse and the appearance to the public is the interest of the common law of conflicts."

Another element in this decision process, as was so aptly described by the Daily News Editorial of December 12, 1985 (see Attachment B), is common sense. It is the appearance of impropriety and the possibility of subconscious motives that will taint the process. The Alaska Supreme Court in Warwick v. State ex rel Chance, 548 P.2d 384 (1976), although faced with a different fact situation, affirmed that principle.

A member of the corporation and class of persons most likely to benefit from this proposed detachment must, in the public's perception, be subjected to "influences from personal considerations which might cause him to fail in coming up to his duty...the frailty of human nature might incline him to a leniency... Mayor of City of Ensley v. Hollinsworth & Company, 54 So. 95, 102 (Ala. 1910).

There can be no division of loyalty. Situations of temptation must be avoided and it makes no difference that Mr. Greist is of the highest integrity and can resist such temptation. See Attorney General's Opinion by Thomas Jahnke to Robert Sundberg, July 23, 1984 (Attachment C).

It is not just the act of voting by Mr. Greist that will taint the proceeding. His mere presence let alone his participation in discussion influences his fellow board members.

As the appearance of impropriety through direct or moderate conflicts must be avoided under the current status of the law in Alaska, "disclosure as (by Mr. Greist) is by no means an answer...Disclosure does

not cure the conflict, it only makes it a matter of record." See Attorney General's Opinion by Diane T. Calvin to Carol Derfner, dated September 23, 1983. (Attachment D).

Thus, Mr. Greist's continued participation in the detachment petition process deprives the North Slope Borough of its guarantee of an impartial tribunal. Mr. Greist's participation has already tainted the actions of the Commission in this matter, i.e., 1) acceptance of the petition; 2) acceptance of an accelerated briefing schedule; and 3) scheduling of hearings.

2. Notice and Opportunity to be Heard

The next pre-hearing guarantee is the guarantee of notice and opportunity to be heard. The petition was accepted on November 22, 1985. The North Slope Borough has been given only 17 working days to answer petition. The petition and its exhibits fill a 35 pound box. While the issue of a possible detachment has been under consideration for some time, there is a considerable difference between what was being considered by representatives of the North Slope Borough and NANA during past negotiations and the petition submitted by the Commissioner. The Commissioner's petition, to which we must respond, became available only on November 22, 1985. The Commissioner has proposed a much larger area for detachment. There is no mention of equitable compensation for the North Slope Borough and the schedule is much accelerated. The following lists some of the major specific differences.

	<u>Criteria</u>	<u>Subject of Negotiations</u>	<u>State's Petition</u>
1.	Size of area to be detached	433,000 acres	over 2.1 million acres
2.	Compensation for North Slope Borough	Legislative authority to select lands or interests of similar economic value to the fullest extent possible	Nothing
3.	Jobs for North Slope Borough residents at the mine	No less than 10 percent of all jobs held by NANA residents	None
4.	Relation to NANA Borough Incorporation	LBC would not submit boundary change to Legislature until after voters <u>approved</u> NANA Borough	Vague reference that detachment will be conditioned on formation of a borough (no time certain)

There has simply not been sufficient time for the North Slope Borough to adequately analyze and respond to the allegations in the petition. North Slope Borough Mayor Ahmaogak has previously expressed his concern for adequate notice and hearing time for this proceeding before the Local Boundary Commission (Attachments D1 and D2). The Alaska Municipal League and Alaska Chapter of the American Planning Association have adopted resolutions stating similar concerns. (Attachments D3 and D4).

In *Mukluk* cited supra, the court held (at p. 414) that the appellant had insufficient time to prepare a written submission and therefore its due process rights were infringed. Although the opinion does not state how much time had been given to appellant, considering the volume of material and the importance of the issues in this case, common sense would indicate that seventeen working days is insufficient time to prepare. The proposed revised regulations for the Local Boundary Commission would allow 45 days. (Attachment E). In addition, representatives of NANA had more notice of the petition and its contents and therefore more time to prepare any material which it will submit for the Local Boundary Commission's review. Reference is made to the Commissioner's petition and a document dated October 4, 1985 and titled "Example Detachment Petition prepared by NANA", transmitted to the North Slope Borough with a cover letter by Marty Rutherford on November 6, 1985 (Attachment F). A side by side comparison (Attachment G) shows that the critical section of the petitioner's brief addressing the "best interests of the State, the detached territory and the North Slope Borough", came mainly from the "Example Detachment Petition" prepared by NANA.

It cannot be forgotten that Commissioner Greist is also a shareholder and director of the private corporation which was improperly allowed to draft major parts of the conclusions of the petitioner's brief.

This fact, added to the burden of the seventeen days for preparation is another infringement of the North Slope Borough's due process guarantees. In addition, this tinges the impartiality of the tribunal. The Commission is deciding upon a petition allegedly prepared by the Commissioner of Community and Regional Affairs and his staff. The true origin of the petition is unknown. Significant material has come from the leading benefactor of this petition. The impartiality of the Commissioner's brief has to be questioned in light of the above information. The

Commission must consider this when deciding upon the merits of the arguments presented.

3. Expedited Briefing and Hearing Schedule.

Other due process considerations arise from the expedited briefing and hearing schedule. As North Slope Borough Mayor Ahmaogak stated to the Commission at its December 9, 1985 meeting, hearings should be held in all the village of the North Slope Borough. The hearings that were held by North Slope Borough representatives prior to the October vote considered a very different detachment proposal than is presented here. The differences as outlined on page six are substantial. The residents of the villages who might have a part of their territory and tax base taken from them desire and deserve an opportunity to be heard. More than 1,000 residents of the North Slope Borough have already signed petitions opposing the detachment petition. (Attachment H).

The expedited hearing schedule was even further expedited beyond the Local Boundary Commission's own stated guidelines of January 9-14, 1986.

The North Slope Borough on December 11, attempted to ensure the best participation out of the only two hearings scheduled on the North Slope - Point Hope and Barrow. Borough representatives recommended that Point Hope be scheduled for the evening of January 13 and Barrow for the evening of January 14. (See letter from Arnold Brower, Jr. Acting Chief of Staff, to Local Boundary Commission Chairman, Robert Eder, December 12, 1985). (Attachment I).

In disregard of the Borough's positive recommendation, the Local Boundary Commission compressed the Point Hope and Barrow hearings into a single day, January 10, 1986. As Arnold Brower, Jr. North Slope Borough Acting Chief of Staff, noted to Chairman Eder, "Your schedule indicates that the public meetings may be more for the record than for the people."

See also the North Slope Borough's Motion for Reconsideration (12/2/85), previously submitted.

Having raised these objections, it is the North Slope Borough's position that the Commission should defer consideration of this petition until (1) more time has been allowed the North Slope Borough to prepare; 2) a more fair hearing procedure as to times and locations has been determined;

and (3) there has been a court decision on Mr. Greist's conflict of interest if he does not withdraw.

C. LACHES - UNDUE DELAY IN ASSERTING A LEGAL RIGHT OR PRIVILEGE.

Another issue which should be addressed by the Commission is laches. The integrity of boundaries is important to local governments. It impacts their ability to develop financial plans for the future and is an important consideration to bond purchasers and bond raters. The boundaries of the North Slope Borough were carefully considered by the Local Boundary Commission during the hearings in 1971 and 1972. The decision was subjected to court review and upheld. If there was a serious concern on the part of the Department or the Northwest Native Association officials and residents regarding the southern boundary, which concern is disavowed by the letter of its Executive Director, John Schaeffer (Attachment J), it should have been pursued earlier. NANA residents, e.g. Mr. Newlin (Attachment K) could have joined in the Mobil Oil litigation which challenged the Borough incorporation and the inclusion of certain territories. This was not done. To wait for thirteen years to challenge the boundary is unreasonable delay. And unreasonable delay with its potential for injury to the North Slope Borough constitutes laches. Alaska both in statute and court decision has recognized the defense of laches as it relates to municipal boundaries A.S. 29.18.150 provides that:

Challenge of Legality. No person may challenge the formation of a municipality except within six months of the date of the incorporation.

In addition, in Concerned Citizens of South Kenai Peninsula v. Kenai Peninsula Borough (527 P. 2d 447, Alaska 1974), the Supreme Court found unreasonable delay on the part of appellants and harm to the appellees. And in Pavlik v. State 634 P. 2nd 1045 (1981) involving the annexation of territory to the City of Yakutat, the court found a delay of two years and eight months after the effective date of a boundary change was unreasonable and led to the defense of laches.

In the case before you, the Borough's boundaries have been set for nearly fourteen years. The MANA representatives (the real party in interest here) acquiesced in the boundaries (Schaeffer's letter, Attachment J) and there was no contest to the Borough incorporation. The court in Pavlik at

p. 1048 accorded significant weight to appellant's acquiescence and the facts here confirm such acquiescence.

The court also stated at p. 1049 that where there is a long delay, a lesser degree of prejudice will be required. The North Slope Borough has brought forth and will present additional evidence of significant prejudice if this territory is detached and the integrity of its boundaries is impaired - far more evidence than would be required under Pavlik. See discussion at pages 46 through 51 of the brief.

With these due process and laches objections noted, the following is the North Slope Borough's response to Commissioner Notti's Brief for the Detachment of 2,720 million acres from the North Slope Borough.

I. HISTORY OF NSB BOUNDARIES AND ANCSA REGIONAL CORPORATION BOUNDARIES

Petitioner's account of the North Slope Borough's incorporation, of how the boundaries for the ANCSA regional corporations were settled and, especially, how ANCSA regional corporate boundaries were viewed in relation to borough boundaries is incomplete, inaccurate and misleading.

The following chronology of events in the incorporation of the North Slope Borough is a matter of record:

April 4, 1971	NSB incorporation petition submitted
May 7, 1971	Local Affairs Agency acceptance of petition
November 24, 1971	Newlin/Northwest Native Association letter protesting proposed boundary
December 2, 1971	LAA report to LBC
December 2, 1971	LBC hearing at Barrow
February 23-25, 1972	LBC decisional meeting to accept NSB incorporation petition
March 28, 1972	Mobil Oil suit to invalidate LBC decision
May 10, 1972	LBC Statement of Findings and Conclusions
July 1, 1972	NSB incorporation
January 16, 1974	State Supreme Court affirms LBC decision

on NSB incorporation and boundaries

The following chronology of events in the resolution of the ANCSA regional corporate boundaries between ASRC and NANA is a matter of record:

January 24, 1966	Arctic Slope Native Association land protest filed
June 13, 1966	Northwest Native Association land protest filed
November 24, 1971	Newlin letter protesting proposed NSB boundary
December 18, 1971	ANCSA signed
February 23-25, 1972	LBC decisional meeting to accept NSB incorporation petition
May 10, 1972	LBC Statement of Findings and Conclusions
May 26, 1972	Sackett letter re Tanana Chiefs Conference boundaries and NSB boundaries
June 2, 1972	Schaeffer letter re NANA Regional Corporation boundaries and NSB boundaries
July 28, 1972	ASRC/NANA agreement on boundaries
August 1, 1972	ASRC/NANA letter re boundary agreement
December 11, 1972	Secretary of Interior's letter approving ASRC/NANA boundary agreement

The Petitioner "contends that if the testimony provided to the Commission regarding the boundaries of the proposed Arctic Slope Regional Corporation had been correct, the Commission may have modified the boundaries of the proposed borough to exclude the territory which the state now seeks to detach."

Petitioner's imputation of jurisdictional import to ANCSA corporate boundaries is directly contradicted by statements issued at the time of North Slope Borough incorporation by Mr. John Schaeffer, then Executive Director of NANA Regional Corporation, and by Mr. John Sackett, then president of Tanana Chiefs Conference.

On June 2, 1972, three weeks after the Local Boundary Commission's Statement of Findings and Conclusions on the North Slope Borough incorporation petition, Mr. Schaeffer wrote to Mr. Harrison Loesch, Assistant Secretary for Public Lands in the Department of the Interior:

We have always believed that the proposed [North Slope] borough boundary has no relation to regional boundaries set up under the Settlement Act and therefore have not opposed the proposed Arctic Slope Borough boundary although it encompasses land used exclusively by the natives of NANA. (Attachment J). Emphasis added.

Thus, this crucial distinction between local government jurisdiction and ANCSA corporate boundaries was precisely acknowledged and accepted by NANA Regional Corporation at the time the North Slope Borough was incorporated.

This crucial distinction was also recognized by the Tanana Chiefs Conference, precursor of Doyon, Ltd. which also shares a common boundary with the Arctic Slope Regional Corporation. On May 26, 1972, John Sackett, then president of Tanana Chiefs Conference, wrote to Assistant Secretary Loesch:

"It is the position of the Tanana Chiefs that boundaries between Regional Corporations set up under ANCSA are unrelated to political boundaries of subdivisions of the state. Regional Corporation boundaries under ANCSA are related to the question of land selections and ownership, while Borough boundaries related to political regulation and taxation.

We note that our region contains the entire Fairbanks-North Star Borough within its boundary, and also a substantial amount of the Matanuska-Susitna Borough. Other Native regions contain whole Boroughs. Additional Boroughs are likely to be formed in the future in all regions. It is not unlikely that taxes may be paid by our regional and village corporations to several Boroughs at some future time.

Accordingly, we believe that the formation of the North Slope Borough and the location of its boundaries is an issue which is entirely unrelated to the establishment of Regional Corporation boundaries under ANCSA. (Attachment L). Emphasis added.

These two letters accurately reflect the historic and legal relationship of the North Slope Borough's boundaries to the boundaries of its two neighboring ANCSA regional corporations.

The origin and the ASRC/NANA boundaries reflects the history of overlapping use of the territory by North Slope Borough and NANA residents. On January 24, 1966, the North Slope Native Association filed the first native claim of aboriginal use and occupancy over the North Slope, including the territory now proposed for detachment. (Attachment M). That original claim encompassed the entire territory later incorporated as the North Slope Borough. North Slope Natives consistently maintained this territorial claim. (Attachment N).

The overlapping territorial claims of the North Slope Native Association and Northwest Native Association date from June 13, 1966, when the Northwest Native Association filed a native claim which partly overlapped the earlier claim of the North Slope Native Association. The overlap area included the territory now proposed for detachment. Most of the overlap stemmed from Northwest Native Association's inclusion of Point Hope and land traditionally used by Point Hope residents. In fact, Point Hope residents chose to remain affiliated with the North Slope Native Association. Thus, the Northwest Native Association territorial claim was inaccurate insofar as it was based on traditional use and occupancy patterns of Point Hope residents.

Robert Newlin's letter to the Local Affairs Agency (Attachment K, undated, but receipted November 24, 1971), described Northwest Native Association's territorial claim at that time, absent Point Hope. As petitioner relies upon this letter to establish that there was a legitimate dispute about native regional boundaries before the Local Boundary Commission, the letter warrants comment. The letter predates passage of ANCSA. Its accompanying map illustrating Northwest Native Association's claim is crudely drawn and does not appear to claim the Red Dog area. The letter does not provide any legal description. As to the overall authority of the letter, comparison of Northwest Alaska Native Association's pre-ANCSA territorial claim with the boundaries that NANA Regional Corporation ultimately negotiated with its adjoining regional corporations (Arctic Slope Regional Corporation, Tanana Chiefs Conference, Bering Straits Native Corporation) shows that Northwest Native Association's original territorial

claims exceeded its final boundaries in every direction: north, east, south, and west. These adjustments were the practical result of an ANCSA-mandated process to impose mutually exclusive regional corporate boundaries, even over marginal territories where overlapping use by adjoining native groups was the rule rather than the exception.

Petitioner's brief generally seeks to bestow upon ANCSA regional corporate boundaries a legal, jurisdictional, proprietary and usufructuary significance that is inconsistent with history and law.

Section 7(a) of ANCSA states:

For purposes of this Act, the State of Alaska shall be divided by the Secretary within one year after the date of enactment at [sic] this Act into twelve geographic regions, with each region composed as far as practicable of Natives having common heritage and sharing common interests...

To implement this section of ANCSA, the Secretary of Interior first encouraged regional Native groups to negotiate mutually agreeable boundaries on their own. The ANCSA regional corporate boundary between Arctic Slope Regional Corporation and NANA Regional Corporation was settled by mutual agreement at a meeting in Kotzebue on July 28, 1972. (Attachment O). This agreement was formalized by a joint letter dated August 1, 1972. (Attachment P). The compromise divided the area of overlap between the original claim of the North Slope Native Association and the post-ANCSA claim of the Northwest Native Association in approximately equal parts. (Attachment Q). This agreement settled the common corporate boundary between the two ANCSA regional corporations. Thus, the Secretary of the Interior's letter of December 11, 1972 (Attachment R) merely formalized an agreement voluntarily reached by the two corporations.

Petitioner's statement that the Secretary of Interior set ANCSA regional corporate boundaries "on the basis of a standard essentially identical to that required for incorporation of a borough" is wrong. As just shown, the two ANCSA regional corporations, not the Secretary of the Interior, determined their mutual boundary.

Petitioner's claim that ANCSA standards for regional corporate boundaries were equivalent to State standards for borough incorporation is amply refuted by reference to the Department of Community and Regional Affairs' map of Alaskan municipalities (Attachment S). As the map shows, none of the eleven established boroughs incorporated under State law has boundaries that coincide with the boundaries of any regional native corporation formed according to the ANCSA standard. This universal incongruity totally belies petitioner's claim that the constitutional, legislative and regulatory standards by which the Local Boundary Commission sets borough boundaries are "essentially identical" in practice to the standard set out in Section 7(a) of ANCSA.

Petitioner's allegation that the Secretary of the Interior in some manner "detached" the territory now in question from the North Slope Borough is, of course, based on a mistaken history of how these ANCSA regional corporate boundaries were set. The Secretary of the Interior did not detach territory of NANA Regional Corporation from the North Slope Borough, any more than he detached territory of Chugach Natives, Inc. or Bristol Bay Native Corporation from the Kenai Peninsula Borough; or territory of AHTNA, Inc. and Doyon Ltd. from the Matanuska-Susitna Borough. Conversely, the Secretary's approval of ANCSA regional corporate boundaries did not consolidate the Bristol Bay Borough into some future unified borough for the Bristol Bay Native Corporation's region; or the Fairbanks North Star Borough into some future unified borough for the Doyon, Ltd.'s region; or the City and Borough of Juneau, the City and Borough of Sitka, the Ketchikan Gateway Borough and the Haines Borough into some future unified borough for the Sealaska Corporation's region; or Kodiak Island Borough into some future unified borough for Koniag Inc.'s region.

It is commonplace for ANCSA regional corporations to fall under the jurisdiction of more than one borough. Sealaska Corporation falls within four separate boroughs (Ketchikan Gateway Borough, City and Borough of Sitka, City and Borough of Juneau, Haines Borough), plus the unorganized borough; Cook Inlet Region, Inc. falls within three separate boroughs (Matanuska-Susitna Borough, Anchorage, Kenai Peninsula Borough), plus the unorganized borough; Doyon, Ltd. falls within the Fairbanks North Star Borough, the Matanuska-Susitna Borough and the unorganized borough. (Attachment T).

It is clear that the standards governing the territorial configuration of boroughs and ANCSA regional corporations were fundamentally different in purpose and result.

Finally, Section 7(a) of ANCSA plainly did not confer, establish or imply specific proprietary or usufructuary rights for ANCSA regional corporations. Section 7(a) merely provided a practical procedure for dividing the State of Alaska into sectors from which ANCSA regional corporations might select eligible lands.

The petitioner's brief struggles to impose a revisionist interpretation upon the Commission's 1972 decision when the record of the Commission's unanimous decision should be allowed to speak for itself. The record speaks contrary to the interpretation that the petitioner's brief attempts to put upon the Local Boundary Commission's decision to approve incorporation of the North Slope Borough.

In its Statement of Findings of Fact and Conclusions (Attachment U), regarding the North Slope Borough incorporation petition, the Local Boundary Commission applied the statutory standards to reach the following conclusions about the Borough's proposed boundaries:

"The Commission finds that the area encompassed by the proposed boundaries contains a population which, on the whole, share common ethnic origin and cultural heritage...

The Commission finds that the proposed borough meets this (geographic) standard in every respect...

The Commission finds that the proposed borough meets this (economic) standard in that commercial activity takes place among the various communities, with Barrow as the regional hub...The trading area described by the proposed borough boundaries is almost precisely that which is defined in Alaska Natives and the Land for the North Slope region. The Commission finds that this (transportation) standard has been met in all respects."

The transcripts for the Local Boundary Commission's December 2, 1971 Barrow public hearing (Petitioner's Attachment 6) and its February 23-25, 1972 decisional meeting (Petitioner's Attachments 7(a) and (b)),

together with the official record for its decision, further document the context within which the Local Boundary Commission made its incorporation decision. Among other matters, the transcripts and record show that:

- the Local Boundary Commission was fully aware of the unresolved territorial dispute between Arctic Slope Native Association and Northwest Native Association. Therefore, it was aware of the possibility that governmental and regional corporate boundaries might diverge.¹

- the Local Boundary Commission was informed of the mineral resources and development potential of the southwest sector of the proposed borough.²

- there was wide-ranging discussion of alternative boundaries for the North Slope Borough, including boundaries that might encompass territory as far south as Unalakleet.³

- the Local Boundary Commission was acutely concerned about the relation of its decision to the great public issue of incorporating the unorganized borough. A substantial share of the February 23-25 decisional meeting agenda was devoted to discussion of pending legislation to incorporate the unorganized borough.⁴

- the Local Boundary Commission was specifically mindful of the implication of its decision upon the boundaries and feasibility of future rural boroughs.⁵

- the Local Boundary Commission was concerned to document the basis for its decision in a Statement of Findings and Conclusions in order to dispel anticipated challenges to its decision, including the serious challenge embodied in this present petition of the State.⁶

II. DESCRIPTION OF TERRITORY PROPOSED FOR DETACHMENT

A. NATURAL GEOGRAPHY

The natural geography of the territory proposed for detachment has not changed since the time of the North Slope Borough's original incorporation petition and is not here in dispute. Whether the natural geography precludes or makes impractical provision of services to the

detachment area by the North Slope Borough is discussed in detail in Section III of this brief.

B. HISTORIC AND CONTEMPORARY SETTLEMENT AND LAND USE

The dominant human use of the territory proposed for detachment is non-use. The territory is huge, larger in area than five existing boroughs. Generally, the territory is at the margin of overlapping subsistence usage by residents of NANA region and the North Slope Borough, with subsistence resource values confined to a few areas of seasonal use. The main subsistence resources, anadromous fish and caribou, are themselves present only seasonally.

Historically and today, there is no uniform region-wide pattern of subsistence use throughout the area. It is well documented that residents of both regions make use of various sectors of the territory. Likewise, it is well documented that residents of the North Slope Borough make extensive use of lands and rivers within the NANA region for subsistence purposes. (Attachment V). This documentation is consistent with a traditional and contemporary practice of wide-ranging, opportunistic pursuit of subsistence resources in a region characterized by frequent population movements even into the current century. (Attachment W). As a result, the boundaries of subsistence use have not been exclusively defined or static.

There is no historic or contemporary evidence of permanent human settlement in the detachment area. The area is outside the selection area of any ANCSA village corporation. There are only six native allotment applications in the entire area. There are few improvements.

Overall, a balanced assesement of available evidence presented below indicates a prevailing pattern of transient, intermittent human use of selected areas and corridors consistent with seasonal subsistence harvest activity and travel enroute through the detachment area for purposes of trade and social interchange. These facts refute the picture implied in petitioner's brief that NANA residents make widespread, intensive and exclusive use of the territory.

Dr. Edwin Hall, an anthropologist with extensive knowledge of and research experience in the North Slope Borough and NANA region, (Attachment X), prepared an independent evaluation of the subsistence use map (Petitioner's Exhibit D-5) compiled under the direction of

Manilaq Association. Dr. Hall concluded that this map substantially overstates the geographic extent and intensity of NANA residents' subsistence use in the detachment area. Dr. Hall's evaluation, reproduced in full in Attachment Y, can be summarized as follows:

The data presently available to the North Slope Borough suggests that the proposed detachment area has not been particularly important, in subsistence terms, to the residents of NANA, except perhaps in the very western portion.

...A general map is not sufficient evidence for the assertion that the people of Noatak and Kivalina "...have commonly used the land and rivers of the proposed detachment for harvest' subsistence resources" (Petitioner's Brief, page 22; emphasis Dr. Hall's).

...A thorough review of the available evidence and further field work quite likely will disclose that NANA's claim of extensive subsistence resource harvesting in much of the proposed detachment area is not an accurate reflection of reality.

Another recent study of subsistence harvest activities of Kivalina and Noaktak residents does not show intensive use of the territory proposed for detachment. (Attachment Z).

The territory proposed for detachment is traversed by many traditional trails and trade routes long used for purposes of trade, communication and social exchange between Inupiat people dispersed throughout the Arctic Slope and NANA region. This is documented on many maps of traditional trails and in scholarly studies. (Attachment AA). Clearly, the natural geography does not pose impassable barriers to overland travel between the two regions.

Petitioner's Exhibit D-6 illustrates the occurrence of archaeological and historic sites within the territory proposed for detachment. This exhibit was evaluated by Dr. Hall who concluded his comments on the significance of Exhibit D-6 as follows:

"As part of his petition, the Commissioner of the Alaska Department of Community and Regional Affairs submitted a map (Exhibit D-6) which supposedly shows locations of archaeological and historic sites in the proposed detachment area. The map is hopelessly out of date. More to the point, it does not illustrate, as is implied, that NANA peoples or their ancestors

utilized the disputed area and (by implication) people from the North Slope Borough did not. The present state of the art rarely permits confident assignment of archaeological remains to specific societal groups (the lineal ancestors of the Point Hope Inupiat for example) and this reality is particularly apparent when dealing with archaeological sites--even early historic ones--within the territory in question. Unless oral history accounts or documentary evidence directly demonstrate that the ancestors of a living NANA individual occupied or utilized a specific site, it is impossible to deny the possibility that members of some other societal group were responsible for the archaeological site. In the case of sites within the proposed detachment area, I would estimate that more than 90 percent are not assignable to a specific societal group. (Attachment Y).

Dr. Hall conducted an extensive field survey in 1982 for Cominco of archaeological sites in the Red Dog vicinity, along the alternative transportation corridors and at the proposed port sites. Dr. Hall was not able to assign discovered sites to definite cultural groups or times. With reference to sites in and near the detachment area, Dr. Hall wrote "The few archaeological sites known from the middle Kivalina - Wulik region are not particularly informative about the history of human resource utilization in the area. While the nature of the known sites suggest subsistence activities and perhaps chert procurement were involved, there is little indication of when or by whom. (Attachment BB).

C. LAND STATUS

The territory proposed for detachment comprises about 2,110,720 acres, including about 2,105,920 acres of land and about 4,800 acres of marine waters.

Based on best information readily available from the Bureau of Land Management, the current land status is shown in Table A and Attachment CC.

TABLE A
LAND STATUS
PROPOSED DETACHMENT TERRITORY

<u>Acres</u>	<u>Percent of Total</u>
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<u>Federal</u>		
Noatak National Preserve	1,598,577	
National Maritime Preserve	16,757	
National Petroleum Reserve	7,091	
National Maritime Preserve	2,165	
Subtotal:	<u>1,624,590</u>	77.0
<u>State of Alaska</u>	504,466	23.9
<u>ANCSA/ANILCA</u>		
NANA regional selections	66,785	3.2
Red Dog minesite	1,336	less than 0.1
NANA historic places/ cemetery sites	19,440	0.8
<u>Native Allotments</u>	690	less than 0.1
TOTAL	2,110,720	100.0

Sources: Bureau of Land Management; Red Dog EIS

NOTE: Acreage and percentage figures are approximate. Due to overlapping state, federal and NANA selections and NANA overselections, land status is in flux. Acreage figures total more than actual acreage of territory proposed for detachment and percentage figures total more than 100%.

Overall, about three-quarters of the land in the proposed detachment is federally owned and managed, mainly as part of the national conservation system. About another quarter is State-selected land. About 4% of the territory has been selected by NANA Regional Corporation. These selections are comprised of two types: NANA regional selections and historic places/cemetery sites pursuant to ANCSA Section 14(h)(1). All of NANA's regional selections are in the general vicinity of Red Dog, apparently chosen for their mineral resource potential. The Red Dog minesite and related improvements comprise less than one-tenth of one percent of the proposed detachment. ANCSA Section 14(h)(1) selections are scattered throughout the territory. As noted earlier, these sites predate contemporary use and occupancy patterns and their origin cannot be linked to contemporary settlement residents.

Because the detachment area is remote from NANA villages, there are no village corporate selections in the detachment territory.

BLM records indicate that six native allotment applications, totalling about 690 acres, have been filed within the proposed detachment. This amounts to one half of one percent of all native allotment applications (1,060) filed within the NANA region.

Considering that the territory proposed for detachment is larger in area than five existing boroughs and extends over a distance that would stretch from Anchorage to Fairbanks, the pattern of NANA residents' use and

occupancy of the territory (no historic or contemporary settlements; no ANCSA village selections; six native allotment applications, seasonal subsistence use) does not substantiate a claim of intensive and extensive use and occupancy by NANA residents.

D. Red Dog Mine Project

1. Description of Red Dog Mine Project

The mineral deposit now popularly referred to as the Red Dog mine was first discovered in 1968 and reported in a U.S. Geological Survey publication in 1970. (Attachment DD). Thus, the occurrence of this mineral deposit was publicly known before incorporation of the North Slope Borough, before passage of ANCSA and before ANCSA regional selections. (Attachment EE).

Publicity about this mineralized area prompted a spate of State and NANA land selections and conflicting private mining claims throughout the general vicinity. By 1982, more than 250 mineral claims were staked in the Red Dog area. Dispute about land tenure over the Red Dog deposit was resolved by ANILCA, which approved NANA Regional Corporation's selection. In 1982, NANA entered an agreement with Cominco, Ltd. of Canada to develop the mine property.

The mineral deposit and proposed minesite facilities are located within the boundaries of the North Slope Borough.⁷ The Red Dog minesite and related improvements will be contained within 1,336 acres, less than one-tenth of 1% of the total territory proposed for detachment. The port and 47 of 54 miles of road improvements proposed to transport Red Dog mineral production are in the unorganized borough and within the boundaries of the NANA Regional Corporation.⁸ (See Attachment FF). The minesite, road and port have been designed as an enclave, totally separate from existing settlements.⁹

Further details about the development of the Red Dog project are contained in Petitioner's Attachment 23.

2. Environmental and Socioeconomic Impacts of Project

The petitioner's brief cites an alarming picture of imminent adverse environmental and socioeconomic impacts stemming from development

and operation of the Red Dog mine project. The brief offers only general assertions and does not document this picture with facts and analyses. This alarming picture is totally in conflict with other analyses published by the Department of Community and Regional Affairs and at odds with the conclusions of the Environmental Impact Statement.

The Department of Community and Regional Affairs' original assessment of the socioeconomic impacts of the Red Dog mine project was published in Red Dog Project Analysis: A Report to Governor Bill Sheffield, (Petitioner's Attachment 15) a 1984 report "commissioned by the Governor to provide his office with the information necessary to formulate the State's role in the development of Red Dog."

The Department of Community and Regional Affairs then assessed the service and facility impacts of the project as follows:

"Because of the stringent requirement that the Red Dog be a fully enclaved development, there are not expected to be substantial additional demands placed upon the regions [sic] service delivery.

...in brief summary, the additional 100 jobs which will occur in Kotzebue, and accompanying overall population increase of some 10%, should not stress existing facilities (i.e., schools, public safety, fire, electrical, etc.) in the near future, and do not represent a significant planning component in comparison to the increase in population which would occur with or without the project. Emphasis added.

The EIS presents a more detailed assessment of Red Dog mine impacts upon environmental resources, subsistence, social life, and community facilities and services. Briefly, the EIS concluded that impacts on the environment, subsistence, community facility and service needs, social life and population growth would be negligible. Pertinent excerpts from the EIS are reproduced as Attachment GG. Key conclusions are summarized below.

The EIS summarizes environmental impacts at the Red Dog minesite as follows:

The mine area facilities (mine, tailings, pond, mill site, worker housing, water supply, airstrip and all associated roads) would directly disturb a total of about 441 ha (1,336 ac) of vegetation in Red Dog Valley. Development and operation of these facilities might have an indirect impact upon caribou by displacing some animals from

marginal water range. This impact would not be significant on more than a local basis and no other wildlife species would be significantly impacted.

...There would be no significant impacts on fisheries resources from mine area facilities.

...The mine site vicinity possesses little value for subsistence or recreational fishing and hunting, and no significant impacts would be anticipated.

With regard to the environmental impacts of the road component, it may be noted that only seven miles and four of 187 stream crossings fall within the North Slope Borough. Due to minesite water treatment requirements, it is likely that water quality downstream of the mine will be improved. Thus, the mine and roadway within the North Slope Borough do not pose any threat to water quality. The port site does not, of course, pose any environmental problems within the North Slope Borough.

The EIS describes the impact of the mine on subsistence as follows:

The mine site vicinity possesses little value for subsistence or recreational fishing and hunting. The South Fork of Red Dog Creek is utilized by caribou to a lesser extent than areas outside the mine site, and the area is at the margin of use areas for Noatak and Kivalina residents. Based on the assessment of environmental effects of mine site operations on surface lands and water quality, the mine would not cause any material loss of habitat.

The EIS describes the overall impact of the Red Dog mine project as a whole on demand for community infrastructure as follows:

All elements of the proposed project (mine area facilities, overland transportation corridor and port facilities) would be remote from existing communities. Cominco would provide at the mine site all support infrastructure for its employees, including camp quarters, recreational facilities and emergency medical services. Thus, the mining project would not compete with existing communities for state or federal community development programs.

The EIS evaluates the impact on the social, political and cultural stability and autonomy of the region as follows:

The isolated, self-enclosed mine camp facilities would tend to buffer the existing communities from the most disruptive social impacts often associated with large resource development projects in undeveloped rural regions. An estimated 354 new residents or about a five percent increment to the base case regional forecast would accrue from the project over a period when the region would not be otherwise projected to undergo much economic or population growth. All these circumstances would tend to moderate any potential disruptions of the prevalent political, social and cultural equilibrium.

On the other hand, the project has substantial potential for positive long-term impacts on employment, income opportunities and the family stability of the region's residents. Increased family income should significantly reduce poverty-related stress, promote family stability, and decrease social problems such as alcoholism, suicide and mental illness.

Petitioner claims that the Red Dog mine project will cause "unprecedented growth" in the region. As noted above, this claim contradicts analyses previously published by the Department of Community and Regional Affairs. It is also contradicted by the growth assessment in the EIS.

The population growth rate projected in the EIS for the NANA region with the Red Dog project is identical with the rate the region experienced between 1970 and 1980 and much slower than the rate experienced from 1980 to the present.¹⁰

Petitioner's prognosis of dire impacts on subsistence, community infrastructure and local social, cultural and political life is unsubstantiated in the brief and contradicted by petitioner's prior analysis and the EIS.

3. Financing and Economic Impact of Project

Development of the Red Dog mine will require capital investment estimated at \$400,000,000. Present plans call for the project to be financed partly by private investment, partly by State tax-exempt industrial revenue bonds.

In 1985, the Alaska Legislature authorized State financial assistance for the Delong Mountain Transportation Project (CSSB 280). (Attachment HH). That legislation authorized the Alaska Industrial

Development Authority ("AIDA") to issue up to \$175,000,000 in state bonds and notes to finance road and port improvements for the Red Dog mine project. That legislation also required AIDA to prepare a finance plan, pursuant to AS 44.88.173, to include estimates of the capital and operating costs of the project and a description of the sources of funds to finance and operate the project. That finance plan for the Delong Mountain Transportation Project is titled "Economic Evaluation and Finance Plan for the Proposed Delong Mountain Transportation System", prepared for AIDA by SRI Institute. (Attachment II). Among the key findings of the finance plan are:

- NANA royalties over the first 30 years of mine operation will exceed two billion dollars. (Attachment JJ).
- Cominco after tax profits over the first 30 years will amount to \$850,000,000. (Attachment JJ).
- Cominco's return on investment ("ROI") is projected at 16.1%, assuming Cominco internally finances minesite improvements. Cominco's ROI would be substantially higher if borrowed capital were obtained.
- State mining, corporate and other taxes will total \$229,880,000 over 30 years. (Attachment JJ)
- Cominco's ROI is primarily sensitive to fluctuations in the price of zinc and, secondarily, to the original cost of project development. Operating costs, including debt service on AIDA revenue bonds and other tax payments, are relatively insignificant factors in Cominco's profit picture.

Since the road and port improvements to be built in the NANA region will be owned and operated by AIDA, they are exempt from local governmental property taxation.¹² However, AIDA is authorized (AS 44.88.140(b)) to "enter into agreements with a proposed project applicant or project applicant providing for payments, computed on a formula basis or otherwise, in lieu of taxes, which the authority may consider appropriate. The agreement may provide that the payments be made to the political subdivision of the state in which the project is or is to be located or to any other taxing unit of the state including, without limitation, a borough, city, municipality, school district or public utility district, the area of which is coterminous in whole or in part with that of the political subdivision."¹³

Thus, AIDA has the authority to require a project applicant (e.g., Cominco) to make payments in lieu of taxes to local governments, including a new NANA region borough, to defray the cost of providing local public services and improvements.¹⁴

AIDA and Cominco are now in process of finalizing a Memorandum of Agreement, required by the Delong Mountain Transportation Project enabling legislation. (Attachment KK). This agreement will provide a six and one half percent return to the State of Alaska, with supplemental payments if the price of zinc rises above a specified level. The proposed Memorandum of Agreement omits any provision for Cominco to make payments in lieu of taxes on the State-financed road and port improvements for the Red Dog mine project.

4. Red Dog Mine Planning Regime

The Red Dog mine is a major development requiring extensive public review and approvals. The EIS identified twenty-eight major federal, state and local approvals required for project development. (Attachment LL). Most of these approvals are mandated by federal (twelve approvals) or state (fifteen approvals) laws. Only one approval - the North Slope Borough's land use permit - is required by local government. Most of the federal and state approvals are to be issued by public agencies headquartered outside the NANA region. Thus, responsibility and authority for regulating and permitting the Red Dog mine project rests overwhelmingly with non-local federal and state agencies. The regulatory and permitting powers of local government, though important for local concerns, are not onerous. They are therefore a relatively minor part of the total scheme of planning and regulatory requirements for the Red Dog mine project. The Borough's primary concerns have been potential adverse effects of mine development on human health and subsistence resources. (Attachment LL1).

Over the past two and a half years, the North Slope Borough has routinely and efficiently processed Red Dog permit applications. The North Slope Borough has never denied, delayed or in any way negatively impacted development progress. NANA Regional Corporation's only planning request to the North Slope Borough has been NANA President John Schaeffer's letter dated April 23, 1985 to Mayor Ahmaogak requesting that "all planning and permitting processed exercised by the North Slope Borough be suspended for the Red Dog Project." (Attachment SS).

The North Slope Borough is currently reviewing Cominco's draft Master Plan (Attachment LL2) and its request to rezone the Red Dog area from the more restrictive Conservation District to the less restrictive Resource Development District which will promote resource development and NANA employment.

This type of planning control by local government over remote resource development control was foreseen and approved by the Alaska Supreme Court in *Mobil Oil*, supra, p. 102, wherein the Court stated that "an active planning and zoning authority in the form of a borough would assure that private agreements and intentions do not waiver and development diverge from the long-range interests of North Slope residents and the State."

5. Relation of Proposed Detachment to Mine Feasibility

Petitioner states that detachment is necessary to facilitate resource development in the region. Petitioner offers no specific evidence for this allegation. Numerous circumstances, recited below, indicate that petitioner's statement is erroneous.

Regardless of detachment, the minesite will be subject to local government regulation (if NANA region residents exercise comparable planning and regulatory authority) and subject to local taxation. AIDA's finance plan does not indicate that local government taxation, whether by North Slope Borough or NANA region borough, is a significant factor in mine profitability. Virtually all of the road and port improvements to be financed, owned and operated by AIDA are outside the North Slope Borough and will be unaffected by detachment. The North Slope Borough has supported mine development so long as it complies with appropriate development standards, and has reviewed permit applications and taken appropriate action in timely fashion. Cominco has not heretofore claimed that North Slope Borough jurisdiction would impede mine development. Any sudden eleventh-hour announcement that the project is contingent upon a boundary change wholly lacks credibility.

III. REGULATORY FACTORS TO BE CONSIDERED

A.S. § 44.47.567(a) states, in part: "The Local Boundary Commission shall...develop proposed standards and procedures for changing local boundary lines." Pursuant to this mandate, the Local Boundary Commission enacted 19 AAC 10.225 - 10.250, "Standards For Detachment From Organized Boroughs".

The Local Boundary Commission may detach land only if the detachment is in the best interest of the state, the land to be detached and the borough from which detachment is sought. This is not a balancing test. The detachment must be in the best interest of each of the enumerated entities.

In addition to determining the best interests of the state, borough and area, the Local Boundary Commission will consider:

(1) whether the social, cultural and economic characteristics of the population of the territory are substantially different or in conflict with those of the remainder of the population located in the borough;

(2) whether the geographic location or configuration of the territory precludes the provision of borough services provided other areas of the borough or make the provision of borough services impractical;

(3) whether the lack of transportation facilities precludes the communication and exchange necessary for responsive and integrated local government.

The burden rests with the petitioner to prove that the service requirements of the area proposed for detachment will be met after detachment. Because the area proposed for detachment is proposed to be included in a NANA regional borough, the Local Boundary Commission may condition the detachment on later incorporation in a NANA borough.

If the detachment is approved, the Local Boundary Commission must distribute the assets and liabilities of the territory to be detached between the North Slope Borough and the State or the successor government.¹⁰ These are the standards governing detachment of land from an organized borough.

Part IV of this brief will address the best interests of the State, North Slope Borough and the area proposed for detachment. This part will address the remaining factors.

A. SOCIAL, CULTURAL AND ECONOMIC FACTORS

In its Statement of Findings and Conclusions on the North Slope Borough incorporation petition in 1972, the Local Boundary Commission found, with respect to the social, cultural and economic standards that "The area encompassed by the proposed boundaries contains a population which, on the whole, share common ethnic origin and cultural heritage..." Emphasis added.

The Commission likewise found "that the proposed borough meets this (economic) standard in that commercial activity takes place among the various communities, with Barrow as the regional hub...The trading area described by the proposed borough boundaries is almost precisely that which is defined in Alaska Natives and the Land for the North Slope region."

Petitioner's brief offers no evidence of past conflict over the use of the detachment area since the North Slope Borough was incorporated in 1972. There is no present population in the area and therefore no present conflict. There is no proof of substantial differences or conflicts between the projected future transient workforce and the residents of the North Slope Borough.

As the petitioner's brief acknowledges, there are no permanent inhabitants in the territory now or within recent decades. Thus, the question of whether the characteristics of the population of the territory are substantially different from or in conflict with those of the remainder of the population located in the borough must be answered in the negative.

Present residents of the North Slope Borough have many social, cultural and economic characteristics in common with NANA region residents, who hope ultimately to comprise a substantial share of the Red Dog mine workforce. Residents of the North Slope Borough and the NANA region share a common language and ethnic history, are joined by family ties, enjoy similar lifestyles and economic endeavors, including reliance on subsistence activities, and have taken part in historic and present-day trade and exchange patterns. North Slope Borough and NANA Inupiat share similar games, traditions and beliefs, Point Hope and Kivalina Inupiat engage in trade for frozen char and ugruk hides. (Attachment MM). Thus, the two groups interact culturally, economically, and socially.

The North Slope Borough is already host to many commercial enterprises and commuting workers associated with the NANA region, e.g., NANA Development Corporation, Arctic Utilities, Purcell Services, NANA's Beaufort Sea oil and gas lease partnerships with Sohio, NANA-Mannings, NANA-Coates Drilling, NANA Construction Company, NANA Oil Field Services, NANA Hotel, Alaska United Drilling.

Petitioner asserts that the cultural, social and economic characteristics of NANA area residents should be considered because they

occasionally populate the land for subsistence purposes. This "standard" finds no support in the Alaska Statutes or the Alaska Administrative Code.

It is argued that NANA residents use the land more frequently than North Slope Borough residents. That does not, however, constitute "substantially different" social, cultural and economic characteristics between the NANA and North Slope Borough Inupiat. Nor does overlapping use evidence conflict.

The land use of the North Slope Borough and NANA Inupiat, both within and without the area in question points to a history of substantial similarity and lack of conflict. There is no conflict over resource usage: no North Slope Borough Inupiat or official has ever tried to halt or limit subsistence use of the area by others. The North Slope Borough has extensive land use regulations that give first priority to subsistence uses of the land. Any development occurring in the area will be subject to development permits and regulations which will protect all subsistence users' rights, regardless of their village ties.

While the characteristics of the future population in the territory proposed for detachment are a matter for speculation, the best information is that there will not be any permanent resident population in the foreseeable future.

The transient workforce quartered at the Red Dog mine camp will not be substantially different from or in conflict with the population of the North Slope Borough. The North Slope Borough is already host to a much larger transient, non-resident workforce employed at remote worksites. For example, in 1982, the Alaska Department of Labor prepared a comprehensive survey of 6,306 workers in North Slope oil field camps. (Attachment NN). Seventy-three percent of this workforce were Alaska residents commuting from hometowns outside the North Slope Borough. Another twenty-three percent (1,432 persons) of these transient workers commuted from places of residence outside Alaska, including Washington State (264), California (204) and Texas (185). About four percent (4%) of these oil field workers were residents of the North Slope Borough. At present and for the foreseeable future, the composition of the North Slope Borough's oil field workforce will remain largely transient and non-resident. Other remote economic and military activities across the North Slope Borough are also typically manned by transient, non-resident workforces.

The economic characteristics of the prospective Red Dog workforce will be far more compatible with the composition of the present residents and workforce of the North Slope Borough than with the traditional society in the NANA region.

As a matter of policy and economics, NANA Regional Corporation and Cominco plan to develop and operate the Red Dog mine as a remote workcamp enclave with a transient workforce. This is consistent with North Slope Borough's own development policy to discourage new permanent settlements in connection with remote resource development activities. Thus, the mine will not promote a permanent resident population in the territory. Furthermore, it is likely that any future mineral development in the territory will be developed according to the enclave concept. There are no other reasons to speculate that this traditionally uninhabited territory will attract permanent settlers. There is no evidence that there will be a future resident population that might be different or in conflict with residents of the North Slope Borough.

It is a strength of Alaska's borough system in general, and a particularly necessary strength of rural boroughs, that established boroughs embrace substantial geographic, social, and economic diversity.

Morehouse, et.al., catalog the great social diversity, economic rivalries and separatist tendencies that the borough system now accommodates. (Attachment 00). To cite some instances of intense separatist conflict that the Local Boundary Commission has had to address in the past: between the City of Anchorage and the former Greater Anchorage Area Borough; between the Eagle River-Chugiak area and the Municipality of Anchorage; between the City of Kodiak and other native villages within Kodiak Island Borough; between the Cities of Juneau and Douglas; between the Cities of Ketchikan and Saxman and Ketchikan Gateway Borough; between the Kenai Peninsula Borough and various cities and rural areas of the Kenai Peninsula Borough (Seward, Tyonek, Nikiski-North Kenai); between the City of Fairbanks, Fairbanks North Star Borough and its rural settlements; between Matanuska-Susitna Borough, Lake Louise and other rural areas.

The longstanding and uniform policy of the Local Boundary Commission has been to promote accommodation within the flexible framework of the established borough system. The long-term result of this policy has been to strengthen the stability, security and effectiveness of the borough

system of local government. The borough system demonstrably possesses the flexibility to accommodate successfully these differences and conflicts, where they exist.

The Local Boundary Commission and the Alaska Supreme Court have directly faced this issue in Mobil Oil Corporation v. Local Boundary Commission, Alaska, 518 P. 2d 92 (1974) wherein the court concluded that the inclusion of the Prudhoe Bay oilfields within the boundaries of the North Slope Borough was consistent with the standards for borough incorporation, even though the workforce at the oilfields was culturally and socially different from the rest of the traditional North Slope Borough population. As the court stated at page 98 "The standards...were intended to be flexibly applied to a wide range of regional conditions." At page 101 "They are meant to provide local government for regions as well as localities and encompass lands with no present municipal use."

Under the analysis of Mobil the Red Dog mine is compatible with the North Slope Borough.

The social, cultural and economic differences and conflicts that might arise between transient workers at the Red Dog minesite and the rest of North Slope Borough's population is trivial compared to the social diversity commonly embraced by Alaska's established boroughs.

There is no good reason for the Local Boundary Commission to ascribe significance to the relatively minor differences that distinguish the prospective transient workforce for the Red Dog mine and NANA region residents in general from the existing population and workforce of the North Slope Borough, when such vast, enduring and divisive differences and conflicts are tolerated by the Local Boundary Commission in other borough jurisdictions despite petitions for realignment of jurisdictional boundaries.

This overall pattern of facts presented by petitioner and respondent, together with policies implicit in earlier Local Boundary Commission decisions, does not provide a reasonable basis for finding that the social, cultural and economic characteristics of the population of the territory proposed for detachment have been, are, or will be substantially different from, or in conflict with, those of the remainder of the population of the North Slope Borough. Conflict fabricated by advocates of detachment is not a just basis for detachment.

B. GEOGRAPHIC FACTORS

In its Statement of Findings and Conclusions on the North Slope Borough incorporation petition in 1972, the Local Boundary Commission found with respect to the geographic standard that "the proposed borough meets this standard in every respect." Emphasis added.

In *Mobil Oil v. Local Boundary Commission*, supra, the Alaska Supreme Court affirmed that the Local Boundary Commission had correctly applied the geographic standard to the incorporation of the North Slope Borough.

From the outset it must be made clear that the standard of 19 AAC § 10.230(a)(2) is not whether services might be supplied more easily from another area. The standard is whether the location of the land in question precludes or makes impractical the provision of borough services.

The North Slope Borough has issued and is currently processing several permits for activities in the area proposed for detachment. Thus far there is absolutely no basis for any argument that the North Slope Borough cannot provide borough services to the area.

The North Slope Borough has demonstrated its ability to develop facilities and provide services as needed at all settlement within its jurisdiction. The North Slope Borough's jurisdiction extends across the arctic frontier from beyond Point Hope, past Anaktuvuk Pass to beyond Kaktovik.

The quality of community improvements and public services provided is superior to the improvements and services generally available to rural Alaskan communities. (Attachment PP). Additionally, the Borough provides area-wide planning, environmental regulation and public safety services and maintains stand-by medivac transport services throughout the Borough.

Three of the Borough's seven permanent settlements outside Barrow and nearly half of its resident population outside Barrow are as distant from Barrow as the Red Dog minesite. (Attachment QQ). While the Borough government is headquartered in Barrow, supplies and materials are typically delivered directly to village destinations by air freight or marine shipping. (Attachment PR). All of the Borough's settlements are accessible by Hercules cargo aircraft, as is the Red Dog minesite. Five settlements are also seasonally accessible by marine transport. The physical development of Anaktuvuk Pass, Nuiqsut and Atkasuk, inland communities which

are inaccessible by sea routes or developed overland routes, demonstrates the Borough's capability to serve remote areas.

The present lack of overland and marine transportation links between Barrow and other communities does not prevent the effective conduct of borough business. Borough officials on public business customarily travel by air among the borough's communities, not by ship or highway. Despite distances between communities, frequent official and personal air travel between Barrow and the Borough's other settlements is available by private flight services and by regularly scheduled borough charter service.

The North Slope Borough has installed modern public telecommunications facilities in all its communities to provide communication linkages among its communities and to facilitate the conduct of public business. It is feasible to install similar facilities at Red Dog when needed.

Furthermore, as has been noted previously, the Red Dog mine project sponsors, the State and the EIS consistently maintain that development of the Red Dog mine will not generate any exceptional demand for local public improvements or services within the territory proposed for detachment. The North Slope Borough is now performing all required local government planning and regulatory functions.

There are no other developments pending in the territory proposed for detachment that might generate demand for local public services.

Finally, the petitioner's brief makes clear that the purpose of the detachment is not to finance and facilitate services to the detachment area but to utilize the tax base being developed at the Red Dog minesite to finance and facilitate services throughout the rest of the NANA region.

Thus, there is no reasonable basis to conclude that the geography or configuration of the territory proposed for detachment precludes or makes impractical the provision of services by the North Slope Borough.

C. TRANSPORTATION AND COMMUNICATIONS FACTORS

In its Statement of Findings and Conclusions on the North Slope Borough incorporation petition in 1972, the Local Boundary Commission found with respect to the transportation standard that "this standard has been met in all respects."

In Mobil Oil v. Local Boundary Commission, supra, the Alaska Supreme Court affirmed that the Local Boundary Commission correctly applied the transportation standard to the incorporation of the North Slope Borough.

The transportation facilities and communications services serving the communities of the North Slope Borough are now greatly superior to the facilities and services available in 1972. As stated before, every community, as well as Red Dog, is serviceable by Hercules cargo aircraft. Marine transportation serves the Borough's coastal communities.

The present low level of transportation improvements in the detachment area as a whole reflects the historic lack of intensive human use and occupancy. However, contrary to petitioner's assertion, the natural geography of the detachment has not barred travel within and across the detachment area for subsistence and inter-regional trade.

Development of the public port and road to the Red Dog minesite will render that sector of the North Slope Borough as accessible by marine and air transportation as Point Hope already is. The detachment area and the Red Dog mine will not be accessible by road or water from any settlement in the NANA region, including Kotzebue. When developed, the port for the Red Dog mine will be among the busiest ports in Alaska and open to public use.

Successful development and operation of the mine will entail substantial import and export of goods and commodities and extensive communications between the minesite and distant locations. Since the mine project will require fewer public improvements or services than the North Slope Borough routinely provides to its other communities, provision of local governmental services should offer no difficulty. The Red Dog minesite will be no less accessible to Barrow by air transport than are Point Hope, Anaktuvuk Pass or Kaktovik.

These circumstances, supplemented by the facts presented in the preceding section, belie any conclusion that "the lack of transportation facilities precludes the communication and exchange necessary for responsive and integrated local government." Few local government services will be required. It will certainly be easier for the North Slope Borough to provide any needed local services than for Cominco to manage the great volume of international commercial activity necessary to develop and operate this remote mine, the largest of its kind in the world.

D. PROVISION OF SERVICES.

The requirements of 19 AAC § 10.240(a) and (b) are cumulative. Even if the Local Boundary Commission approves detachment conditioned on the formation of a NANA regional borough, the Local Boundary Commission must still find that the new borough will be able to provide services to the detached area.

The Local Boundary Commission does not have the benefit of any proposal for a NANA borough as yet. The Local Boundary Commission cannot now tell what services a NANA borough can or will provide to the area. Nor can the Local Boundary Commission guarantee that services promised by borough petitioners will be delivered.

In talks with North Slope Borough representatives, NANA incorporation advocates (then seeking voluntary detachment), asked the North Slope Borough to suspend enforcement of planning regulations governing the Red Dog area for three years (Attachment SS). Planning is the most critical local government function applicable to the proposed detachment. As such suspension would be unlawful, the North Slope Borough declined. Will these advocates suddenly become eager to regulate and protect this land and its resources after incorporation of a NANA borough? Is it reasonable to assume that the advocate of this boundary change, which owns mine properties in the area, will support the lawful regulation of its property by the new borough government when it has sought unlawful waiver of regulation by the North Slope Borough?

E. DISTRIBUTION OF ASSETS AND LIABILITIES

Petitioner states: "There are no assets of the North Slope Borough within the territory proposed for detachment". From this, Petitioner extrapolates that the Local Boundary Commission can dismiss the need to distribute the North Slope Borough's liabilities. This application of 19 AAC 10.250 is in error.

Because there are no permanent residents, and, as yet, no substantial developments warranting local improvements, the North Slope Borough has not invested - nor been asked to invest - in local public improvements within the detachment area. Moreover, as noted earlier, the Red Dog EIS indicates that there will be no significant demand for public improvements at the minesite.

Nevertheless, there are existing and pending improvements to which a portion of the North Slope Borough liabilities attaches. All of the North Slope Borough's bonded indebtedness is in the form of general obligation bonds, backed by the full faith and credit of the North Slope Borough. All real property valuation that is or, in the absence of detachment, will be within the North Slope Borough is liable for a pro rata share of North Slope Borough debt service obligations. In other words, even now, a measurable share of liability attaches to all real property valuation that is or will be developed in the detached area.

The Petitioner's argument that the lack of improvements excuses the state or a successor government from assuming liability for a portion of the NSB's bonded debt conflicts with the court's ruling in Mobil, supra, p. 102. Also, if property taxes from the Red Dog mine and other properties in the detached area are to be available to service bonded debt for the proposed NANA borough (Petitioner's Attachment 36), they will be no less useable for the same purposes by the North Slope Borough, in the absence of detachment.

The Red Dog Mine is only one manifestation of extensive mineralization occurring within the area. (Attachment TT). Petitioner has not attempted to prepare a comprehensive assessment of the fiscal impact of the detachment petition on the North Slope Borough. Petitioner's brief addresses the Red Dog minesite, to the exclusion of all other potential revenue sources. While it may be technically demanding to develop a full accounting of the future revenue potential encompassed by the detachment territory, failure to do so discredits Petitioner's assessment of potential fiscal impacts. It also prevents a full and fair reckoning of the distribution of assets and liabilities at this time.

To conclude, the Petitioner's brief fails to address the equitable distribution of assets and liabilities, as required by 19 AAC 10.250 in the event of detachment. The Local Boundary Commission must address the distribution of assets and liabilities before it decides upon detachment petition.

IV. APPLICATION OF THE BEST INTEREST STANDARD

In order to approve the detachment of the land in question, the Local Boundary Commission must find the detachment to be in the best interests of

the State of Alaska, the territory proposed for detachment and the North Slope Borough. This standard is cumulative. Detachment must be in the best interest of all three or it is not in compliance with standards and cannot be approved.

A. BEST INTERESTS OF THE STATE OF ALASKA.

1. Local Self Government

The North Slope Borough shares the State's interest in promoting local self government. The State, however, cannot be provincial in this regard. The State's best interest is to promote local self government throughout Alaska, not just "maximizing local self-government in the NANA region". For the State to promote local self government in one area by harming it in another area is self-defeating. Formation of one local government at the expense of another jurisdiction is detrimental to the principle of jurisdictional and fiscal integrity for all local governments in the State.

It is not in the State's best interest to harm the long term viability of any government. As will be shown more fully in the section addressing North Slope Borough's best interests, the future viability of the North Slope Borough depends on diversification of its economy and tax base in the face of declining oil reserves and revenues. The State of Alaska should be especially sensitive to this concern. Mineral development in the area proposed for detachment will help provide that diversified economy and tax base for North Slope Borough's future.

Involuntarily removing a potential revenue source from North Slope Borough can only hurt the North Slope Borough's creditworthiness. Indeed, the State's apparent readiness to tamper with its local governments' economy and tax base can only harm investor confidence in all Alaskan local governmental bonds. It is not in the State's best interests to harm the North Slope Borough's creditworthiness or to create a precedent whereby the bond ratings of all Alaska local governments may suffer.

The State's interest in promoting local government is valid. The method the State has chosen in this petition however harms all local

governments, especially the North Slope Borough. The State's interest can be effected in other, less harmful ways. There are fiscal alternatives for support of a NANA region borough. (Attachment UU).

Petitioner's brief has not provided evidence that detachment will advance the State's interest in the development of the territory.

2. Precedents for Future Detachment

Detachment of this area would set a precedent for similar detachments of unpopulated or lightly populated areas and/or for detachments of areas containing natural resources which are near the borders of an ongoing-unorganized borough which might form the basis of a new borough. (Attachment VV).

Beginning with the southern part of Alaska.

a. Ketchikan Gateway Borough. The only populated area in Ketchikan is the area immediately northwest of Ketchikan towards Ward Cove and the area immediately south of Ketchikan along the road going to Saxman and south. The other 95% of the Ketchikan Borough does not receive any greater level of governmental services from the Ketchikan Borough than does the area here proposed for detachment.

The Ketchikan Borough also includes all of Revillagigedo and Gravina Islands. Almost all of the area comprised by these two islands would also be eligible for detachment.

The pertinent natural resource area is the U.S. Borax molybdenum mine which is just outside the Ketchikan Gateway Borough in the unorganized borough. The precedent of tax relief for a private developer might be used there to defeat an annexation proposal by the Ketchikan Borough.

b. Sitka Borough. The Sitka Borough is similar to the Ketchikan Borough in that at least 95% of the borough could be detached, including all of that part of Chichagof Island included in the Sitka Borough, all of Kruzof Island and the great majority of Baranof Island, and in particular, all of the eastern and southern portions of the island, if lack of population or lack of provision of municipal services were considered. There do not appear to be any natural resource areas equivalent to the Red Dog area in this Borough.

c. Juneau Borough. The Juneau Borough is similar to the Ketchikan and Sitka Boroughs. Areas which would easily qualify for detachment include all the land north of Berners Bay and all of the land south of Taku Inlet and on both sides of Taku Inlet to the Canadian Border.

In the Juneau Borough area there are natural resource areas which could be considered i.e the Green's Creek lead, zinc and silver mine which is just outside the Juneau Borough in the unorganized borough and Admiralty Island with its timber resource. If there were to be an Admiralty Island Borough proposed or a Sealaska Borough, this Green's Creek area could be included. It could also be included even without the formation of a borough if the City of Angoon continues its expansion. This would place Juneau in the position of servicing the population of the Green's Creek mine, as most workers commute from Juneau, without the benefit of the tax base to offset these costs. Annexation of this area to the Juneau Borough would be more logical but under the basis of the petitioner's brief, this could be defeated.

d. Haines Borough. All of the area of the Haines Borough could be detached, including Klukwan. There are valuable mineral and timber resource deposits in this area. With the long standing conflict between Klukwan and the Haines Borough, a detachment petition might be presented by Klukwan if the Local Boundary Commission began looking with favor upon realigning existing borough/government boundaries.

e. Kodiak Island Borough. Kodiak Island has small Native villages on the shores and inlets of Kodiak Island. All of Afognak, considering the lack of population or municipal services could be detached. Koniag could propose a new borough coterminus with its boundaries which would swallow the existing Kodiak Island Borough.

f. Bristol Bay Borough. Almost all of the Bristol Bay Borough could be detached. This includes the approximate third of Bristol Bay Borough within Kvichak Bay and all of the area north of Naknek and east of King Salmon, including a portion of Naknek Lake. The areas within the Bristol Bay Borough now receiving government services are Naknek, South Naknek, which is across the Naknek River from Naknek, King Salmon, and the

area on both sides of the road between Naknek and King Salmon. Tax revenues for this borough come almost entirely from their one percent sales tax on fish, a substantial portion of which is collected from floating processors within Kvichak Bay which never touch shore. The Bristol Bay Regional Corporation could propose a new borough coterminus with its boundaries which would extinguish the existing Bristol Bay Borough.

g. Kenai Peninsula Borough. The one-half of the Kenai Peninsula Borough area comprised of Cook Inlet and the area west of Cook Inlet could be detached. They include all the drilling platforms within Cook Inlet and the Beluga coal fields. There is an elementary school at the very northwest tip of that portion of the Kenai Peninsula Borough west of Cook Inlet at the Native Village of Tyonek. Other than at Tyonek, the area west of Cook Inlet is unpopulated and is not served by schools, roads or fire service. Development of the Beluga and Placer Amex coal fields could form the economic nucleus of a new borough with Tyonek as its seat. The road access to this area would be from the Matanuska-Susitna Borough although Tyonek, the power station and the port site are presently within the Kenai Peninsula Borough.

The analogy of this situation to the present petition is clear, i.e., road from a NANA port to a resource in the North Slope Borough.

The Kenai Peninsula Borough is subject to attack from the other side as well. The concept of a Prince William Sound Borough surfaces periodically. This Borough, as discussed, would include Valdez, Cordova, Whittier and Seward which if approved would significantly alter the Kenai Peninsula Borough boundaries and remove a substantial amount of tax base.

In addition, there are mineral deposits in the Port Graham-English Bay area which could form the basis of a detachment petition.

Even if some of these examples above would not be the basis for a new government entity, there would at least be a precedent for the detachment of territory to grant tax relief to a corporation under the guise of creation of jobs.

h. City of Valdez. The City of Valdez if encompassed within a Prince William Sound Borough as discussed above would see its tax base seriously diluted.

i. Municipality of Anchorage. All of the Chugach State Park could be detached from Anchorage plus Portage and Portage Glacier, where there are no schools or municipally maintained roads.

j. Fairbanks North Star Borough. Most of the area in this borough could be detached, including all of the area south of the Tanana River, which is unpopulated, and all of the area away from the Alaska Highway and west of the homesteaded area along the Chena Hot Springs Road. This is well over half of the Fairbanks North Star Borough. And, certainly, major portions of the Alyeska Pipeline, which passes through the Fairbanks North Star Borough, could be taken away from the Borough's tax base if criteria presented here applied or Doyon, Ltd. would wish to propose a regional government along its boundaries.

k. Matanuska Susitna Borough. The Matanuska Susitna Borough has already experienced efforts on the part of some of its residents (as distinguished from this case) to detach. These petitions have been rejected. In addition to the Lake Louise area, there is also the Dunkle Mine area near the northwestern boundary of the borough. With the growth in the Healy area because of the Usibelli Mine development, it is conceivable that the formation of a regional government around Healy would seek to detach the Dunkle mine area.

Also as discussed in the section on the Kenai Peninsula Borough, the possibility of a new government centered around Tyonek also raises the possibility of territory being detached from the Matanuska-Susitna southwestern boundary.

l. North Slope Borough. The North Slope Borough could be subjected to other detachments.

As the above discussion indicates, there are many areas of the State ripe for detachment petitions if the Commission approves this petition. Disturbing effects of detachment are discussed on pages 48 through 51 of this brief.

3. Economic Development and Employment

The North Slope Borough shares the State's interest in promoting resource development and local employment. Petitioner, however, makes unfounded statements that detachment will further these interests.

The State's interest in resource development at Red Dog can be fully satisfied under North Slope Borough jurisdiction. Preliminary development of the mine is going on now. No evidence has been submitted that detachment is essential to the economic feasibility of the mine project. The world market for the mine's products is the crucial factor in the feasibility and profitability of the Red Dog Mine, according to AIDA's official finance plan. There is no evidence the proposed boundary change will enhance the financing of the DeLong Mountain Transportation Project.

Petitioner alleges the detachment will achieve unified regulation and control of the DeLong Mountain Transportation system and the Red Dog Mine. As shown earlier (Attachment LL), local governmental regulation is a relatively minor factor in the overall regulatory scheme for the mine, compared to federal and state regulation. Detachment will not materially unify regulatory processes or remove non-existent barriers to development.

Part of NANA Regional Corporation's private agreement with COMINCO involves an employment preference for NANA shareholders at the Red Dog Mine. As the mine is developed and operates, NANA shareholders will absorb a major share of the jobs. This will help alleviate unemployment and underemployment in the NANA region. This economic benefit will accrue to NANA residents regardless of detachment.

The North Slope Borough has no power or interest to impede employment of NANA residents at Red Dog. The proliferation of NANA-related businesses in the North Slope Borough has already been noted. The North Slope Borough has not sought to mandate employment of North Slope Borough residents on private projects. The North Slope Borough cannot, as a matter of law, condition the granting of a permit or enforcement of a regulation on the employment of North Slope Borough residents. Such an action would be unconstitutional both under the Alaska and United States Constitutions.

B. THE PROPOSED DETACHMENT IS NOT IN THE BEST INTERESTS OF THE TERRITORY TO BE DETACHED.

Petitioner's brief makes no claims and offers no evidence that the North Slope Borough has been remiss in its governance of the territory

proposed for detachment or has heretofore interfered with any person's use and enjoyment thereof. Since its founding, the North Slope Borough has protected and encouraged traditional subsistence uses in the territory, including uses by NANA residents. The North Slope Borough has not interfered with the efforts of allotment applicants, NANA Regional Corporation, and other landed interests to obtain, use and enjoy their lands. The North Slope Borough has protected the territory's environmental integrity through appropriate planning regulations and has provided public services appropriate to the character of the territory.

The best interest of the territory proposed for detachment is to be found in a balance between the exploitation and conservation of resources. The vast majority of the area is a "conservation area" under North Slope Borough land use regulations. (Attachment WW and Petitioner's Attachment 29). Development of mineral sites in the area will be allowed to the extent such development does not harm subsistence resources. The North Slope Borough has demonstrated the ability to successfully address and balance these concerns. NANA Regional Corporation representatives however have shown an antipathy for legitimate regulation. They have sought a three-year waiver of environmental regulation over their Red Dog mine property. (Attachment SS). NANA's president has said, "Cominco feels that if the people who benefit from the mine regulate it, they will have a more stable government to work with." (Attachment XX).

Even assuming officials of a NANA borough would seek to regulate development and protect the environment of the territory, the fact remains that any future government's laws, rules, regulations and enforcement procedures are unknown. For the Local Boundary Commission to find that a future government and its unknown regulatory scheme will better serve the territory proposed for detachment than will North Slope Borough's regulations would be pure speculation.

Petitioner argues that the territory will be managed and regulated to promote environmentally sound economic development. Thus, as nothing would change, it would not be in the territory's best interest to be detached. Petitioner's arguments, however, also ignore the necessary time lag between a decision to detach and the enactment and enforcement of a regulatory scheme by a new borough. In the interim, uncontrolled

development may occur, as was sought by NANA Regional Corporation from the North Slope Borough.

As noted earlier, the proximity of the area proposed for detachment to Kotzebue is immaterial when considering the North Slope Borough's ability to provide services to the area. The North Slope Borough can effectively service the area from Barrow or Point Hope.

The North Slope Borough has demonstrated a willingness to provide services to the Red Dog area. It has issued and is processing land use permits for the area. The North Slope Borough has offered to create a Service Area governed by a board with representatives from NANA and Cominco to allay development concerns of the Red Dog mine sponsors. Evidently, the service area concept holds no appeal to project sponsors.

C. BEST INTERESTS OF THE NORTH SLOPE BOROUGH.

Detachment will have no positive effects and many detrimental effects on the best interests of the North Slope Borough.

First, the North Slope Borough respectfully submits that the uniform judgment of its electorate and elected Assembly and Mayor are, in the absence of overwhelming evidence to the contrary, the best measure of the best interest of the North Slope Borough. The electorate, the Assembly and the Mayor have judged that the proposed detachment is not in the best interest of the North Slope Borough. Since submittal of this petition for a forced detachment, North Slope Borough residents have become more convinced that detachment is not in their best interests. (Attachment H).

Second, the proposed detachment will deny the North Slope Borough an important source of potential revenues to fund public improvements and services for its residents. A preliminary and limited analysis, of the fiscal impact of detachment of Red Dog mine alone, prepared by E.F. Hutton, projected a short-term revenue loss to the North Slope Borough of \$33,260,000 by 1996. (Attachment YY). While this is only a conservative, short-term and partial analysis, it establishes that there will be a significant revenue loss to the North Slope Borough. A more comprehensive analysis would undoubtedly find a more substantial revenue loss.

This revenue loss will have three fiscal impacts adverse to the North Slope Borough's best interests. It will reduce the amount of revenues available for debt service and will thereby devalue outstanding North Slope Borough bonds and diminish the marketability of future North Slope Borough

bond offerings. It will reduce revenues available to fund the ongoing operations of local government. It will shift to other North Slope Borough taxpayers a substantial burden of higher mill rates and higher taxes to offset the revenues lost by detachment. These impacts are not in the best interest of the North Slope Borough.

Data submitted as part of the petitioner's brief indicate that the taxable value of Red Dog mine improvements will be about \$250 million and that the new borough will levy a 3 mill property tax. (Petitioner's Attachment 16 and 36) Based on this data, it is calculated that the proposed detachment of Red Dog alone will yield \$750,000 in annual revenue to the NANA region borough and \$3,842,500 annually in tax reduction to NANA/Cominco. The annual net fiscal effect of the Red Dog minesite development can be summarized as follows:

Revenues to NANA Region Borough	3.0 mills X \$250 Million =	\$750,000
Tax Reduction for NANA/Cominco	15.37 mills X \$250 Million =	<u>\$3,842,500</u>
Tax Burden Shift to NSB Taxpayers	18.37 mills X \$250 Million =	\$4,592,500

Thus, detachment of the Red Dog minesite alone will result in a shift of tax burden to North Slope Borough taxpayers of about \$4.6 million annually. This is not in the best interest of the North Slope Borough.

Notwithstanding petitioner's allegation that the main purpose of the detachment is to provide a tax base for the proposed NANA borough, figures submitted by the petitioner (Petitioner's Attachments 16 and 36) lead to the conclusion that better than eighty percent (80%) of the financial benefits of the proposed boundary change will accrue to NANA/Cominco as developers of a private mining venture. Less than twenty percent (20%) of the public revenues taken from the North Slope Borough will actually go to support the proposed NANA borough and the public needs of its citizens.

There is no statutory or regulatory authority or just reason to implement boundary changes for the purpose of redistributing local government tax assets to benefit private interests.

Third, this first inroad upon the territorial and fiscal integrity of the North Slope Borough will naturally raise general concern in the financial community about the commitment of the State of Alaska to maintain the long-term stability of the North Slope Borough's boundaries. This

result will magnify the financial market's concern about the North Slope Borough's long-term creditworthiness, beyond any short-term concern for immediate revenue losses.

Bond buyers are used to settled local government boundaries and have developed expectations as to the size of the tax base for individual governments. Since 1963, there have not been significant detachments of areas from any local government tax base. As a result, there are almost 24 years of expectation and reliance upon the settled nature of Alaskan local government boundaries. There have been almost 14 years of reliance upon the North Slope Borough's boundaries. Any action which will suggest that this commission would as a matter of policy favorably consider petitions for detachment of land in unpopulated areas of the North Slope Borough will become a relevant factor of the bond rating for not only the North Slope Borough but for every local government where this is a possibility.

Fourth, the proposed detachment encompasses other important prospective mineral deposits besides the Red Dog minesite. (Attachment TT and ZZ). While it is technically difficult to determine the fiscal value of these resources to the North Slope Borough, detachment of this economic potential is clearly not in the best interest of the North Slope Borough.

Fifth, the North Slope Borough well recognizes the vulnerability of its petroleum- dominated economic and fiscal base. For the North Slope Borough, as for the State, petroleum revenues are forecast to decline steeply beyond 1995. The North Slope Borough, like the State, is committed to a prudent program to diversity its long-term economic base. Development of the North Slope Borough's mineral resources at Red Dog and other sites in the detachment area represents the first significant opportunity to diversify the borough's economic base. This is doubly important, since the mineral reserves in the Red Dog vicinity have a productive life that will far outlast the proven petroleum reserves elsewhere in the borough. Detachment of the territory holding the first opportunity for economic diversification is not in the best interest of the North Slope Borough.

Petitioner alleges that the proposed detachment will not impair the future creditworthiness of the North Slope Borough. In support of this allegation, petitioner offers the opinion of the State Bond Bank's financial advisor (Government Finance Associates, Inc.) and of the Commissioner of Revenue. (Petitioner's Attachment 19 and 20). Petitioner and the

Commissioner of Revenue aver that detachment will augment the tax base of the proposed NANA borough but will not diminish the North Slope Borough's tax base. Obviously, any aggrandizement of the proposed NANA borough's property tax base resulting from the detachment is offset by diminution of North Slope Borough's property tax base.

The Commissioner of Revenue's letter of November 18, 1985, purports to refute the E.F. Hutton letter of November 6, 1985 assessing the impact of the proposed detachment on the North Slope Borough's fiscal condition. The Commissioner's letter, however, does not challenge the two key points in the E.F. Hutton letter: (1) detachment will set a damaging precedent and (2) detachment will result in measurable loss of revenue to the North Slope Borough. Both of these points are affirmed by information that petitioner has submitted for the record on this petition (Petitioner's Attachment 19) and information submitted regarding a previous detachment petition, (Attachment AAA, BBB, CCC) as well as by new information submitted as part of this brief. Nor does the Commissioner's letter address the obvious loss of the North Slope Borough's ability to pledge that future tax revenue to secure bond funds.

Standard and Poor's Corporation is widely recognized as the nation's foremost independent credit rating agency. As such, its professional opinion carries unmatched credibility and acceptance in the financial community. Mr. Vladimar Stadnyk, Senior Vice President of Standard and Poor's Municipal Finance Department, assessed the impact of the proposed detachment of the North Slope Borough territory as follows:

"Although the magnitude of the loss in valuation, and its impact on the Borough rating cannot be defined specifically at this time, I would offer that continued loss of assessed valuation because of economic reasons, deannexation proceedings, or detachment by other agencies or authorities would generally be considered detrimental to the ability of the borough to meet its commitments on general obligation debt. (Attachment DDD).

Standard and Poor's independent opinion is wholly consistent with the conclusion of the North Slope Borough's own financial advisors. (Attachments YY and EEE). It is also consistent with the Matanuska-Susitna Borough's financial advisor's evaluation of the impact of the proposed Lake

Louise detachment upon the creditworthiness of the Matanuska-Susitna Borough. (Attachment AAA).

This concern for precedent cited by Standard and Poor's, and concurred in by the North Slope Borough's own financial advisors was heartily endorsed in the Department of Community and Regional Affairs' own recommendation to the Local Boundary Commission and the Local Boundary Commission's decisional statement on the proposed Lake Louise detachment. The Department's report recommended that the Lake Louise detachment be rejected, in part because:

"The Matanuska-Susitna Borough would be adversely affected by the detachment of the Lake Louise area. It would reduce the assessed value by \$6,941,700 (0.67%), which would negatively affect the bonding capacity of the borough. As the bonding ability of the Borough is based upon the level of taxable property, the uncertain future of current boundaries could have a debilitating effect upon the Borough's bond rating and capacity to issue bonds. In addition, there are other regions within the Matanuska-Susitna Borough that are in a similar situation to the Lake Louise area and this detachment could, again, set a precedent for future detachment proceedings from the Matanuska-Susitna Borough. Therefore, it would not be possible for the Borough to assure the bonding market of a consistent future valuation." (Attachment BBB).

This concern for precedent was reflected in the Local Boundary Commission's official Statement of Decision, in which it said:

"The Matanuska-Susitna Borough would be adversely affected by the detachment of the Lake Louise area. It would reduce the assessed value by \$6,941,700 which could negatively affect the bonding capacity of the Borough. (Attachment CCC).

Petitioner seeks to minimize the redistribution of local property tax base from the North Slope Borough to the proposed NANA region borough by characterizing it as a relatively modest part of the North Slope Borough's overall fiscal base. Objectively, if detachment of less than \$7 million (or

0.67%) from its property tax base adversely affects the Matanuska-Susitna Borough, then it would be inconsistent and illogical to maintain that this proposed detachment of \$250,000,000 (or 1.6%) in property tax base, counting only the initial Red Dog minesite valuation, will not affect the North Slope Borough.

In any case, relative significance is not the issue. For example, the State was not careless of its own resources during its negotiations with Cominco to finance the Red Dog road and port improvements, even though it was committing only a minute share of its total financial assets to the project. In practice, the State of Alaska and the North Slope Borough are similarly obliged to be mindful of the public resources entrusted to their stewardship.

The fact that the area proposed for detachment only comprises 3.7 percent of the total land area of North Slope Borough is irrelevant. The fiscal significance of an economic resource is not proportionate to its area. For example, Prudhoe Bay represents a very small portion of the North Slope Borough and of the State of Alaska but is the primary source of revenue for both governments.

The fact that the 1984 tax valuation of property in the area proposed for detachment was a small percentage of North Slope Borough's overall tax base is irrelevant and misleading. The 1985 valuation is much higher. Mineral exploration and development activity in the territory is on the upswing. The 1986 valuation and future valuations will continue to rise.

The detriments to the North Slope Borough that flow from detachment show that it is not in the best interest of the North Slope Borough.

CONCLUSION

The North Slope Borough has shown through its brief that Commissioner Notti's petition to detach the 2,110,720 million acres from the North Slope Borough should fail not only on its merits but on procedural grounds as well. These failures are on many grounds:

1. NANA Regional Corporation representatives and its predecessor acquiesced in the boundaries of the North Slope Borough at the time of the original incorporation. NANA

representatives in fact supported the original boundaries and disavowed any commonality between regional corporation and borough boundaries.

2. There is no correlation between the success of the Red Dog mine and detachment of the area from the North Slope Borough. The Red Dog mine can benefit the people of NANA while remaining in the boundaries of the North Slope Borough.

Red Dog development promises no significant adverse environmental or social impacts and many positive impacts for NANA residents. Red Dog development alone is not an urgent cause for borough incorporation. There is time and need to explore fiscal alternatives to detachment.

3. The petition fails to satisfy the standards for detachment and bases its arguments on erroneous assumptions and interpretations of the Local Boundary Commission North Slope Borough incorporation decision.

4. Detachment is not in the best interest of the State. Instead of promoting local self government, the petition undermines the integrity and stability of a local government's boundary, with harmful implications for the State's entire system of borough government.

5. The petition is clearly not in the best interests of the North Slope Borough. It harms the financial stability and future of the North Slope Borough and takes territory from the Borough against the express wishes of its voters.

6. The petition is based upon the erroneous assumption that there are no assets and/or liabilities to be distributed if detachment is approved. Approval will impose an arbitrary and inequitable shift of tax base from an existing government to a yet-to-be formed government.

7. The petition is not in the best interests of the area proposed to be detached. The North Slope Borough is exercising land management regulations over the area while NANA representatives have indicated a desire to abate such regulation.

8. Approval would set a dangerous precedent, giving rise to the possibility of many similar petitions. The subsequent local boundary and fiscal instability would reverberate through the financial markets, and would be very detrimental to local governments and to the State.

9. Due process guarantees have been abrogated which would subject any approval of the petition to judicial attack. These issues should be resolved before the Commission takes action.

For all of the above reasons and additional reasons presented in the body of the North Slope Borough brief, the North Slope Borough urges the Local Boundary Commission to deny Commissioner Notti's Petition for Detachment.

Signature Page is Attached.

LIST OF ATTACHMENTS TO NORTH SLOPE BOPOUGH BRIEF

Attachment A - December 3, 1982, Attorney General Opinion #15, memorandum from Attorney General Wilson Condon to Governor Jay Hammond.

Attachment B - December 12, 1985, Anchorage Daily News editorial on conflict of interest.

Attachment C - July 23, 1984, memorandum from Assistant Attorney General Thomas Jahnke to Commissioner Robert Sundberg.

Attachment D - September 23, 1983, memorandum from Assistant Attorney General Diane Colvin to Carol Derfner.

Attachment D1 - November 7, 1985, letter from North Slope Borough Mayor George Ahmaogak to Commissioner Notti.

Attachment D2 - November 14, 1985, letter of North Slope Borough Mayor Ahmaogak to Local Boundary Commission Chairman, Robert Eder.

Attachment D3 - November 16, 1985, Resolution No. 86-20 of the Alaska Municipal League, "A Resolution Endorsing Careful Planning of Municipal Boundary Changes."

Attachment D4 - December 17, 1985, Resolution 1-85 of the Alaska Chapter, American Planning Association, "A Resolution Endorsing Careful Planning of Municipal Boundary Changes."

Attachment E - Timetable from draft revised Local Boundary Commission regulations.

Attachment F - October 1, 1985, draft memorandum, hand-titled "Example Detachment Petition - [redacted] by NANA"; November 6, 1985, letter from Marty Rutherford to Earl Fickler; excerpt from Commissioner Notti's Brief in Support of Petition for Detachment.

Attachment G - Two-page chart comparing NANA draft memorandum and Commissioner Notti's Brief.

Attachment H - Petitions of the residents of the North Slope Borough reference detachment petition.

Attachment I - December 12, 1985, letter from Arnold Brower Jr., North Slope Borough, to Local Boundary Commission Chairman Robert Eder.

Attachment J - June 2, 1972, letter from John Schaeffer, Executive Director of Northwest Alaska Native Association to Assistant Secretary Harrison Loesch.

Attachment K - Letter from Robert Newlin, Northwest Native Association to Byron Mallott, Local Affairs Agency, with attached map.

Attachment L - May 26, 1972, letter from John Sackett, president of Tanana Chiefs Conference to Assistant Secretary Harrison Loesch.

Attachment M - Two maps of Arctic Slope and Bering Strait native protests, from Alaska Natives and the Land.

Attachment N - April 24, 1972, letter from James Wickwire to BLM Director Curtis McVee, with six attachments.

Attachment O - August 17, 1972, letter from Jacob Adams, ASRC, to U.S. Department of the Interior, with attachment of NANA/ASRC boundary agreement.

Attachment P - August 1, 1972 letter from Joseph Upicksoun, ASRC, to John Schaeffer, NANA Regional Corporation.

Attachment Q - Map and title box, dated February 22, 1972, showing NANA's proposed regional boundaries.

Attachment R - December 11, 1972, letter to Joseph Upicksoun, ASPC, from Assistant Secretary Harrison Loesch.

Attachment S - DCRA map of Alaska municipalities.

Attachment T - Map illustrating borough and ANCSA regional corporate boundaries.

Attachment U - "Statement of Findings and Conclusions on the Petition Proposing Incorporation of a First Class North Slope Borough", adopted by the Local Boundary Commission on May 10, 1972.

Attachment V - Edwin Hall, Jr., In the National Interest: A Geographically Based Study of Anaktuvuk Pass Inupiat Subsistence Through Time, Volume I, with Attachment Va, map of "Total lifetime subsistence territories" from Volume II.

Attachment W - 1800 Ernest Burch, Jr., The Traditional Eskimo Hunters of Point Hope, Alaska: 180-1875.

Attachment X - September 1985 VITA, Edwin S. Hall, Jr.

Attachment Y - December 13, 1985, memorandum from Edwin Hall to Kevin Waring.

Attachment Z - Stephen Braun and David Burnham, Chapter 7, Kivalina and Noatak Subsistence Use Patterns, from Cominco Alaska, Inc., Environmental Baseline Studies, Red Dog Project, prepared by Dames & Moore.

Attachment AA - Three maps of traditional trails, arctic and northwest Alaska.

Attachment BB - Edwin Hall, Jr., Chapter 8, Archaeology, from Cominco Alaska Inc., Environmental Baseline Studies, Red Dog Project, prepared by Dames & Moore.

Attachment CC - Map of Land Status, Territory Proposed for Detachment.

Attachment DD - Irvin Tailleir, U.S. Geological Survey Open-file Report, "Lead- Zinc-, and Barite-Bearing Samples from the Western Brooks Range, Alaska."

Attachment EE - U.S. Geological Survey Open-file Report, "The Status of Mineral Resource Information on the Major Land Withdrawals of the Alaskan Native Claims Settlement Act of 1971.

Attachment FF - Cominco map of Red Dog minesite and road corridor.

Attachment GG - Excerpts of Red Dog project environmental and socioeconomic impacts from Red Dog EIS.

Attachment HH - CS for Senate Bill No. 280 (Finance) am in the Legislature of the State of Alaska, Fourteenth Legislature - First Session.

Attachment II - SRI International, Economic Evaluation and Finance Plan for the Proposed Delong Mountain Transportation System.

Attachment JJ - Table IV-5 from Economic Evaluation and Finance Plan for the Proposed Delong Mountain Transportation System.

Attachment KK - Memorandum of Understanding between the Alaska Industrial Development Authority and Cominco, Ltd. for the Delong Mountains Transportation System.

Attachment LL - Excerpt on Red Dog permit approvals from Red Dog EIS.

Attachment LL1 - April 13, 1983 letter of North Slope Borough Mayor Eugene Brower to William Riley, Environmental Protection Agency; May 10, 1984, letter from North Slope Borough Mayor George Ahmaogak to William Riley, Environmental Protection Agency.

Attachment LL2 - November 1985, Red Dog Master Plan and Rezoning Peouest, Cominco Alaska.Attachment MM - December 13, 1985, letter from Stephen Braund to John Carnahan.

Attachment NN - "Special Census Results for Oil Related Worksites in the North Slope Borough" from Alaska Department of Labor Alaska Population Overview, 1982.

Attachment OO - Thomas Morehouse, et al., Alaska's Urban and Rural Governments.

Attachment PP - North Slope Borough Capital Improvements Program, FY 1986 - FY 1991.

Attachment QQ - Map of air mileage from Barrow to North Slope Borough communities.

Attachment RR - Map of inbound Marine and Air Cargo Routes, North Slope Borough.

Attachment SS - April 23, 1985, letter from John Schaeffer, NANA Regional Corporation to North Slope Borough Mayor George Ahmaogak.

Attachment TT - Alaska's Mineral Industry, 1984.

Attachment UU - November 19, 1985, letter from North Slope Borough Mayor George Ahmaogak to Local Boundary Commission Chairman Robert Eder.

Attachment VV - Map of natural resources and Alaska boroughs.

Attachment WW - North Slope Borough Land Management Regulations.

Attachment XX - Article from Anchorage Daily News, November 2, 1985, "Native groups vie for right to tax mine".

Attachment YY - November 6, 1985, letter from Peter Gaide, E.F. Hutton, to Mr. James Sharpe, North Slope Borough.

Attachment ZZ - August 2, 1985, memorandum from Kevin Waring to Earl Finkler, North Slope Borough.

Attachment AAA - August 11, 1982, letter from Eric Wohlforth, Wohlforth and Flint, to Gary Thurlow, Matanuska-Susitna Borough.

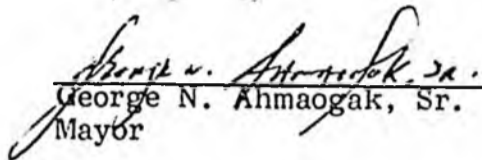
Attachment BBB - "Report to the Local Boundary Commission of the State of Alaska on the Petition to Detach the Lake Louise area from the Matanuska-Susitna Borough", September 9, 1982.

Attachment CCC - "Statement of Decision", State of Alaska Local Boundary Commission, January 8, 1983.

Attachment DDD - November 18, 1985, letter from Vladimir Stadnyk, Standard and Poor's Corporation to Mr. James Sharpe, North Slope Borough.

Attachment EEE - November 20, 1985, letter from Wood Dawson Smith and Hellman to Mr. James Sharpe, North Slope Borough.

Respectfully submitted this 18th day of December, 1985.


George N. Ahmaogak, Sr.
Mayor

FOOTNOTES

1. Petitioner's Attachment 6, pp. 45-46; Petitioner's Attachment 7(a) and 7(b), pp.34 ff.; pp.201 ff.; p. 215; p. 248 ff.
2. Petitioner's Attachment 7(a), p. 123.
3. Petitioner's Attachment 6, p. 22.
4. Petitioner's Attachment 7(a) and 7(b), pp. 44 ff.; pp. 56 ff.; pp. 66 ff.; pp. 98 ff.; pp. 154 ff.; pp. 180 ff.
5. Petitioner's Attachment 4, p. 10; Petitioner's Attachment 7(a), pp. 56 ff.; pp. 166 ff.
6. Petitioner's Attachment 7(b), pp. 241 ff.; pp. 252 ff.; p. 255.
7. Please see, Petitioner's Attachment 23, Environmental Impact Statement Red Dog Mine Project Northwest Alaska at p. 1-4, figure 1-2.
8. Id., at p. 111-4 and 111-5, figure 111-1 and 111-2.
9. Id., _____
10. _____

Table #
NANA Region Population

Year/Source	Population
1970 (U.S. Census)	4,048
1980 (U.S. Census)	4,831
1982 (State of Alaska)	5,343
2000 (EIS Base Case Forecast)	6,985
2000 (EIS Red Dog Impact Case)	7,339

Source: Red Dog Mine Project EIS

Table #
Average Annual Population Growth Rate

Period of Time	Average Annual Growth Rate
1970 - 1980 (actual)	1.8%
Base Case Forecast	1.5%
Red Dog Impact Forecast	1.8%

11. Please see, Attachment II, Alaska Industrial Development Authority and SRI, Economic Evaluation and Finance Plan for the Proposed DeLong Mountain Transportation System.
12. Please see, A.S. 44.88.140 (1984).
13. Please see, A.S. 44.88.140(b) (1984).
14. The Alaska State Housing Authority customarily makes payments-in-lieu of taxes to local governments to help offset local governmental expenditures for improvements, services and facilities furnished to ASHA's tax-exempt housing or public housing projects (AS 18.55.250). The Alaska Power Authority is also authorized (AS 44.83.150) to "make payments in place of taxes in amounts equal to the real and personal property taxes which would be assessed on its real and personal property by each political subdivision in which its property is located to the same extent as if that property were private property and the authority were a non-public corporation."

15. Please see, Attachment LLI, Letter of April 13, 1984 from North Slope Borough Mayor Eugene Brower to Mr. William Riley Environmental Protection Agency; and Attachment LLI, Letter of May 10, 1984 from North Slope Borough Mayor Eugene Brower to Mr. William Riley, Environmental Protection Agency.

16. Please see, 19 A.A.C. 10.240 (b).

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IN RE:)
THE DETACHMENT FROM THE)
NORTH SLOPE BOROUGH OF)
TERRITORY WITHIN AND)
ADJACENT TO THE NANA REGION)

Dept. of Comm. & Reg. Affairs
Div. of Municipal & Reg. Asst.

COMMENTS OF NANA REGIONAL CORPORATION IN REPLY TO BRIEF IN
OPPOSITION TO PETITION FOR DETACHMENT

I. Introduction.

NANA Regional Corporation ("NANA") submits the following reply to the North Slope Borough's Brief in Opposition to Petition for Detachment ("Brief in Opposition to Petition"). The Brief in Opposition seriously distorts the standards under which the Commission must review the petition - advocating a rigid interpretation of those standards that cannot be reconciled with the Commission's constitutional mandate. The Brief in Opposition to Petition also misrepresents important facts concerning the history of the North Slope Borough's southwest boundary, and the subsistence use of the Detachment Area. Finally, the Brief in Opposition to Petition fails to present any persuasive reason why the Commission should delay in approving the petition.

II. The Commission Should Apply the Detachment Standards Flexibly and in Accordance With its Constitutional Mandate.

A. The Commission Must Apply its Standards Flexibly to Meet a Wide Range of Regional Conditions.

Under United States Smelting, Refining and Mining Co. v. Local Boundary Commission, 489 P.2d (Ak. 1971), and Port of Valdez Company, Inc. v. City of Valdez, 522 P.2d 1147 (Ak. 1974), the Local Boundary Commission must adopt standards for boundary changes before it has the power to recommend boundary changes to the legislature. The Commission has complied with this requirement here by adopting the standards for detachment from organized boroughs appearing at 19 AAC 10.225 through 19 AAC 10.250.

While the Commission must adopt standards for local boundary changes, United States Smelting and Port Valdez Co. do not state what those standards must consist of or how they should be applied. On the contrary, the court in United States Smelting carefully excluded itself from reviewing standards adopted by the Commission, or decisions to approve boundary changes under those standards:

Without doubt there are questions of public policy to be determined in annexation proceedings which are beyond the province of the court. Examples are the desirability of annexation, as expressed in published stan-

dards. Judicial techniques are not well adapted to resolving these questions. In that sense, these may be described as "political questions," beyond the compass of judicial review. But other annexation issues, such as whether statutory notice requirements were followed, are readily decided by traditional judicial techniques.

489 P.2d 140, 143 (emphasis added). United States Smelting and Port Valdez Co. do not constrain the Commission to apply the standards in 19 AAC 10.225 through 19 AAC 10.250 in the rigid and mechanical fashion advocated by the North Slope Borough.

The correct approach to applying the Commission's standards is indicated in Mobil Oil Corp. v. Local Boundary Commission, 518 P.2d 92 (Ak. 1974). In contrast to the present detachment proceeding, the Commission's acceptance of the North Slope Borough incorporation petition in Mobil Oil was not subject to review by the legislature, but was explicitly subject to judicial review under former AS 7.10.110, which provided in relevant part:

Any person aggrieved by any determination of the commission may appeal to the Superior Court in the manner and within the scope of review prescribed by Sections 24 and 25, Ch. 2 of the Administrative Procedure Act (AS 44.62).

518 P.2d 92, n.5 at 96. Thus, the Commission's action in Mobil Oil was subject to a more stringent standard of review than that which would apply to the Commission's action on this detachment.

The court described the standard of review that it applied in Mobil Oil as follows:

Recent cases have established that where administrative action involves formulation of fundamental policy, the appropriate standard on review is whether the agency action has a reasonable basis. [citations]. A determination whether an area is cohesive and prosperous enough for local self government involves broad judgments of political and social policy. The standards for incorporation set out in AS 07.10.030 were intended to be flexibly applied to a wide range of regional conditions. This is evident from such terms as "large enough", "stable enough", "conform generally", "all areas

necessary and proper", "necessary and desirable", "adequate level" and the like. The borough concept was incorporated into our constitution in the belief that one unit of local government could be successfully adapted to both urban and sparsely populated areas of Alaska, and the Local Boundary Commission has been given a broad power to decide in the unique circumstances presented by each petition whether borough government is appropriate. Necessarily, this is an exercise of delegated legislative authority to reach basic policy decisions. Accordingly, acceptance of the incorporation petition should be affirmed if we perceive in the record a reasonable basis of support for the Commission's reading of the standards and its evaluation of the evidence.

518 P.2d 92, 97-99 (footnotes omitted).

As with the standards for borough formation in Mobil Oil, the detachment standards here are appropriately general so that they may be applied to a wide range of regional conditions. As in the case of incorporation, the Commission here has been given a broad power, subject to its adopted standards, to decide in the unique circumstances presented by each petition whether a detachment is appropriate. It is the Commission's duty to exercise this power, applying the detachment standards flexibly to produce a recommendation to the legislature that is appropriate under all the circumstances presented in this case.

B. The Commission Should Consider Additional Factors in Applying the Detachment Standards.

To apply the detachment standards with appropriate flexibility, the Commission must decide what factors, if any, in addition to those listed in 19 AAC 10.230(a)(1)-(3) to consider in evaluating a detachment under the best interest standard in 19 AAC 10.230(a). In applying the best interest standard the Commission must consider the factors stated in 19 AAC 10.230 (a)(1)-(3), and may consider such additional factors as the Commission deems relevant to applying the best interest standard to the facts in this case. At pp. 38-51 of its brief the North Slope Borough also urges the Commission to consider a wide variety of factors other than those listed in 19 AAC 10.230(a)-(1)-(3). NANA suggests that the Commission's decision in this case should indicate what factors the Commission decided to consider in addition to those stated in 19 AAC 10.230(a)(1)-(3).

C. The Commission Should Consider Additional Factors Related to Maximizing Local Self-government.

Although not expressed in the regulations, a major factor supporting detachment is the mandate for maximum local self-government in Article X, Section 1 of the Alaska Constitution:

The purpose of this article is to provide for the maximum local self-government with a minimum of local government units, and to prevent duplication of tax levying jurisdictions.

"Self-Government" implies more than the mere presence of a local government serving the area proposed for detachment. "Self-Government" indicates that the area proposed for detachment should be served by a local government directly accountable to the people immediately affected by local government decisions concerning the Detachment Area. Those people are the residents of the NANA Region. Approving this detachment and the resulting transfer of the Detachment Area to a borough serving the NANA Region clearly would best serve the constitutional mandate for maximum local self-government in the present case.

The North Slope Borough contends that because it is capable of providing government services to, and communicating with, the Detachment Area, 19 AAC 10.230(a)(2) and (3) require that the detachment be disapproved. That is not the case. There are other factors related to maximizing local self-government that the Commission should consider here that are far more important to the merits of the present petition.

The factors stated in 19 AAC 10.230(a)(2) and (3) are most relevant to a pure detachment, one where territory is being detached from an organized borough and returned to the Unorganized Borough. Under those circumstances the heavy presumption in favor of maintaining current local government boundaries that is indicated by the use of words such as "precludes" and "impractical" in 19 AAC 10.230(a)(2), and "precludes" in 19 AAC 19.10.230(a)(3), may be appropriate. Here, however, the proposed detachment is to be conditioned on inclusion of the Detachment Area with the boundaries of another organized borough.

The practical consequences of the detachment proposed here are similar to the consequences of an annexation to one borough of territory in another, rather than the pure form of detachment apparently contemplated by 19 AAC 10.230. Hence in looking for additional factors to use in evaluating this petition, it is appropriate to refer to the standards for annexation of contiguous territory to an organized borough in 19 AAC 10.190(a). Several of the standards listed in that regulation are particularly appropriate to the present case:

- whether the territory is in need of municipal services which the organized borough can provide more efficiently than another municipality or the state (19 AAC 10.190(a)(3))

- there is a reasonable likelihood that future growth and development will occur within the territory and annexation of the territory will enable the organized borough to plan for and control that development (19 AAC 10.190(a)(4))

- residents or property owners receive or may be reasonably expected to receive, directly or indirectly, the benefit of organized borough services without commensurate property tax contributions, whether such services are rendered or received inside or outside the territory (19 AAC 10.190(a)(7))

- whether the annexation is otherwise necessary to accomplish a valid public purpose (19 AAC 10.190(a)(8)).

The Petitioner's arguments for this detachment demonstrate that all of these highly relevant additional factors support approval of the detachment.

D. In applying the Standards for Detachment the Commission Must Balance Local and Statewide interests.

In its previous comments on this detachment, NANA alluded to the Commission's constitutional mandate to assure that local boundary changes conform to statewide, as opposed to merely local, interests. Those comments bear reemphasis. Article X, Section 12 of the Alaska Constitution provided for a Local Boundary Commission so that local government boundaries would be established to serve statewide needs without obstruction by local interests:

Article X [of the Alaska Constitution] was drafted and submitted by the Committee on Local Government, which held a series of 31 meetings between November 15 and December 19, 1955. An examination of the relevant minutes of those meetings shows clearly the concept that was in mind when the local boundary commission section was being considered: that local political decisions do not usually

create proper boundaries and that boundaries should be established at the state level. The advantage of the method proposed, in the words of the committee --

* * * * lies in placing the process at a level where areawide or statewide needs can be taken into account. By placing authority in this third-party, arguments for and against boundary change can be analyzed objectively.

Fairview Public Utility District No. 1 v. City of Anchorage, 368 P.2d 540, 543 (Ak. 1962) (footnotes omitted). In responding to an argument that the Commission's mandate to adjust boundaries in accordance with statewide interests became effective only after boroughs were formed, the Fairview court narrated the history that informed the constitutional convention in the drafting of Article X, Section 12:

This expressed need for state adjustment of local boundaries was of immediate concern, and not something that the delegates considered would arise only after a borough government had been formed. Following World War II the City of Anchorage, the largest municipality in Alaska, experienced such a rapid growth that it soon outgrew its boundaries, and the population of adjacent and contiguous areas became greater than that of the city. This resulted in efforts by the city to annex a number of these heavily populated and unincorporated areas. Those efforts were met by the most determined opposition. In a 1954 case involving the attempted annexation of adjacent territory, Judge Folta remarked:

"Every impediment and dilatory tactic has been employed by the opponents of annexation, except the homesteaders, to obstruct and harass the city in every move in connection with its efforts to extend its boundaries in the traditional manner to include the adjacent areas. Such opposition does not appear to be in the public interest or in good faith."

In 1955 there were petitions for the annexation of three additional areas adjacent to the city. Again there were protests and

concerted opposition, which required determination by the Territorial District Court.

* * *

We cannot assume that when the delegates to the constitutional convention assembled later in 1955, they were unaware of these obstacles faced by Alaska's cities. We cannot assume that they were insensitive to the inadequacies inherent in a system where needed municipal expansion could be frustrated if the electors in a single urban area outside of municipal boundaries did not agree to annexation. In the light of these contemporary realities, we cannot assume that the adjustment of local boundaries at a state level was intended to be delayed pending the formation of boroughs.

368 P.2d 540, 543-546 (footnotes omitted). This history of Article X, Section 12 demonstrates that the fundamental purpose of the Local Boundary Commission is to assure that boundary changes to meet statewide needs are not obstructed by local interests. It totally refutes the North Slope Borough's repeated assertion that local government boundaries are somehow sacrosanct from "forced" detachment. The framers of the Alaska Constitution wisely provided otherwise.

The interpretation of the best interest standard in 19 AAC 10.230(a) advocated by the North Slope Borough cannot be reconciled with the purpose of the Commission mandated by Alaska Constitution Article X, Section 12. 19 AAC 10.230(a) states the best interest standard as follows:

Territory which is part of a borough may be detached from that borough if, in the determination of the Commission, the detachment would be in the best interests of the state, the territory to be detached, and the borough affected by the detachment.

The North Slope Borough contends that this standard requires the consideration of the best interest of each named entity separately. Under this interpretation, if the Commission determines that the detachment is not in the best interest of the North Slope Borough alone, the detachment must be disapproved. Brief in Opposition to Petition, pp. 29, 38-39. In fact, the North Slope Borough goes so far as to argue that opposition to the detachment by its elected officials and rejection of the

proposed detachment by its voters are enough to defeat the proposed detachment under the best interest standard. Brief in Opposition to Petition, p. 46.

The interpretation of the best interest standard advocated by the North Slope Borough would return local boundary changes to the state of affairs described in the Fairview case as prevailing in territorial days, where concerted local opposition could block a needed boundary change. This interpretation would nullify the fundamental purpose of the Local Boundary Commission under the Alaska Constitution. If the best interest standard were so interpreted it undoubtedly would be held unconstitutional and void.

However, there is another, no less reasonable, interpretation of the best interest standard which avoids the constitutional infirmity of the North Slope Borough's interpretation. That is that the Commission must determine the best interests of the three named entities as a whole, by balancing the best interest of each. Under this interpretation, the Commission may determine that the positive effects of the proposed detachment on one entity outweigh the negative effects of the proposed detachment on another entity. The latter interpretation conforms to the function of the Commission described in Fairview - to consider statewide as well as local interests in reviewing a proposed boundary change. Moreover, this interpretation conforms to the rule of statutory construction that an interpretation under which a provision is constitutional is preferred to an interpretation which renders the provision constitutionally infirm. Hammond v. Hoffbeck. 627 P.25, 1052, 1059 (Ak. 1981).

III. The Proposed Detachment Conforms to the Best Interest Standard.

While NANA submits that the proposed detachment is actually in the best interest of the North Slope Borough, the Commission should find that any harm to the North Slope Borough resulting from the detachment is outweighed by the substantial state interest in maximizing local self-government and promoting economic development. In addition to the arguments under the best interest standard in the Brief of Petitioner and the previous NANA comments, NANA submits the following comments in response to the Brief in Opposition to Petition.

The North Slope Borough exaggerates the financial effects of the proposed detachment. The financial community will not perceive the proposed detachment as a precedent for the wholesale dismemberment of the North Slope Borough, much less of other Alaskan municipalities. The capacity of the Local Boundary Commission independently to review each detachment proposal on its individual merits assures that detachments will not be

approved indiscriminately. The present detachment is supported by a unique set of circumstances that do not have a parallel elsewhere in the state. It is no precedent for the boundary changes upon which the North Slope Borough speculates at pp. 41-43 of the Brief in Opposition to Petition. The North Slope Borough has not produced any disclosure document, used in the sale of its bonds, to demonstrate that investors have been led to rely on tax revenues from the Red Dog Mine project in evaluating the North Slope Borough's credit. If this detachment may be defeated by the hypothetical concerns about creditworthiness raised by the North Slope Borough, then so may any detachment. The \$33 million in tax revenues that the North Slope Borough claims it will lose over the next 10 years (Brief in Opposition to Petition, p. 46) amounts, on an annual basis, to only 1% of the borough's current annual operating budget of \$329 million.

The North Slope Borough also seriously understates the cost of providing services to the Detachment Area as the Red Dog deposit is developed. In describing the available air communications among its villages at p. 36 of the Brief in Opposition to Petition, the borough neglects to mention the annual cost to the borough of this service, or the additional cost of extending that service to the Detachment Area. The suggestion that such a service might be provided does not address the issue of the inefficiency of that service as compared to air service from Kotzebue, which already is commercially available. Moreover, the North Slope Borough's assertion that the Red Dog Mine project will not generate any exceptional demand for government services within the Detachment Area (Brief in Opposition to Petition, p. 35) is contradicted by the borough's position concerning the provision of local services to the Prudhoe Bay oilfield area. In opposing reductions in its tax limit under AS 29.53.045 and in its revenue sharing entitlement, the borough has asserted that it provides substantial and costly services to the Prudhoe Bay - Deadhorse area (Attachment 1, pp. 1-2).

The interests that the Commission is to weigh in reviewing this petition are public interests. Private interests are not relevant to the Commission's decision. Nonetheless, the North Slope Borough repeatedly refers to benefits to NANA and Cominco resulting from the detachment. These references distort the facts and warrant a brief response. Whether the detachment is approved or not the Detachment Area will be part of an organized borough. If the detachment is approved the regulatory and tax policies of the borough for the NANA Region may or may not be more favorable to NANA and Cominco than those of the North Slope Borough. The issue will not be determined by NANA and Cominco, but by the residents of the NANA Region and the officials whom they elect. For example, while for planning purposes the new borough's property tax revenues are projected on the assumption of a 3 mil tax rate, nothing would prevent the new borough

assembly from selecting a higher rate. Whatever the outcome, the fact that residents of the NANA Region may make different choices about local regulatory policy and taxation than residents of the North Slope Borough is the very essence of the local self-government that is to be maximized under Article X, Section 1 of the Alaska Constitution.

IV. The Southwest Boundary of the North Slope Borough Established in 1972 Must be Corrected in Accordance with Present Circumstances.

The location of the southwest boundary of the North Slope Borough was not given significant consideration when the Commission reviewed the North Slope Borough incorporation petition in 1971 and 1972. The citations to the Local Boundary Commission record at p. 17 of the Brief in Opposition to Petition only show that on two occasions when the NANA protest of the North Slope Borough's southwest boundary was discussed, the issue was dismissed with the observation that the area was uninhabited.

MR. HEDLAND: Now, if we excluded the area that they're objected to, would you still be including Point Hope?

MR. STRANDBERG: Yes, you would, I'd like to point out something on the map here that they submitted. They note that the exclusion will be areas within the proposed borough South of 68 degrees North latitude and between 154 and a 164 degrees West longitude.

MR. HEDLAND: It's this area here that they're objecting to.

MR. STRANDBERG: If we go to the map and plot it on the the map, its this area right here. Let's see, where is the 69 degree line? It would be about half way. Now, where is 164 degrees? Right here. So the intersection is right about here and the area that they want to exclude comes over here to 154 degrees.

MR. HEDLAND: Does that go right along the Colville River here?

MR. STRANDBERG: No. they're swinging over here on the 69 degree latitude line.

MR. HEDLAND: Is any of that land populated?

MR. STRANDBERG: Let me see. Where is Noatak? No, there is no population there.

MR. HEDLAND: You're talking about land that nobody lives on. The boundaries of the Arctic Slope Land Claims Corporation are what?

MR. STRANDBERG: They're as is proposed for the borough here.

MR. HEDLAND: Well, this contested area here by the Northwest Native Association, is that part of the Arctic Slope or the Northwest Native Land Claims Corporation?

Mr. There is a little conflict overlapping those two claims, Northwest has claimed on up and the Arctic Slope has claimed on down so this area is in conflict.

MR. HEDLAND: Weren't the boundaries set out in the Land Claims Act?

MR. Well, by reference yes. The Secretary of the Interior is directed by statute to conform the regional incorporations to be the same as the existing regional associations unless good cause exists to the contrary.

MR. HEDLAND: Okay, but there's nobody living in this area, I take it, that is contested between the--

MR. If I can add or volunteer a statement, there's a misapprehension as to the boundary of the borough, Northwest has the idea that it's a fence. We had trouble on the Slope.

Attachment 7 to Brief in Support of Petition, pp. 35-37.

MR. HEDLAND: As far as geography is concerned, ethnic relations there isn't any question at all.

MR. North Slope, this was more to form their corporation boundaries with the Lands Claim. There's one little area that they're going to iron out.

MR. On the boundaries on the execution of the Alaska Native Land Claims, the Northwest Native Association and the Tanana chiefs have resolved their boundary problem.

MR. The dispute was over uninhabited land anyway. There wasn't--it wouldn't effect--it doesn't effect--substantially--it's basically bounded by the ocean and the Brooks Range which are certainly natural boundaries.

Id. at p.215.

At p. 17 of the Brief in Opposition to Petition, it is asserted that "the Local Boundary Commission was informed of the mineral resources and development potential of the southwest sector of the proposed borough." The record cited in support of this assertion does not support any inference that the Commission was aware of any mineral potential within the Detachment Area, much less aware of the Red Dog and neighboring zinc deposits. The cited testimony is only a highly generalized discussion of the presence of coal and petroleum resources in the southwestern part of the North Slope Borough. It offers no basis for asserting that the Commission was aware of, or considered, the presence of, zinc or other metal ore deposits in the Detachment Area in establishing the southwest boundary of the North Slope Borough.

Most importantly, no matter how well-considered was the Commission's decision concerning the North Slope Borough's boundaries in 1972, the present petition requires the Commission to consider anew the location of the North Slope Borough's southwest boundary in the light of present circumstances. The Commission is not bound now by its 1972 decision. If the Commission could not reassess previous boundary decisions in response to boundary change petitions, its power to approve boundary changes would be rendered meaningless.

Before the Local Boundary Commission in 1971, NANA vigorously protested the location of the southwest boundary of the North Slope Borough. In early 1972, the Local Boundary Commission nonetheless established that boundary contrary to NANA's position. Thus when NANA was presenting its position on the boundaries of its region, the boundaries of the North Slope Borough were an accomplished fact. Faced with this fact, NANA did not acquiesce in it, but merely argued that the North Slope Borough boundary did not preclude the establishment of a more appropriate region boundary. Similarly, it is turning history on

its head to argue that NANA indicated its consent to the North Slope Borough's boundary by not joining in the Prudhoe Bay oil companies' litigation to invalidate the incorporation of the North Slope Borough.

The doctrine of laches has no bearing on this case. The elements of that doctrine are as follows:

A laches analysis requires the trial court to make two determinations in deciding the effect of a delay in bringing suit. The court must find both an unreasonable delay in seeking relief and a resulting prejudice to the defendant as a result of the delay.

Pavlik v. State, 637 P.2d 1045, 1047 (Ak. 1981). The Petitioner is not now seeking to undo the 1972 incorporation of the North Slope Borough. It has initiated a new proceeding to modify the North Slope Borough's boundary in light of present circumstances. There is ample constitutional, statutory and regulatory authority for this independent proceeding. Additionally, the North Slope Borough has demonstrated absolutely no prejudice resulting from delaying the change in its southwest boundary from 1972 to 1986.

V. Subsistence Use by NANA Region Residents Supports the Petition.

The North Slope Borough claims that the Detachment Area, "generally... is at the margin of overlapping subsistence usage by residents of the NANA Region and the North Slope Borough...", Brief in Opposition to Petition, p. 18. At page 19 of the Brief in Opposition to Petition, the North Slope Borough quotes a report of its anthropological expert in support of this claim. That quote seriously misrepresents the expert's conclusion by omitting the following sentence that contradicts the North Slope Borough's position:

The available evidence indicates that the residents of the North Slope Borough rarely if ever have directly utilized the resources of the proposed Detachment Area during the past 75 years, with the exception of the inland Inupiat/Anaktuvuk Pass people who regularly engage in subsistence activities in the very eastern portion of the area.

Attachment Y to Brief in Opposition to Petition, p. 4. While the exact degree of subsistence use of the area by NANA Region residents is in dispute, it is undisputed that there is some such use. More important, it is undisputed that NANA Region

residents' subsistence activities depend heavily on the river drainages that commence in the Detachment Area. See, e.g. Attachment Z to Brief in Opposition to Petition. The NANA Region people who depend upon these river drainages need a local government than can participate in determining the use of the upland regions in the Detachment Area.

VI. The Proposed Detachment Should be Approved Without Delay.

The people of the NANA Region have expressed a strong interest in forming a borough for their region. A borough incorporation petition circulated in the NANA Region has received over 700 signatures. No one seriously contends that a borough for the NANA Region will be financially viable without the tax base provided by the Red Dog Mine development. The people of the NANA Region are entitled to know whether the proposed borough will be financially viable before voting on its incorporation. Because approval of the proposed detachment will be conditioned upon incorporation of a borough for the NANA Region, the North Slope Borough loses nothing if the voters do not approve the incorporation.

With appropriate regulatory controls, the environmental effects of the Red Dog Mine development may not be significant. However, most of the area surrounding the DeLong Mountain Transportation System presently is in the Unorganized Borough and is not subject to such controls at the local level. While the Red Dog Mine development itself is subject to substantial regulatory control by federal, state and North Slope Borough agencies, none of these agencies is directly accountable to the people most directly affected by the development - the residents of the NANA region. This local accountability is an important purpose of borough government in Alaska, including the North Borough. Mobil Oil, supra, n.14 at 98; see also II.C above.

The social effects of the Red Dog Mine development are more difficult to assess. It is clear that the construction and operation of the Red Dog Mine will have a dramatic effect on employment patterns and income levels with the NANA Region. It is difficult to believe that this major social change will not require an organized community response, and create new demands for government services. A borough government will be an important means of community self-determination in response to the social changes arising from the Red Dog Mine development.

The North Slope Borough acknowledges (Brief in Opposition to Petition, p. 45) that there will be a necessary delay between the forming of a borough for the NANA Region and the implementation of the new government's programs. This fact argues strongly for prompt approval of the proposed detachment.

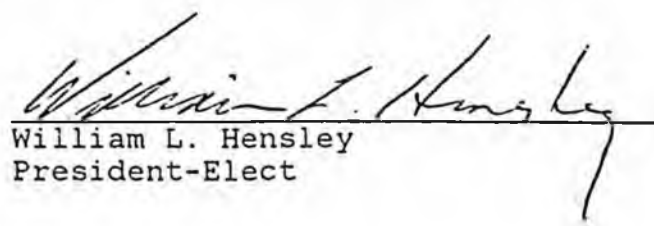
The North Slope Borough has raised no credible argument why the Commission should delay in considering the petition. The proposed detachment has been the subject of public debate for several years. The positions of the interested parties have been fully briefed and documented before the Commission. There are good reasons for prompt action on the petition and no good reasons for delay. The Commission should use its best efforts to approve the petition promptly.

VII. Conclusion.

Under its constitutional mandate and the applicable regulatory standards the Commission is fully authorized to approve the petition. Two constitutional mandates - the Commission's duty to balance local and statewide interests, and the goal of maximizing local self-government - must guide the Commission in evaluating the petition and strongly support its approval. The Brief in Opposition to Petition does not refute the facts supporting the petition, and in several instances severely distorts the relevant facts. In the interest of maximizing local self-government for the people of the NANA Region the Commission should approve the petition without delay.

DATED this 3rd day of January 1986.

NANA REGIONAL CORPORATION, INC.



William L. Hensley
President-Elect

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

2 THIRD JUDICIAL DISTRICT AT PALMER

3 MATANUSKA-SUSITNA BOROUGH,)
4 MUNICIPALITY OF ANCHORAGE,)
5 KENAI PENINSULA BOROUGH, and)
6 FAJRANKS NORTH STAR BOROUGH,)

7 Plaintiffs,)

8 v.)

9 JAY S. HAMMOND, GOVERNOR, LEE)
10 McANERNEY, COMMISSIONER,)
11 DEPARTMENT OF COMMUNITY AND)
12 REGIONAL AFFAIRS, and the)
13 STATE OF ALASKA,)

14 Defendants,)

15 and)

16 NORTH SLOPE BOROUGH,)

17 Defendant-Intervenor.)

18 Case No. JPA-82-1131 Civ.

19 AFFIDAVIT

20 STATE OF ALASKA)
21) ss.
22 THIRD JUDICIAL DISTRICT)

23 I, EUGENE BROWER, having been duly sworn, depose
24 and state:

25 BOROUGH SERVICES AT PRUDHOE BAY - DEADHORSE

26 1. That in October of 1981 I was elected and sworn
27 into office as Mayor of the North Slope Borough for a three
28 (3) year term.

29 2. The North Slope Borough provides the following
30 services to employees and other residents located within the
31 Prudhoe Bay - Deadhorse area:

- 32 (a) Potable Water
- (b) Sewage Treatment
- (c) Solid Waste Disposal via Incineration
- (d) Solid Waste Landfill
- (e) Sludge Treatment and Disposal
- (f) Police Protection

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- (g) Search and Rescue Services
- (h) Land Use Zoning and Regulation
- (i) Environmental Inspection and Protection
- (j) Administration, Finance, Legal and other

general administrative support for above services

3. The costs of the utility services set out in paragraph 2 (a) - (e) are to be covered by utility rates. However, there was a \$359,590.00 revenue short fall for Fiscal Year 1979 - 1980, and a \$1,815,082.00 revenue short fall for Fiscal Year 1980 - 1981. These revenue operating losses required a \$2,000,000.00 appropriation from the North Slope Borough's general fund. There is also an operating loss for these utilities for Fiscal Year 1981 - 1982 which resulted in a cash position deficit in the amount of \$3,964,018.00. It is likely that this deficit will require an appropriation from the North Slope Borough's general fund.

4. The police protection, search and rescue services, land use zoning and environmental protection are all services that are financed from the North Slope Borough's general fund.

5. The State of Alaska, beginning Fiscal Year 1982, has supplemented the police protection provided by the North Slope Borough by stationing a state trooper at the Prudhoe Bay - Deadhorse area. Room and board for the state trooper is subsidized by the Borough in the amount of \$62,050.00 for Fiscal Year 1982 - 1983.

NEGATIVE IMPACT OF FISCAL YEAR 1982 - 1983 BUDGET REDUCTION

6. The Borough's original budget for Fiscal Year 1982-1983 was based on the assumption that the Borough would

continue to be able to raise operating revenues under the property tax limitation formula using population figures as they had previously been determined and certified by the

1 Department of Community and Regional Affairs for 1980 and
 2 all previous years. The operating revenue projections used
 3 for the original Fiscal Year 1982-1983 budget were based on
 4 the conservative assumption that the Department would certify
 5 population figures for the Borough for 1981 showing only a
 6 modest increase in population from the 1980 figure of 9,234.
 7 The actual population for the Borough certified by the
 8 Department of Community and Regional Affairs for 1981 was
 9 only 7,098 -- substantially less than had been certified for
 10 1980. The lower population figure, when applied to the
 11 property tax limitation formula, resulted in approximately
 12 \$11,000,000 less in available operating revenues for Fiscal
 13 Year 1982-1983 than had previously been projected.
 14 Consequently, substantial budget reductions were necessary
 15 for a number of Borough programs and services, not including
 16 reductions required for the School Board, as follows:

	Original 82-3	Substitute 82-3	Reduction
17			
18	\$4,892,500	\$3,392,500	\$ 1,500,000
19			
20	7,224,500	5,724,500	1,500,000
21	8,910,000	7,410,000	1,500,000
22	4,662,100	3,662,100	1,000,000
23			
24	6,180,700	5,680,600	500,100
25	538,700	438,300	100,400
26	3,100,100	2,800,100	300,000
27			
28	1,759,500	759,500	1,000,000
29	7,102,300	5,602,300	1,500,000
30	5,367,600	4,092,600	1,275,000
31	TOTAL REDUCTIONS		<u>\$10,175,500</u>
32	49,738,000 ±		

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These reductions were communicated by me to the members of the Borough Assembly in a letter dated March 12, 1982. (See Exhibit A, attached hereto and made a part of this affidavit.) The appropriation ultimately enacted by the Assembly in Ordinance No. 82-3 (Substitute) reflected the reductions outlined in the March 12, 1982 letter.

7. The approximately \$11,000,000 reduction in anticipated operating revenues has had, and continues to have, both direct and indirect effects on the Borough's ability to provide municipal services and to maintain and operate capital improvement projects which have been built over the last ten years, and which are projected to be built over the next six years. These capital projects were constructed under an assumption that operating revenues would be based on the same methods for population determination which had always been employed by the Department of Community and Regional Affairs prior to 1981.

8. While it would take a detailed study to categorize, list, and analyze the various effects that the reduction has had on the operations of the North Slope Borough, I will lay out some examples of those effects in the following paragraphs 9 through 20.

9. The North Slope Borough cut in excess of 36 positions spread over various departments.

10. The Utilities Department cut 14 positions, and much of its training programs.

11. Despite the cuts in the Utilities Department it is projected that the Utilities budget will still be \$500,000 short for this fiscal year. This short falls will be for fuel to run the generators in various villages on the North Slope.

1 12. The power houses that are now located in all
2 the villages in the North Slope are not manned properly.
3 National standards recommend that these power houses be
4 supervised on a 24-hour basis. The cut back of 14 people and
5 of the training programs has resulted in a shortage of
6 trained personnel to supervise and operate power houses in
7 the villages. Obviously, the lack of trained personnel to
8 supervise results in inappropriate maintenance and shortened
9 life for the power house generators. This also causes more
10 frequent power failures and said failures increase costs and
11 delays.

12 13. The Public Works Department maintains many of
13 the capital improvements projects after their completion.
14 While the Public Works Department did not have to eliminate a
15 significant number of positions, increased maintenance costs
16 have made it necessary not to fill many positions so that the
17 funding for those positions can be used to maintain new
18 capital improvements projects. The cutbacks have also
19 eliminated training programs. The shortage of trained
20 personnel reduces the effectiveness of maintenance and
21 increases the amount of time and costs (transportation and
22 per diem) to maintain facilities.

23 14. There were 20 positions eliminated from the
24 Department of Public Safety. Public Safety operates the
25 Barrow jail and provides police protection to all the
26 communities on the North Slope, including Prudhoe Bay -
27 Deadhorse. The cutbacks in positions resulted in reducing
28 the number of police in the villages from two officers to one
29 officer per village and a reduction of five officers and one
30 investigator in the City of Barrow. It should be noted that
31 there was no reduction in police services to Prudhoe Bay -
32 Deadhorse area.

1 15. The cut of officers in the villages resulted in
2 a lack of adequate police protection. Figuring in personnel
3 leave, court time and associated travel, the officers in each
4 village spend only about 50% of their work time on duty in
5 each village.

6 16. The cuts in Barrow resulted in much the same
7 reduction of public safety service and coverage in the Barrow
8 area.

9 17. In the Planning Department the cuts resulted in
10 the delay or elimination of the projects set out below:

- 11 (a) Borough-wide Census
12 (b) Barrow Zoning Ordinance
13 (c) Cultural Resource, Survey and Data Collection
14 for the Coastal Management Program and
15 Comprehensive Plan.
16 (d) Larger, more comprehensive biological resource
17 inventory for the Point Hope - Point Lay area
18 under the Coastal Zone Management program.
19 (e) On-site inspection of existing petroleum
20 development work by the Interim Zoning
21 administrator and staff.
22 (f) Production of video tape for presentation of
23 Coastal Zone Management program to the
24 villages and other interested parties.
25 (g) Study of impacts of seismic activity on fish,
26 lakes and rivers and on other wildlife.
27 (h) Production of as built drawings for all North
28 Slope Borough completed capital improvements
29 projects in each village.

30 18. The Housing Department has a significant
31 maintenance responsibility for the public housing on the
32 North Slope Borough. The cutbacks resulted in reduction of
inventories for maintenance and reduction of personnel and
training of personnel for maintenance. These reductions
produce delays in maintenance response time and reduction in

the maintenance efficiency. There have also been reductions
for personnel to collect rents which undermines the ability

1 of the Borough to collect the revenues for its public housing
2 in a timely manner.

3 19. The reductions for the school district resulted
4 in a projected delay in opening the new Barrow High School in
5 Barrow, Alaska. It also resulted in the elimination of
6 community programs offered by the school. These programs
7 included recreation and community education programs.

8 20. These operational short falls each can also
9 directly or indirectly affect the operation and maintenance
10 of capital improvements projects. Such short falls are one
11 factor which is considered in rating and insuring North Slope
12 Borough Municipal bonds.

13 BASIC SERVICES PROVIDED BY THE NORTH SLOPE BOROUGH

14 21. In 1972 when the Borough started, the Bureau of
15 Indian Affairs provided education, health, housing and many
16 other of the municipal services that the Borough now
17 provides. The Borough, once organized and financially
18 capable, began to assume the responsibilities for services
19 traditionally provided by the Bureau of Indian Affairs. Due
20 to the deplorable standard of education and housing provided
21 by the federal government through the Bureau of Indian
22 Affairs to the people of the North Slope, and the importance
23 of education and housing to the people of the North Slope,
24 the North Slope Borough put a priority on assuming these
25 responsibilities and upgrading education and housing for it's
26 residents.

27 22. In 1972, the Bureau of Indian Affairs schools
28 existed only in the villages of Wainwright and Point Hope and
29 Barrow. The Borough has taken responsibility for all Bureau

30 of Indian Affairs schools in the North Slope. These schools,
31 which did not meet State fire and health standards, have been

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1 or are being replaced. In addition, schools have been built
2 in each village so as to comply with state standards.

3 23. Villages in the North Slope in 1972 did not
4 have the infrastructure to support new schools or new houses.
5 There were not adequate airports, roads, electrical
6 distribution, water distribution or sewage collection
7 systems, and there was not adequate platted land on which to
8 locate and build the new schools and houses. The North Slope
9 Borough, through its capital improvements program, has
10 addressed each of these needs and provided them on a
11 Borough-wide basis for each of its villages. As a result of
12 this, each village has graveled roads and airports,
13 generation facilities to provide electricity, trucks to haul
14 water and sewage, houses with central heating, running water
15 and plumbing, warm storage and maintenance buildings to store
16 the trucks and equipment and to maintain the airports,
17 buildings, generation plants, and the school facilities.

18 24. These elementary services have been built and
19 provided in the Borough's first ten years of existence. More
20 recently such necessities as fire protection and health care
21 have been improved via the establishment of fire stations in
22 each village and plans to locate health clinics in each
23 village. Each of these services greatly increases the need
24 for trained personnel, equipment, materials and supplies, and
25 for operating and maintenance procedures, each of which
26 substantially increases the operating expenses of the North
27 Slope Borough necessary to provide these basic services.

28 25. The fiscal constraints caused by the reduced
29 1981 population certification demonstrate that the North
30 Slope Borough will not, if its population continues to be

31 undercounted for 1982 and future years, be able to provide
32 the fundamental needs of transportation, housing, education,

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fire and police protection, and health care, because the operation and maintenance of these projects is essential to their continued existence or effectiveness.

The facts contained in this Affidavit were outlined by me to the Commissioner of Community and Regional Affairs and to the Governor of the State of Alaska prior to action being taken to adopt emergency regulations to restore the Borough to its previous status in terms of "population" and tax limitations.

DATED: Jan 21 1983

Eugene Brower
EUGENE BROWER, Mayor of the North Slope Borough

SUBSCRIBED AND SWORN to before me this 31 day of January, 1983.

Richard C. Lewis
Notary Public in and for the State of Alaska. My Commission Expires: 11/21/83

NORTH SLOPE BOROUGH

OFFICE OF THE MAYOR

P.O. Box 59
Barrow, Alaska 99723

Phone: 907-852-2611

Eugene Brower, Mayor



March 12, 1982

Assembly
North Slope Borough
Barrow, Alaska 99723

Gentlemen and Lady:

Enclosed you will find Ordinance 82-3 (Substitute) which now totals \$201,604,800 in comparison to the \$214,180,300 of the original submission.

The enclosed letters were forwarded to the various departments and agencies under my supervision outlining them to revise the original budget details to fit my support figure.

A subcommittee of the Assembly has been meeting with a subcommittee of the School Board. The figure recommended for the school is based upon suggestions from members of that group.

The following compares the changes recommended to achieve the necessary \$12,575,500 net reductions to balance the budget.

	<u>Original</u> <u>82-3</u>	<u>Substitute</u> <u>82-3</u>	<u>Reduction</u>
School Board	\$27,510,000	\$23,010,000	\$4,500,000
Police	4,892,500	3,392,500	1,500,000
Fire Protection	601,900	601,900	--
Search and Rescue	1,364,200	1,364,200	--
Public Works - General Services	7,224,500	5,724,500	1,500,000
Public Utilities - Communities	8,910,000	7,410,000	1,500,000
Budgetary Reserves	2,393,000	4,493,000	(2,100,000)
Assembly	431,700	431,700	--
Borough Clerk	107,100	107,100	--
Elections	26,400	26,400	--
Mayor's Office	4,662,100	3,662,100	1,000,000

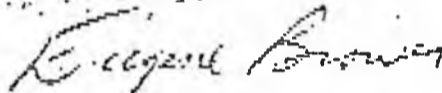
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Exhibit A, page 1

	<u>Original 82-3</u>	<u>Substitute 82-3</u>	<u>Reduction</u>
Administration & Finance	\$5,190,700	\$5,680,000	\$ 500,100
Legal	538,700	. 438,300	100,400
Planning & Community Services	3,100,100	2,800,100	300,000
Environmental Protection & Conservation	1,759,500	759,500	1,000,000
Health	7,102,300	5,602,300	1,500,000
Housing Agency	5,367,600	4,092,600	1,275,000
Debt Service	100,370,000	100,370,000	--
Down Payment Cap. Projects	15,383,400	15,383,400	--
TOTAL General Fund	\$197,925,700	\$185,350,200	\$12,575,500
Service Area 10 Fund	16,254,600	16,254,000	--
TOTAL	\$214,180,300	\$201,604,800	12,575,500

It is my recommendation that the public hearing on the Ordinance 82-3 (Substitute) be held on March 12, 1982 and the Assembly take action on this ordinance immediately thereafter.

Sincerely,



Eugene Brower, Mayor
North Slope Borough

*

Exhibit A, page 2

RECEIVED

DEC 18 1985

IN RE:)
THE DETACHMENT FROM THE)
NORTH SLOPE BOROUGH OF)
TERRITORY WITHIN AND)
ADJACENT TO THE NANA REGION)

Dept. of Comm. & Reg. Affairs
Div. of Municipal & Reg. Asst.

COMMENTS OF NANA REGIONAL CORPORATION, INC. SUPPORTING
PETITION FOR DETACHMENT FROM THE NORTH SLOPE BOROUGH

Pursuant to 19 AAC 10.530, the NANA Regional Corporation, Inc. ("NANA") submits the following comments supporting the Petition for Detachment from the North Slope Borough filed by the Commissioner of the Alaska Department of Community and Regional Affairs ("Petitioner") on November 22, 1985.

I. Introduction.

NANA supports the boundary change requested by Petitioner. The proposed boundary change is essential to the formation of a borough for the NANA Region (Brief of Petitioner, pp. 14-18). NANA views the formation of a borough for our region as essential to the well being of our shareholders who comprise approximately 85 percent of the population of the NANA Region. Crucial issues of local control, appropriate land use, and preservation of traditions and culture, all require the formation of a borough for this region. This view is held not only by the NANA Regional Corporation, but also by the other major institutions in our region such as the Maniilaq Association, the non-profit regional corporation servicing our area, and the Northwest Arctic School District.

NANA also is the principal owner of private property within the area proposed for detachment from the North Slope Borough (the "Detachment Area"). NANA is planning the development of the Red Dog mineral deposit on NANA-owned land in the Detachment Area. This development will provide substantial economic benefits to NANA's shareholders and the NANA Region. The proposed boundary change will unify local government responsibility for the area containing the Red Dog Mine development, and the region that will experience the major economic effects of that development. This unification of local government responsibility will facilitate the orderly and efficient development of the Red Dog Mine, and the planning for, and delivery of services to, the area principally affected by that development. For these reasons NANA supports the proposed boundary change even though NANA and the Kotzebue Village Corporation will be the second and third largest tax-payers, respectively, in the borough for the NANA Region.

The brief of Petitioner demonstrates that the proposed boundary change is in the public interest and meets the legal criteria for approval of a detachment. These comments address

several points which NANA believes merit particular attention by the Commission. First, the boundary that petitioner seeks to change resulted from historic accident and not from a conscious policy choice under statutory standards. Second, the Commission's principal concern in this proceeding should be statewide interests, as opposed to local interests, and the proposed boundary change serves important statewide interests. None of the harm to statewide interests that might arise from the moving of territory from an organized local government into the Unorganized Borough will result here, because territory in effect is being moved from one organized borough to another. Third, the proposed boundary change is in the best interest of the North Slope Borough, particularly when significant non-economic factors are given due consideration. Fourth, the proposed boundary change clearly is in the best interest of the Detachment Area and the NANA Region as a whole. Finally, the imminence of major development in the NANA Region requires that a borough for that region, and this proposed boundary change, be approved without delay.

II. The Proposed Boundary Change Corrects an Inappropriate Boundary.

The southwest boundary of the North Slope Borough was established through historic accident rather than through conscious policy choice. When the Local Boundary Commission reviewed the North Slope Borough's incorporation in 1971 and 1972, the Commission was led to believe that the southwest boundary of the North Slope Borough would coincide with the boundary to be established between the Arctic Slope Region and the NANA Region under the Alaska Native Claims Settlement Act (Brief of Petitioner, pp. 3-7). The boundary between the two regions had not been established at that time, because it was not known with which region the village of Point Hope would choose to associate. Later, Point Hope chose to be part of the Arctic Slope Region. Once this choice had been made, NANA and Arctic Slope Region representatives negotiated the current boundary between the two regions. 1/

The negotiators for NANA and Arctic Slope Region drew the mutual boundary of their regions to reflect, as nearly as possible, the historical, traditional and existing use and occupancy of land in Northwest Alaska. Using this standard, the proper boundary between the two regions is the crest of the

1. Petitioner's Brief, at p. 7, implies that this boundary was determined unilaterally by the Secretary of the Interior. In fact, the Secretary of the Interior merely adopted the boundary that the people of the two regions had agreed on among themselves.

Brooks Range. All watersheds flowing north from the crest of the Brooks Range are considered part of Arctic Slope Region, and those flowing south part of the NANA Region. This explains why the regions' boundary is not a straight line and is drawn in such a way as to include in the NANA Region Brooks Range drainages such as Wrench Creek, Kelly River, Avan River, Kugururok River, Trail Creek, Tunit Creek, Nimiuktuk River, and others. The Brooks Range crest is also a dividing line that properly places within the NANA Region entire major drainages of extreme importance to the people of the NANA Region such as the Singoalik, Kivalina, Wulik and Noatak Rivers.

In the record of proceedings before the Local Boundary Commission on the North Slope Borough incorporation, the Northwest Arctic Native Association raised the issue that the southern boundary proposed for the North Slope Borough did not conform to the traditional cultural and geographic boundary of the Arctic Slope Region. However, nothing in the record cited by Petitioner indicates that this issue was considered in detail. This is unfortunate, because the boundary negotiated for the NANA and Arctic Slope Regions, unlike the 68th Parallel Boundary of the North Slope Borough, conforms closely to standards for borough boundaries in AS 29.18.030, in particular that (1) "the population of the area is interrelated and integrated as to its social, cultural and economic activities", and (2) "the boundaries of the proposed borough conform generally to natural geography..." Now is the time for the Local Boundary Commission to correct this boundary discrepancy.

III. The Proposed Boundary Change Serves Important Statewide Interests.

Article X, Section 12 of the Alaska Constitution provided for a Local Boundary Commission so that local government boundaries would be established in accordance with statewide needs rather than solely to serve local interests. This function of the Commission has been recognized from the early years of statehood:

Article X [of the Alaska Constitution] was drafted and submitted by the Committee on Local Government, which held a series of 31 meetings between November 15 and December 19, 1955. An examination of the relevant minutes of those meetings shows clearly the concept that was in mind when the local boundary commission section was being considered: that local political decisions do not usually create proper boundaries and that boundaries should be established at the state level. The advantage of the method proposed, in the words of the committee --

* * * * lies in placing the process at a level where area-wide or statewide needs can be taken into account. By placing authority in this third-party, arguments for and against boundary change can be analyzed objectively.

Fairview Public Utility District No. 1 v. City of Anchorage, 368 P.2d 540, 543 (Ak. 1962) (footnotes omitted). Other decisions have also emphasized the importance of this function of the Commission:

The basic purpose for creating the boundary commission and conferring upon it the powers that it possesses was to obviate the type of situation that existed here where there was a controversy over municipal boundaries which apparently could not be settled at the local level. As we pointed out in the Fairview case, the concept that was in mind when the local boundary commission section of the Constitution was being considered by the constitutional convention was that local political decisions do not usually create proper boundaries and that boundaries should be established at the State level.

Oesau v. City of Dillingham, 439 P.2d 180, 183-184 (Ak. 1968) (footnote omitted).

This proposed boundary change calls for the Commission to serve its constitutional function of considering statewide interests as opposed to local concerns. The State has two major interests that will be served by the proposed detachment. The detachment will promote local self government in northwest Alaska, and will promote resource development and employment in northwest Alaska.

The State has a substantial interest in maximizing local self-government in northwest Alaska. It is the State's policy, expressed in Article X, Section 1 of the Alaska Constitution, "to provide for maximum local self-government." In northwest Alaska, this goal will be served best by forming a borough for the NANA Region. The Detachment Area is an indispensable part of a borough for the NANA Region. A financial analysis conducted for NANA indicates that a borough for the NANA Region presently would at best have marginal financial feasibility. Even under optimistic assumptions, revenues from the

Region's present tax base, principally located in the City of Kotzebue, would barely cover the local costs of the three mandatory borough functions of planning, tax collection and education (Brief of Petitioner, pp. 15-17). Assuring sufficient funding for these mandatory functions, plus other borough services, requires the additional tax base that the Red Dog Mine development will provide. Hence, this proposed boundary change is an essential and vital prerequisite to providing maximum local self-government to northwest Alaska and the NANA Region.

In addition to maximizing local self-government, the State has a substantial interest in promoting resource development and employment in northwest Alaska. The development of the Red Dog mineral deposit will provide significant employment opportunities in northwest Alaska, an area in urgent need of such opportunities. The proposed Red Dog Mine will be served by the State-financed Delong Mountain Transportation Project, consisting of a road and port facility for the export of ore from the mine. The port facility and the road are located within the NANA Region; the port and over 85 percent of the road will be located outside the present North Slope Borough boundary. Two villages in the NANA Region, Kivalina and Noatak, are located 18 and 25 miles, respectively, from the proposed port or road. The efficient and orderly development of the Red Dog Mine, and of other mineral deposits that could be served by the Delong Mountain Transportation System, will be best served if one political subdivision provides local government planning, regulation and services for the entire area affected by the Delong Mountain Transportation System and the Red Dog and neighboring mineral deposits. A unified approach to such matters as land use planning and regulation, environmental protection, and local government permitting will serve the public interest better by providing comprehensive and consistent planning and regulation for the entire region. It will also reduce substantially the regulatory burden upon the development of these projects. Additionally, the physical proximity of a borough government for the NANA Region, most likely based in Kotzebue, as compared to the North Slope Borough government located in Barrow, should enhance the efficiency and effectiveness of local government decision-making related to the Red Dog development (Brief of Petitioner, pp. 25-27).

The proposed boundary change involves no harm to any State interest. The proposed boundary change becomes effective only upon the approval of the incorporation of a borough for the NANA Region. None of the harm to statewide interests that might result from moving territory from an incorporated borough to the Unorganized Borough is at issue here. The effect of the proposed boundary change is to transfer territory from one organized borough to another. The treatment of past proposals to "disincorporate" organized borough territory provides no precedent for

action on this petition, and approving this petition does not establish a precedent to support future "disincorporation" proposals. Approval of the present petition only calls upon the Commission to perform the function approved by the Alaska Supreme Court in the Fairview and Oesau cases - adjusting local government boundaries to serve statewide needs, as opposed to local interests.

IV. The Proposed Boundary Change is in the Best Interest of the North Slope Borough.

The "best interest" standard in 19 AAC 10.230(a) requires a balancing of the advantages and disadvantages to the North Slope Borough arising from the proposed boundary change. The possibility that some disadvantage to the North Slope Borough will result from the proposed boundary change does not defeat the boundary change if anticipated benefits to the North Slope Borough outweigh those disadvantages. The proposed detachment provides benefits to the North Slope Borough that significantly outweigh the minimal change in its tax base that will result from the boundary change.

The jurisdiction of the North Slope Borough covers a vast territory, approximately 87,500 square miles. The seat of borough administration is in Barrow. For the purpose of delivering borough services from Barrow, the Detachment Area is on the most remote periphery of the North Slope Borough. No estimate of the cost to the North Slope Borough of delivering services to the Detachment Area has been developed, but it is clear that the logistical difficulties inherent in that service delivery (Brief of Petitioner, pp. 24-27) will make it extremely expensive.

The major access to the Detachment Area will be the port and road comprising the DeLong Mountain Transportation System. The port and over 85 percent of the road will be located outside the present North Slope Borough boundary. The efficient and orderly development of the Red Dog Mine and its surroundings will require a unified planning and administrative effort for the Detachment Area and the DeLong Mountain transportation area. Such an effort will be far more expensive and cumbersome if it requires cooperative action by two local governments, rather than being undertaken exclusively by one.

Most of the persons to be served in the Detachment Area now have and will continue to have economic, social and cultural ties to the NANA Region rather than to the North Slope Borough, increasing the difficulties of communication and participation necessary to the effective delivery of services from the North Slope Borough. That the persons in the Detachment Area lack ties to the North Slope Borough also raises the issue of their effective representation by a North Slope Borough government, and the

effect on that government of disharmony and dissension between the people of the NANA and Arctic Slope Regions (Brief of Petitioner, p. 34).

The North Slope Borough will benefit significantly by avoiding these burdens upon its finances, operations, and political processes. To be balanced against this significant benefit from the proposed boundary change there is only a minimal loss to the tax base of the North Slope Borough. The full development of the Red Dog Mine will result in an assessed valuation in the Detachment Area of up to \$250 million. While this tax base is essential to the viability of a borough for the NANA Region, it represents a mere 2 percent of the current \$12,268,737,790 of assessed valuation in the North Slope Borough. Moreover, oilfield development in the North Slope Borough during 1986 and 1987 will add several billion more dollars to the North Slope Borough tax base. Even the North Slope Borough's own financial advisor can identify no significant harm to the borough's financial position that could result from the proposed boundary change (Brief of Petitioner, Attachment 35). The North Slope Borough financial advisor's only concern rests on the absurd premise that the proposed boundary change could be viewed as a precedent for detaching Prudhoe Bay from the North Slope Borough. Any objective evaluation of the financial effects of the proposed boundary change on the North Slope Borough will conclude that those effects are outweighed by benefits that indicate the detachment is in the North Slope Borough's best interest. Providing such an objective evaluation is, of course, precisely the function of the Commission under Article X, Section 12 of the Alaska Constitution.

V. Approving the Proposed Boundary Change at this Time is in the Best Interest of the Detachment Area and the Nana Region.

The people of the NANA region should not be delayed in their efforts to establish a financially viable borough government to address the imminent effects of the Red Dog Mine development. Construction of the mine, road and port facilities is expected to begin during the summer of 1986. Direct employment resulting from construction activities is expected to reach 143 full time equivalent jobs between 1986 and 1988. From 1986 to 1990, there will be approximately 500 construction jobs available. One estimate has projected a gross payroll of \$8.8 million per year for the period 1986 to 1988.

Direct employment resulting from the operation of the mine is expected to reach between 350 and 400 jobs, with an annual payroll of between \$11.2 million and \$12.9 million. Additionally, an estimated 156 to 303 secondary and indirect jobs are expected to be created. An estimated 78 to 135 of these secondary and indirect jobs are expected to be created in Kotzebue and surrounding villages.

As of 1983, a study estimated that there were approximately 1,200 full time equivalent jobs in the NANA Region (Job Availability and Market Relations for the NANA Region, 1982-1990, Darbyshire and Associates, 1983, Attachment 21 to Brief of Petitioner). Development and operation of the Red Dog Mine thus will increase employment in the NANA Region by nearly 50 percent within the next two to four years. The dramatic economic and social impact of this change in the NANA Region should be evident. To plan and otherwise prepare for such change at the local level, NANA believes that it is critical that a borough be formed at the earliest opportunity.

It also is the view of NANA and the residents of its villages (especially Kivalina and Noatak) that there should be but one transportation facility (road and port) serving the Red Dog Mine and the surrounding area (including the Lik deposit). Furthermore, all lands to be developed in this portion of the region, including the transportation facilities serving them, should be located in one borough. This will insure that local residents set the course of development desired by them through the actions of their elected borough representatives, and that their desires are carried out through the exercise of mandatory planning and zoning functions of their borough. As things stand now, these decisions of critical importance to our people are being made in Barrow, hundreds of miles from where our people live.

Presently, a petition to incorporate a borough for the NANA Region is circulating among residents of the region. It is expected that the petition will be ready for submission to the Department of Community and Regional Affairs in January 1986. Incorporating a borough is only the first step toward preparing a local government response to the imminent development impact described above. Borough staff must be hired. Internal operating procedures must be developed. Plans must be made, policies debated, and implementing legislation passed. Even if the incorporation process proceeds without delay, months will pass before actual programs and regulatory measures are in place. No more time must be allowed to pass.

Approval of the proposed boundary change under the schedule adopted by the Local Boundary Commission will allow ample time for public input to, and consideration of, the proposed boundary change. Meetings, correspondence and work sessions between representatives of the NANA Region and the North Slope Borough concerning the proposed boundary change began in 1982 and continued through 1985. Representatives from the North Slope Borough have included Mayors Eugene Brower and George Ahmaogak, the North Slope Borough Assembly, the North Slope Borough Planning Commission, and current and former North Slope Borough Planning Directors and their staff. NANA Region repre-

sentatives have included the NANA Regional Corporation, the Maniilaq Association, the Northwest Arctic School District, and the City of Kotzebue. Meetings have taken place in Barrow, Kotzebue, Red Dog, Anchorage, and the villages of the North Slope Borough.

From 1982 through 1983, several attempts were made to bring the North Slope Borough Assembly and Administration members to the NANA Region for a tour of the Red Dog site. This resulted in one visit to the site during the summer of 1983. Throughout 1983, several meetings and work sessions with the North Slope Borough Assembly were held in both Barrow and Kotzebue. In October of 1983, materials describing the Red Dog project were submitted to then Mayor Eugene Brower for the North Slope Borough Assembly to review. A formal request to the North Slope Borough Assembly to detach lands in the southwest corner of the borough was made during their November meeting. In December of 1983, those same materials were submitted to the North Slope Borough Planning Commission for their consideration, followed by a formal request to redraw the borough's southwest boundary in January of 1984.

Correspondence, meetings and work sessions increased during the 1984 - 1985 period. Shortly after the North Slope Borough mayoral election in the fall of 1984, work began with the newly elected Mayor George Ahmaogak and his administration. This was followed by over a half dozen hearings and work sessions concerning this matter conducted in Barrow by the North Slope Borough Planning Commission. Thus, the present petition has been preceded by over three years of public review and discussion.

V. Conclusion.

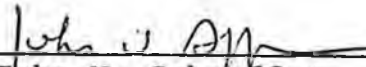
For the reasons stated above, it is in the best interests of the State, the area to be detached, and the North Slope Borough, to approve this proposed boundary change without delay. NANA requests that the Local Boundary Commission approve the proposed boundary change subject to voter approval of a borough for the NANA Region including the territory to be detached.

Respectfully submitted this 18th day of December 1985.

NANA Regional Corporation, Inc.

RECEIVED

DEC 18 1985


John W. Schaeffer
President

Dept. of Comm. & Reg. Affairs
Div. of Municipal & Reg. Ass't.

BEFORE THE LOCAL BOUNDARY COMMISSION OF THE STATE OF ALASKA

IN RE:)
THE DETACHMENT FROM THE NORTH)
SLOPE BOROUGH OF TERRITORY)
WITHIN AND ADJACENT TO THE)
NANA REGION)
_____)

REPLY TO NSB BRIEF IN OPPOSITION TO PETITION FOR DETACHMENT

Pursuant to the provisions of 19 AAC 10.560, this is in reply to the December 18, 1985 "Brief In Opposition To Petition For Detachment", prepared by the North Slope Borough (Respondent). The following is a rebuttal of the pertinent issues raised in the Respondent's Opposition Brief.

I. DUE PROCESS

The Petitioner has made every effort to be open and fair regarding this matter. Wherever the responsibility of the Department of Community and Regional Affairs to serve as staff to the Local Boundary Commission has had the potential to conflict with Commissioner Notti's role as Petitioner, those potentially conflicting responsibilities have been unconditionally delegated to an independent agency.

A. Impartial Tribunal

The participation in these proceedings by Commission Member Bert Greist is being challenged by the Respondent because of an alleged appearance of conflict of interest. The Petitioner believes that any questions concerning the propriety of Mr. Greist's participation rightfully belong before the Commission. The Petitioner's wish is only that the proposed detachment be judged fairly on its merits of substance.

B. Notice and Opportunity to be Heard

As was evidenced in the Petitioner's Brief and the Brief dated December 18 from the NANA Regional Corporation, the question of detachment has been considered extensively by

the North Slope Borough over the past three years. The Respondent notes that it has had only seventeen working days to prepare its Brief. Thus, the Respondent claims that it has not had an adequate opportunity to prepare for this action. This is not true. In addition to the considerable effort over the past three years, the Respondent has been intensively preparing for the petition to be submitted by Commissioner Notti since October. A substantial number of staff and outside consultants have been working on the matter. While seventeen "working days" have lapsed between the date of the petition and the date of the Respondent's Brief, it is possible and indeed likely that the Respondent has spent one hundred or more full time equivalent staff days on its brief. The extent of the resources dedicated to the effort of the brief would be a much more accurate measure of the adequacy of the time permitted for response. Recall that a couple of years ago dozens of carpenters built a house in Palmer in a matter of a few hours.

The Respondent notes that the petition and exhibits fill a 35 pound box. While that is so, the Petition and Brief comprise only 68 pages, compared to 54 pages in the Respondent's Opposition Brief. The bulk of the Petitioner's submission consists of 38 attachments to the Brief. Of those, 15 are documents either prepared by the North Slope Borough or are a part of the record relating to the original incorporation of the Borough. Letters and maps totalling 35 pages make up 13 of the other attachments. Most of the remaining 10 attachments are documents that the Borough is presumably very aware of and familiar with (e.g. Alaska Taxable, EIS Statement for the Red Dog Mine, etc.).

The Respondent claims impropriety in the fact that the Petitioner received a "document dated October 4, 1985 and titled 'Example Detachment Petition prepared by NANA'". The Respondent goes to great length to note similarities in elements of that document and the Petition. Thus, the

Respondent concludes that representatives of NANA had more notice of the petition and greater opportunity to prepare for this action. Ironically, the referenced document was originally prepared last summer by Tom Klinkner (Attorney with the firm of Wolforth and Flint) for use by the North Slope Borough when it was considering detachment. Similarities to the brief are only coincidental. The Petitioner independently arrived at the same conclusions as Mr. Klinkner. There exist only so many ways to make pertinent arguments.

The Respondent references the resolution passed by the Alaska Municipal League. This resolution simply states that the Local Boundary Commission should view these actions carefully. The record clearly demonstrates that the Commission is doing this. The implication that the Alaska Municipal League finds the process or the timelines established for this action to be inappropriate is simply not true.

The Petitioner believes that it and the Local Boundary Commission have and will continue to provide every practical opportunity to the North Slope Borough and other interested parties to fairly and fully participate in all proceedings relating to this matter.

C. Expedited Briefing and Hearing Schedule

The Respondent claims that the Commission has set an expedited briefing and hearing schedule and that this important matter will not be given the consideration it deserves. The time schedule is not unreasonable, nor is it without precedent. For example, two years ago on November 29, 1983, the Commission received a petition for a change in the boundaries of the City of Kodiak using the same process to which the current petition is subject. The Commission held its hearing regarding that petition on January 7, 1984, and submitted its recommendation on the matter to the Legislature twelve days later. With respect to the current proceedings, it should be noted for the record that the Commission has agreed

only to attempt to reach a decision on the petition in time for possible action by the Second Session of the Fourteenth Legislature. The Petitioner is confident that should the Commission be unsatisfied that it has received all information which is relevant and available, the decision will be delayed until that information is provided.

The Petitioner believes, however, that the issue can be fully considered given the written material received and the testimony to be provided at the extensive public hearings to take place on this matter. The Local Boundary Commission has agreed to hold five separate hearings directly or via teleconference in Anchorage, Noatak, Kotzebue, Kivalina, Ambler, Shungnak, Noorvik, Selawik, Buckland, Deering, Kiana, Point Hope, Barrow, Anaktuvuk Pass, Atkasuk, Nuiqsut, Point Lay, Wainwright and Kaktovik.

As the Petitioner stated in its brief, given the pending development in the territory proposed for detachment, it is essential that this detachment be considered now. The issues concerning this matter are not new issues. They are not going to change. Residents of the NANA Region are seeking to form a borough. They are entitled to know whether that borough will be economically viable by having the Red Dog mine site within its boundaries. The residents want and need the borough without delay in order to implement local control possible only through a municipality. It will take time following incorporation to create an optimally organized and functioning borough. Delay in these proceedings will only frustrate the desires of the residents of the NANA Region to seek such local control.

D. Laches

The Respondent claims that because no formal challenge of the Borough's boundaries was initiated by NANA representatives over the past thirteen years, the defense of laches and the statute of limitation on the challenge of the

formation of a municipality (AS 29.18.150) are now an obstacle to the proposed detachment. This claim is without merit. The proposed detachment is not a challenge to the original incorporation, but rather is a proposed municipal boundary change fully authorized by State law.

II. ORIGINAL INCORPORATION OF THE NORTH SLOPE BOROUGH

The Respondent has alleged that, "NANA Regional Corporation representatives and its predecessor acquiesced in the boundaries of the North Slope Borough at the time of the original incorporation. NANA representatives in fact supported the original boundaries and disavowed any commonality between regional corporation and borough boundaries."

For the Respondent to state that NANA representatives "acquiesced" (i.e. agreed to without protest) and "supported" the boundaries of the proposed North Slope Borough is a gross and apparently deliberate misrepresentation of the facts. As evidenced in the Petition and Brief, the record concerning the incorporation of the North Slope Borough clearly indicates the position of the Northwest Alaska Native Association. Robert Newlin, President of the Association stated in a letter considered by the Commission (see Attachment # 5 to Petitioner's Brief for detachment) that, "I do question and strongly oppose the extent of their (proposed North Slope Borough) boundaries. If I am not mistaking, [sic] one of the provisions in proposing for a borough system is that the region involved must have direct or common interrelationships among its peoples, land, governmental agencies, or whatever. ASNA's proposed borough boundaries include all lands above the 68th parallel which includes much land in the established Northwest Alaska Native Association region, namely the upper Noatak River and its tributaries. Enclosed is a map illustrating the

established NANA region and the land in which we feel the proposed ASNA borough is trespassing. Again, on behalf of NANA, I strongly oppose ASNA's proposed borough boundary selections." (emphasis and clarification added).

Willie Hensley, President-Elect of the NANA Regional Corporation, advised the Local Boundary Commission on November 20, 1985, that at the time of the incorporation of the North Slope Borough, there was significant opposition in the NANA region to this encroachment. Mr. Hensley indicated, however, that because the Local Boundary Commission did not conduct a hearing in the NANA region, representatives were unable to adequately express their concerns over the matter. The record of the North Slope Borough incorporation indicates the lack of consideration given to Mr. Newlin's letter (see DCRA Brief - page 5).

The Respondent also discounts any significant relationship between ANCSA regional corporation boundaries and jurisdictional boundaries of political subdivisions of the State. Again, the Petitioner stresses that standards for the formation of ANCSA regional corporation boundaries are consistent with standards governing the formation of boroughs (see DCRA Brief - page 7). Further, State laws do directly link regional corporation boundaries to those of political subdivisions of the State.¹

The Respondent goes to great length to describe the disparities between the boundaries of existing boroughs and those of ANCSA regional corporations. Conveniently omitted from the Respondent's discussion however, is the fact that nearly every one of those boroughs was formed twenty-two years ago or earlier. This was many years before the idea of regional corporations was conceived. In fact, the only borough to be formed subsequent to the enactment of ANCSA is the North Slope Borough. The Petitioner has demonstrated in its Brief accompanying the petition for detachment that the Local

Boundary Commission was concerned with the relationship between the two prospective boundaries. The Petitioner has further documented that the Commission was led to believe, incorrectly, that the proposed borough boundaries would be coterminous to those of the prospective Arctic Slope Regional Corporation (see DCRA Brief - pages 4-3).

III. REGULATORY FACTORS TO BE CONSIDERED

The administrative regulations for detachment distinguish between standards which must be met and factors which, in the course of the Commission's decision, must be considered. The former consist of a determination by the Commission that the detachment is in the best interests of (1) the State, (2) the territory to be detached and (3) the borough. The factors which the Commission must consider are (1) whether the social, cultural and economic characteristics of the population of the territory are substantially different or in conflict with the population of the rest of the borough, (2) whether geographic considerations preclude the provision of borough services, (3) whether the lack of transportation facilities precludes the communication and exchange necessary for responsive and integrated local government, (4) whether services will be provided following detachment and (5) the provision for distribution of assets and liabilities.

There is no requirement that the latter must be met to any degree, cumulative or otherwise. This notwithstanding, the Petitioner believes that these factors do support the proposed detachment.

A. Social, cultural and economic factors

The Respondent claims that: "Generally, the territory is at the margin of overlapping subsistence usage by residents of NANA region and the North Slope Borough . . .".

Further, the Respondent claims, "it is well documented that residents of the North Slope Borough make extensive use of lands and rivers within the NANA region for subsistence purposes". If this is the case, why did the North Slope Borough fail to identify these locations as areas of use in its Coastal Management Program and Comprehensive Plans? (see DCRA Brief - Attachment 30).

The Respondent claims "historically and today, there is no uniform region-wide pattern of subsistence use throughout the area". The sources used to develop the Coastal Management Program Plan for the NANA region and the North Slope Borough present evidence to the contrary.

The Respondent states that after preparing an independent evaluation of the subsistence use map of the area proposed for detachment, Dr. Hall concluded "this map substantially overstates the geographic extent and intensity of NANA residents' subsistence use in the detachment area". The Petitioner believes that this is not true. The NANA CRSA Board and staff conducted an extensive resource inventory and analysis of the NANA Region in preparation of its Coastal Management Plan. Areas of significant resource value and potential conflict were identified. Following this, the CRSA staff obtained additional subsistence use information through field research with village residents. The NANA CRSA Board subsequently developed an approach for management of these resources. As a result, selected areas were identified by village residents and designated Restrictive/Sensitive Use Areas. This is the most restrictive management category in the NANA Coastal Management Program. Several of these areas border the North Slope Borough boundary but do not include the areas within the area of proposed detachment because of political jurisdictional restrictions. These areas include the Kivalina River, Wulik River Arctic Char Overwintering sites and the Noatak River Chum Spawning area.

Keep in mind that the data used to prepare this map was derived from information obtained directly from region residents who comprise the user groups. Dr. Hall, apparently relying upon his familiarity with the region, questions the data yet presents no additional study or source of information to convince the reader of its inaccuracy. The Respondent continues to note ". . . a thorough review of the available evidence and further field work quite likely will disclose that NANA's claim of extensive subsistence resource harvesting in much of the proposed detachment area is not an accurate reflection of reality." (emphasis added) At best, this is speculation. Where is the data, the survey, or the study to substantiate this claim?

The Respondent claims ". . . Dr. Hall . . . concluded his comments on the significance [of the archaeological and historical sites] . . . as follows:

. . . it [a map of archaeological and historic sites within the territory proposed for detachment] does not illustrate, as is implied, that NANA peoples or their ancestors utilized the disputed area and (by implication) people from the North Slope Borough did not.

The Petitioner has never claimed or implied that an ancestral distinction can be made between the residents of the NANA region and the North Slope Borough. The petition does not imply that the area was historically inhabited by ancestors not shared by the residents of the NSB or the NANA region. Rather, it recognizes common ancestral relationships. It states "The Native inhabitants of the NANA Region and the North Slope Borough probably share the same ancestral beginnings . . . ". However, it continues ". . . the indigenous peoples of the two areas are distinctive . . .". Further, the petition states "the NANA region is, for the most part, distinguished from the North Slope Region . . .". The Petitioner does not claim that the social, cultural and economic characteristics of the population

of the territory proposed for detachment are substantially different or in conflict with those of the remainder of the population located in the borough. The Petitioner has neither asserted that there is a conflict between the two regions nor has the Petitioner "fabricated" conflict, as the Respondent claims. Rather, the Petitioner claims that the area of the NANA region is distinctive and distinguished from the North Slope Region.

As the Respondent states, "Petitioner asserts that the cultural, social and economic characteristics of NANA area residents should be considered because they occasionally populate the land for subsistence purposes. This "standard" finds no support in the Alaska Statutes or the Alaska Administrative Code". The Respondent fails to realize that it is not necessary to identify an argument as a standard for it to be considered by the Local Boundary Commission. A close reading of the regulatory standards for detachment finds that "In determining whether to approve a detachment, the commission will consider, but is not limited to, the following factors . . ." (19 AAC 10.230.(a)). Further, frequency and degree of contact with the area of proposed detachment by a group of people does justify consideration of all dynamics of that group. The Petitioner discusses these conditions to fairly characterize the area of proposed detachment. How can the Local Boundary Commission make an informed decision if all aspects of the area are not presented? The Petitioner would be remiss in not doing so. The relationship of the area of proposed detachment to a people oriented to the NANA Region supports the Petitioner's belief that detachment is justified.

The Respondent claims that "the transient workforce quartered at the Red Dog mine camp will not be substantially different from or in conflict with the population of the North Slope Borough". Considering the fact that approximately 80% of the workforce at Red Dog will be comprised of NANA Region

residents and given the admitted similarities between the residents of this area with those of the North Slope, the Petitioner recognizes that they will probably not be substantially different from or in conflict with the population of the North Slope Borough. The Petitioner has never claimed this. The Petitioner contends that considering the composition of the area's workforce, the area will be aligned more intimately and to a greater degree with the residents of the NANA Region.

The Respondent continues "As a matter of policy and economics, NANA Regional Corporation and Cominco plan to develop and operate the Red Dog mine as a remote workcamp enclave with a transient workforce." This is the result of negotiations between the developers to protect the interests of the native inhabitants of the NANA region for preservation of subsistence and natural resources not, as the Respondent implies, to be consistent with any North Slope Borough policies.

B. Geographic factors

In regard to this issue, the Respondent claims, ". . . Thus far there is absolutely no basis for any argument that the North Slope Borough cannot provide borough services to the area." The Petitioner has not claimed that the North Slope Borough cannot provide services to the area. The Petitioner's discussion of the issue centers around the "impracticality" of serving the area from the North Slope Borough. Considering that the term "impractical" is relative, the Petitioner makes the argument that "it is far more practical to deliver services to the area . . . from the NANA region." The Petitioner refines this contention with points of argument based upon geographic configuration and physical proximity to the Kotzebue Basin, transportation corridors and existing and anticipated marine and overland transportation infrastructure. Quite clearly the Petitioner demonstrates that, in relative terms, service delivery is impractical from the North Slope Borough.

The Respondent goes on, "The North Slope Borough has demonstrated its ability to develop facilities and provide services as needed at all settlements within its jurisdiction. The North Slope Borough's jurisdiction extends across the arctic frontier from beyond Point Hope, past Anaktuvuk Pass to beyond Kaktovik." The Petitioner does not question the ability of the North Slope Borough to provide services to areas other than the proposed area of detachment. Rather, it acknowledges its current adequacy in this function. It simply addresses the impracticality of servicing the area from Barrow, as opposed to Kotzebue, the anticipated seat of government for the proposed NANA region borough.

C. Transportation and Communications factors

Once again, the point of the Petitioner's discussion of transportation and communication factors surrounding the area of the proposed detachment is to establish that geographic configuration, physical proximity, transportation corridors and anticipated marine and overland transportation infrastructure combine to make delivery of borough services impractical from the North Slope Borough.

The Respondent claims "contrary to Petitioner's assertion, the natural geography of the detachment has not barred travel within and across the detachment area for subsistence and inter-regional trade." The Respondent however, fails to present evidence that inter-regional trade occurs on any consistent basis. Further, travel within and across the area for subsistence purposes and travel or access for purposes of delivering Borough services requires totally different degrees of accessibility. Subsistence activities occur on snow machine, sled and foot. They require only the most primitive levels of overland routes. However, delivery of public services that involve capital construction require a much greater degree of access. The Petitioner's Brief quite adequately demonstrates that these access routes occur in the

southern reaches of the area of proposed detachment and are approached through the NANA region.

D. Provision of Services

The Petition requests that the Local Boundary Commission, "approve the boundary change proposed herein (by the petition) with the condition that the detachment take effect only upon the incorporation of a borough within the NANA region, the boundaries of which must include all of the territory." (see DCRA Petition - page 1). The Respondent characterizes this as a "Vague reference that detachment will be conditioned on formation of a borough." There is nothing vague about this aspect of the Petition. Nor is there any question that the Local Boundary Commission has the authority to approve the stipulation requested in the Petition (see Attachment B - opinion from Department of Law).

The Respondent states that the Commission does not have a proposal for a NANA borough as yet. In addition to being wrong, that comment is irrelevant since the petition seeks conditional detachment. For the record, Attachment 2 of the Petitioner's Brief contains a copy of the petition being circulated for the incorporation of the Northwest Arctic Borough. The incorporation Petition provides that the Borough would initially exercise the powers mandated by law (i.e. education, planning and tax assessment/collection), and would include the area to be detached from the North Slope Borough. Other services would be added as the need arose.

E. Distribution of Assets and Liabilities

The Petitioner partially agrees with the Respondent that, "even now, a measurable share of liability (for areawide bonded indebtedness) attaches to all real property valuation that is or will be developed in the detached area". We disagree with the notion of relating liabilities incurred in the past to prospective valuations. In this particular instance, the valuation of real property in the area is currently nothing. Thus, the liability is nothing.

IV. APPLICATION OF THE BEST INTEREST STANDARD

After more than three years of consideration, representatives of the North Slope Borough and the NANA Region reached an agreement concerning the proposed detachment of 433,000 acres of land from the North Slope Borough. This was done to facilitate the incorporation of a borough in the NANA Region (see DCRA Brief - Attachment # 11). The terms of that agreement required, among other provisions, that the voters of the North Slope Borough approve an advisory vote on the proposed detachment. Neither the advisory election nor the other provisions of the agreement were requirements of State laws and regulations governing the proposed detachment.

It is reasonable to conclude, considering the agreement between NANA and the Borough, that the North Slope Borough had determined that the detachment of the 433,000 acres of land would meet the standards for detachment. What, then, has changed between the date of the execution of the agreement and today when the North Slope Borough raises numerous issues in an eleventh hour reversal of its position? Only one action caused the Borough to not seek detachment. On October 1, 1985, Borough residents voted against the proposed detachment (467 in favor and 651 opposed). Had 93 of the voters who voted against the proposed detachment, voted in favor of the measure (and had the other terms of the agreement been met) the North Slope Borough and not the Alaska Department of Community and Regional Affairs would have petitioned for detachment. Certainly, the Borough would not have made the arguments which it now raises as evidence that the standards for detachment are not met.

Again, voter approval is not a requirement for the type of boundary change brought before the Commission. Nor is it an issue which relates to the interests of any of the parties. Therefore, the Petitioner challenges the equitability

of the Borough's eleventh hour claim that the standards for detachment are not met. Admittedly, the State seeks to detach an area larger than the territory which was the subject of the agreement (3,298 square miles compared to 677 square miles). However, this additional territory does not detract from the degree to which the proposed detachment meets the applicable standards. Indeed, the Petitioner believes that the satisfaction of the applicable standards is greatly enhanced through the addition of the territory--which is precisely why the State chose to follow the regional corporation boundaries. If the Local Boundary Commission does not concur in the State's position that the expansion of the amount of territory proposed for detachment better meets the standards, it has the authority to reduce the territory to the 433,000 acres which were subject to the agreement between NANA and the North Slope Borough.

The Borough has long been aware of the standards for detachment and prior to December 18, 1985, had expressed no formal indication that the standards could not be met. Nonetheless, the Petitioner will address the points raised concerning this matter in the Respondent's Brief.

A. Best Interests of the State of Alaska

On August 6, 1985, the North Slope Borough Assembly made a formal finding that the proposed detachment of the 433,000 acres being considered at the time is, "a unique situation that should not serve and be construed as a precedent for others to follow" (NSB Ordinance 85-15 Substitute - emphasis added). Yet the Respondent now spends four pages of its brief weaving a fantasy that the proposed detachment will set a precedent which will result in wholesale detachments from other regional municipal governments. The statements of the Respondent are misleading and incorrect. For example, the Respondent claims that, "the long standing conflict between Klukwan and the Haines Borough" might serve as a basis for the detachment of Klukwan from the Haines Borough.

The Petitioner is unaware of any such "long standing conflict". Robert Henderson, Mayor of the Haines Borough confirmed the absence of any such conflict in a conversation with staff (Irene Rowan 12/19/85). Further, Klukwan isn't even within the Haines Borough!

B. Best Interests of the Territory to be Detached

As discussed on pages 31-32 of its brief, the Petitioner maintains that the detachment is in the best interests of the territory proposed for detachment. Nothing the Respondent has stated in its brief warrants any change of the Petitioner's position.

C. Best Interests of the North Slope Borough

The Respondent claims that the detachment will hurt the Borough's creditworthiness. In developing the Petition, Commissioner Notti sought counsel concerning this issue from the Alaska Department of Revenue and from the State Bond Committee's Financial Advisor (Government Finance Associates, Inc.). Both carefully and thoroughly examined claims of adverse impact upon the Borough's creditworthiness made in a letter dated November 6 from E.F. Hutton (see DCRA Brief - Attachment 35). The Commissioner of the Department of Revenue noted that the North Slope Borough and the investment community rely on the security provided by the revenues derived from existing and taxable property to repay the Borough's debts. Further, the Commissioner noted that, "The amounts of revenue which could be expected to result from tax levies upon the Red Dog mine as fully developed when compared to revenue requirements of the North Slope Borough for the life of outstanding bonds are insignificant and would not be considered important in maintaining the Borough's debt service schedule." The Commissioner of the Department of Revenue concluded her evaluation of the issue by stating that, "it would appear unlikely that the proposed detachment would be of either interest or significance in determining the creditworthiness of

the North Slope Borough." (see DCRA Brief - Attachment 36). The State Bond Committee's Financial Advisor, Government Finance Associates (GFA), concurred with that assessment (see DCRA Brief - Attachment 20).

The Respondent claims that the, "uniform Judgment of its electorate and elected Assembly and Mayor are, in the absence of overwhelming evidence to the contrary, the best measure of the best interest of the North Slope Borough". While not discounting the significance of the voters' choice, the Local Boundary Commission was established through the State Constitution in order to make such determinations outside local political considerations. Thus, the Respondent's "best measure" of its interest is readily discounted by the State Constitution.

The Respondent claims that it will incur significant financial loss from the detachment. This is not so. The North Slope Borough will lose little from the proposed detachment. The proposed shift of the jurisdictional boundaries of the North Slope Borough affects only 3.7 percent of the total area within the Borough. The \$607,180 present value of taxable property within the area proposed to be detached represents less than five one-thousandths of one percent of the North Slope Borough's 1984 total assessed valuation of \$12,268,737,790. The prospective future value of taxable property at the Red Dog mine site represents only 2 percent of the 1984 value of the taxable property within the North Slope Borough.

On the other hand, the detachment will save the North Slope Borough the cost and logistical difficulties of providing services to territory on its remote periphery, which may be served much more efficiently from a regional center located outside the North Slope Borough. Moreover, most of the persons to be served in the territory to be detached now have and will continue to have economic, social and cultural ties to

the NANA region rather than to the North Slope Borough, increasing the difficulty of communication and participation necessary to the effective delivery of local services from the North Slope Borough.

Further, retainage of the territory proposed for detachment within the boundaries of the North Slope Borough has strained the relationships between the peoples of the two regions. The Inupiat people have long prided themselves on values which include cooperation and sharing. Residents of the NANA region correctly believe that the territory proposed for detachment rightfully belongs within the jurisdiction of their region. The detachment of the territory will aid in the resolution of the conflict currently existing in the area.

All things considered, particularly the threat to harmonious relations among the people within the area and the relative difficulty which the North Slope Borough would have in serving the area, the State contends that the proposed detachment is in the best interests of the North Slope Borough.

V. CONCLUSION

The claims of the lack of due process expressed in the Respondent's Opposition Brief do not withstand reasonable scrutiny. The process being used not only meets technical requirements, but also provides the Respondent with every reasonable opportunity to present its side of the issue. The time schedule is not unreasonable, nor is it without precedent.

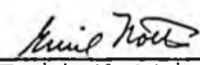
The Respondent has also failed to refute the evidence in the State's Petition and Brief which proves that the regulatory factors to be considered by the Commission support the proposed detachment. These factors include social, cultural, economic, geographic, transportation and communications considerations.

Finally, the Respondent has failed to refute the evidence in the State's Petition and Brief demonstrating that

the necessary standards concerning detachment are met. These include: (1) assurance of the delivery of municipal services following detachment; (2) equity in the distribution of assets and liabilities of the North Slope Borough; (3) that detachment is in the best interests of the State; (4) that detachment is in the best interests of the territory proposed for detachment; and (5) that detachment is in the best interests of the North Slope Borough.

Therefore, the Commissioner of the Alaska Department of Community and Regional Affairs again, respectfully requests the Local Boundary Commission concur with the position of the State and approve the current Petition for detachment. The Local Boundary Commission is further requested to recommend the boundary change proposed in this petition to the Second Session of the Fourteenth Legislature.

Submitted this 23rd day of December, 1985.



Emil Notti, Commissioner
Alaska Department of Community
and Regional Affairs

FOOTNOTES

1 AS 14.08.031 provides that, "The Department of Community and Regional Affairs in consultation with the Department of Education and local communities shall divide the unorganized borough in educational service areas using the boundaries or sub-boundaries of the regional corporation established under the Alaska Native Claims Settlement Act." (emphasis added). Other provisions of State law, in turn, relate the boundaries of regional education attendance areas to other political subdivisions of the State. For example, AS 46.40.120 states that, "Except as otherwise provided in this section, each regional educational attendance area established under AS 14.08.031 containing a part of the coastal area may be organized as a coastal resource service area." AS 14.08.031 also establishes standards for the formation of regional education attendance areas in stating, "As far as practicable, each regional education attendance area shall contain an integrated socio-economic, linguistically and culturally homogenous area. In the formation of the regional education attendance area, consideration shall be given to the transportation and communication network to facilitate the administration of education and communication between communities that comprise the area. Whenever possible, municipalities, other governmental or regional corporate entities, drainage basins and other identifiable geographic features shall be used in describing the boundaries of the regional school attendance areas . . ." (emphasis added). The standards for the formation of a regional education attendance area are strikingly similar to those provided in law for the formation of a borough (see Attachment A).

LIST OF ATTACHMENTS

Attachment A -- Standards for incorporation of organized boroughs (AS 29.18.030 and 19 AAC 10. 160).

Attachment B - Memorandum from Jonathan B. Rubini to Marty Rutherford dated July 23, 1985.

MEMORANDUM

State of Alaska

TO: Marty Rutherford, Director
Municipal & Regional Asst. Div.
Dept. of Community & Regional
Affairs

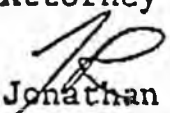
DATE: July 23, 1985

FILE NO: 366-034-86

TELEPHONE NO: 465-3600

FROM: Harold M. Brown
Attorney General

SUBJECT: LBC authority to de-
tach an area from an
organized borough

By:  Jonathan B. Rubini
Assistant Attorney General
Governmental Affairs-Juneau

You have asked whether the Local Boundary Commission (LBC) enjoys the legal authority to present to the legislature a petition which provides for the detachment of an area from an organized borough if, but only if, the area to be detached is included within a newly-formed borough. Upon your request to expedite our review of this matter, we stated our oral advice that the LBC does enjoy the requisite legal authority. We briefly set out our views below.

We are advised that the North Slope Borough presently has under consideration a proposal to detach that portion of the borough which is included within the NANA Regional Corporation. The area in question includes the Red Dog mineral deposit, and inclusion of the Red Dog site is considered essential to the formation of a new borough encompassing the NANA Regional Corporation territory.

Article X, section 12 of the Alaska Constitution provides for the establishment of the LBC, and further directs the LBC to "consider any proposed local government boundary change." (Emphasis added.) Boundary changes approved by the LBC are presented to the legislature and "shall become effective forty-five days after presentation ... unless disapproved by a [concurrent resolution]."

We have previously stated our view that the LBC enjoys broad, inherent legal authority in the discharge of its constitutional and statutory obligations. 1982 Inf. Op. Att'y Gen. (J66-585-81; Oct. 25) (copy attached). Our conclusion in this regard reflects the series of Alaska Supreme Court decisions which reflect the court's deference to recommendations and procedures adopted by the LBC. See Port Valdez Co. v. City of Valdez, 522 P.2d 1147 (Alaska 1974); Oesau v. City of Dillingham, 439 P.2d 180 (Alaska 1968); Fairview Public Utilities District Number One v. City of Anchorage, 368 P.2d 540 (Alaska 1962). Oesau is particularly illuminating, since in that case the court explicitly noted that the LBC enjoys the authority to dissolve a city notwithstanding the absence of express statutory authority to do so. Oesau, 439 P.2d at 183.

Attachment B

Marty Rutherford, Director
CRA--Municipal & Regional Asst. Division
366-034-86

July 23, 1985
Page #2

The immediate question is whether the constitutional effective date provision precludes the LBC presentation of a qualified boundary change, that is, a proposal which takes effect at some point -- and for some reasons -- unrelated to the 45-day provision. In most instances, the affirmative action of the legislature is required to initiate legislative action. In this instance, as in the case of legislative review of executive orders under article III, section 23, the constitution uniquely authorizes legislative "approval" through inaction. The provision reflects deference to the LBC and a desire to compel expeditious legislative attention to a LBC proposal. The constitutional provision should not be construed as a substantive limit to the otherwise broad delegation of legislative powers to the LBC. Indeed, the effective date provision is not necessarily in conflict with the broad authority of the LBC. Viewed properly, the effective date clause relates to the LBC proposal, not the underlying boundary change. Were the LBC to exercise its inherent authority to present a qualified proposal to the legislature, the proposal -- as qualified by the LBC -- takes effect 45 days after submission unless disapproved by concurrent resolution. Accordingly, we believe that the LBC enjoys the legal authority to present a qualified proposal to the legislature.

We further note that regulations adopted by the LBC further confirm the authority to present a qualified proposal. 19 AAC 10.240(b) provides:

(b) If, in fulfilling the requirement of (a) of this section, the petitioners have proposed the incorporation of a new municipality, the commission will, in its discretion, condition approval of the detachment upon voter approval of the incorporation proposal.

The regulation expressly authorizes the LBC to condition a detachment petition upon the subsequent incorporation of a municipality including the detached area. By direct implication, the regulation reflects that the LBC may condition a detachment petition upon the subsequent incorporation of a new borough. See 1982 Inf. Op. Att'y Gen. (J66-585-81; Oct. 25). See generally U.S. Smelting, Refining and Mining Co. v. Local Boundary Comm'n, 489 P.2d 140 (Alaska 1971).

If you have any other questions, please feel free to call.

JBR/pjg
Enc.

19 AAC 10.160. INCORPORATION. An area may incorporate as an organized borough if it meets the statutory standards set forth in AS 29.18.030 and meets the following specific requirements:

(1) the area includes at least two separate communities;

(2) transportation services are available at least once a week between communities located within the area on a regularly scheduled or charter basis, or communities located within the area which do not have regularly scheduled transportation services are connected by a highway system;

(3) there are sufficient anticipated revenues to maintain and operate, at a minimum, the mandatory powers of the proposed borough government;

(4) there are at least 1,000 people located within the area; and

(5) the area includes, at a minimum, one entire regional education attendance area unless the commission determines that a smaller area can otherwise meet borough government standards for incorporation. (Eff. 2/21/82, Reg. 81)

Authority: Art. X, Sec. 12
Alaska Const.
AS 44 47 980

Sec. 29.18.030. Organized boroughs. An area may incorporate as an organized borough if it conforms to the following standards:

(1) the population of the area is interrelated and integrated as to its social, cultural, and economic activities, and is large and stable enough to support organized borough government;

(2) the boundaries of the proposed borough conform generally to natural geography and include all areas necessary for full development of local services;

(3) the economy of the area includes the human and financial resources capable of providing local services; evaluation of an area's economy includes land use, property valuations, total economic base, total personal income, resource and commercial development, anticipated functions, expenses, and income of the proposed borough;

(4) land, water, and air transportation facilities allow the communication and exchange necessary for the development of integrated local government. (§ 2 ch 118 SLA 1972)

NOTES TO DECISIONS

As to de facto incorporation, see *Jefferson v. State*, Sup. Ct. Op. No. 1084 (File No. 2000), 527 P.2d 37 (1974).

Legislation to organize a specific borough unconstitutional. — Chapter 145, SLA 1974, by which the Eagle River-Chugiak Borough was organized, contravened the provisions of Alaska Const., art. II, § 19, since it was special

and local legislation creating a new local government without regard to the general statutory provisions that prescribe the method that otherwise governs the creation of new local governmental entities from existing ones. *Abrams v. State*, Sup. Ct. Op. No. 1142 (File No. 2407), 534 P.2d 91 (1975).

BEFORE THE LOCAL BOUNDARY COMMISSION OF THE STATE OF ALASKA

IN RE:)
THE DETACHMENT FROM THE NORTH)
SLOPE BOROUGH OF TERRITORY)
WITHIN AND ADJACENT TO THE)
NANA REGION)
_____)

PETITION FOR DETACHMENT FROM THE NORTH SLOPE BOROUGH

I, Emil Notti, Commissioner of the Alaska Department of Community and Regional Affairs, (hereinafter "Petitioner") hereby petition the Local Boundary Commission of the State of Alaska (hereinafter "Commission") for a change in the jurisdictional boundaries of the North Slope Borough pursuant to the provisions of AS 29.68.010(a) and 19 AAC 10.450 - 19 AAC 10.620. More specifically, this petition seeks the detachment from the North Slope Borough of all of the territory lying within the boundaries of the NANA Regional Corporation, as well as adjacent waters seaward to a line three geographical miles distant from the coast line, an area which is more particularly described in this petition. The area sought for detachment is comprised of approximately 3,298 square miles.

This petition requests that the Commission approve the boundary change proposed herein with the condition that the detachment take effect only upon the incorporation of a borough within the NANA region, the boundaries of which must include all of the territory approved for detachment.

As the Commission is aware, the provision of 19 AAC 10.480 requiring a census or other reliable enumeration within the territory proposed for detachment was waived by the Commission on November 20, 1985, with the stipulation that the Department provide available information concerning any current population of the territory, as well as past, present and future projections of employment relating to the Red Dog mine project.

Additionally, the Commission waived on November 20, the provision of 19 AAC 10.480 requiring maps showing roadways

throughout the North Slope Borough, with the stipulation that the petitioner provide, in the petition or by future submission, existing and available maps and/or other information concerning commercial air and barge routes of the North Slope Borough and the NANA Region, as well as existing and available maps of existing and proposed roadways and highways within the North Slope Borough prepared by or on behalf of the Alaska Department of Transportation and Public Facilities and/or the North Slope Borough. Additionally, the petitioner is providing as an attachment a U.S. Geological Survey map of the entire North Slope Borough at 1:1,000,000 scale. Further, the petitioner will provide at the hearings a U.S. Geological Survey topographic map of the territory proposed for detachment at 1:250,000 scale.

To the extent practicable, the Petitioner has also included in the supporting documentation, relevant information relating to the proposed incorporation of the NANA region as a borough and information concerning the future development of the territory proposed for detachment.

The following information is submitted for consideration by the Commission:

(1) The name and mailing address of the Petitioner:

The Honorable Emil Notti
Commissioner
Alaska Department of Community and Regional Affairs
Pouch B
Juneau, Alaska 99811

(2) The name, telephone number and mailing address of representative designated by the Petitioner to receive service, notice and other correspondence relating to the proceedings on behalf of the Petitioner:

Ms. Marty Rutherford, Director
Municipal and Regional Assistance Division
Department of Community and Regional Affairs
949 East 36th Avenue, Suite 404
Anchorage, Alaska 99508

Telephone number: (907) 561-8586

(3) A legal boundary description of the territory proposed to be detached through this petition is set forth in Exhibit A.

(4) A legal boundary description of the boundaries of the North Slope Borough if the proposed detachment is effected is set forth in Exhibit B.

(5) The assessed or estimated value of taxable real and personal property within the territory proposed for detachment is as follows:

Real Property	\$	0
Personal Property	\$	607,180
TOTAL	\$	607,180

(6) The number of residents within the territory proposed for detachment:

There are no permanent residents of the territory proposed for detachment. However, there are 2 individuals presently working in the territory on the development of the Red Dog mine which might be considered residents for operating budget tax levying purposes pursuant to AS 29.53.050(b). Further information concerning past and projected future workers at the Red Dog mine site is provided in the brief attached to this petition.

(7) The rate at which real and personal property are taxed within the territory proposed for detachment and throughout the North Slope Borough:

18.37 mils.

(8) The rate or rates of sales and use taxes levied and collected within the territory proposed for detachment and throughout the North Slope Borough:

The North Slope Borough levies a 3% sales tax and a 3% use tax throughout the boundaries of the Borough. In addition, the Cities of Barrow, Nuiqsut, Point Hope and Wainwright each levy a 3% sales tax (but no use tax) within their respective jurisdictional boundaries.

(9) The amount and a full explanation of the outstanding bonded indebtedness for which the territory is wholly or partially responsible:

The present outstanding bonded indebtedness of the North Slope Borough is \$1,266,991,000. There are no capital facilities owned by the North Slope Borough located in the area proposed for detachment. Accordingly, no proceeds from the sale of bonds by the North Slope Borough have been used directly for improvements within the territory proposed for detachment.

A full explanation of the bonded indebtedness of the North Slope Borough as of June 30, 1984, is attached as Exhibit C.

(10) The population and size of the municipality affected by the proposed boundary change:

The population of the North Slope Borough is 7,978 for State Revenue Sharing purposes and 12,359 for operating budget tax levying purposes pursuant to AS 29.53.050(b). The size of the North Slope

Borough is approximately 56,500,000 acres
(88,281.25 square miles).

Pursuant to 19 AAC 10.490, the Petitioner appends the following exhibits to this petition:

- (1) EXHIBIT D: Maps showing 1) the boundaries of the North Slope Borough before and after the proposed detachment; 2) the territory proposed for detachment and the NANA Regional Corporation boundaries (the area proposed by a separate petition for incorporation as a borough); 3) transportation routes and facilities of the North Slope Borough (source: North Slope Borough Coastal Management Plan - July, 1984); 4) village areas of influence within the North Slope Borough (source: North Slope Borough Comprehensive Plan Maps 11A, 11B and 11C - January, 1983); 5) intensive resource use areas within the territory proposed for detachment (source NANA Coastal Management Plan - September, 1985); 6) archaeological and historical resources within the territory proposed for detachment (source NANA Coastal Management Plan - September, 1985).

Maps which the Commission stipulated on November 20, 1985, should be made available for its review were requested from the Alaska Department of Transportation and Public Facilities and the North Slope Borough on November 21 (see Exhibits D-7 and D-8) and will be made available to the Commission by the Petitioner as soon as is practicable. These maps consist of existing and available maps and/or other information concerning commercial air and barge routes of the North Slope Borough and the NANA Region, as well as existing and available maps of existing and proposed roadways and highways within the North Slope Borough prepared by or on behalf of the Alaska Department of Transportation and Public Facilities and/or the North Slope Borough.

To the extent available and practicable, maps showing identical information but of a larger size of those included in the petition will be provided by the Petitioner at the hearings regarding this petition to be conducted by the Commission. Such maps have also been provided to the North Slope Borough. Further, such maps may be inspected prior to the hearing at the following locations:

Office of the Representative of the Petitioner:

Office of the Director
Municipal and Regional Assistance Division
Department of Community and Regional Affairs
949 East 36th Avenue, Suite 404
Anchorage, Alaska 99508
Telephone number: (907) 561-8586

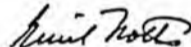
Office near the area to be detached:

Kotzebue Regional Office
Municipal and Regional Assistance Division
Department of Community and Regional Affairs
Drift Inn, Second Floor
Kotzebue, Alaska 99752
Telephone number: (907) 442-3696

- (2) EXHIBIT E: An affidavit of the Petitioner's Representative indicating the source of the information contained in the petition.
- (3) EXHIBIT F: An affidavit of the Petitioner's Representative that service of the petition has been made in compliance with 19 AAC 10.510.

Pursuant to 19 AAC 10.500, the Petitioner appends to this petition a written brief fully setting forth the reasons supporting the boundary change and demonstrating that the boundary change meets the standards established in 19 AAC 10.225 - 19 AAC 10.250 regarding detachment from an organized borough.

Respectfully submitted this 22nd day of November,
1985.



Emil Notti, Commissioner
Alaska Department of Community
and Regional Affairs

IN RE:)
THE DETACHMENT FROM THE NORTH)
SLOPE BOROUGH OF TERRITORY)
WITHIN AND ADJACENT TO THE)
NANA REGION)
_____)

EXHIBIT A
THE LEGAL BOUNDARY DESCRIPTION OF THE TERRITORY PROPOSED
TO BE DETACHED FROM THE NORTH SLOPE BOROUGH

Beginning at a point in the Chukchi Sea where the westerly extension of the protracted northern boundary of Township 30 North, Range 29 West, Kateel River Meridian (approximate latitude 68 degrees 2 minutes 7.56 seconds North) intersects the westerly boundary of the State of Alaska; thence in an easterly direction along the westerly extension of the protracted northern boundary of Township 30 North, Range 29 West, Kateel River Meridian (KRM) to its intersection with the mean high tide line of the Chukchi Sea; thence continuing easterly to the protracted Northwest corner of Township 30 North, Range 25 West, (KRM); thence northerly to the protracted Northwest corner of Township 32 North, Range 25 West, (KRM); thence easterly to the protracted Southeast corner of Township 33 North; Range 18 West, (KRM); thence northerly to the protracted Northwest corner of Township 33 North; Range 17 West, (KRM); thence easterly to the protracted Northeast corner of Township 33 North; Range 15 West, (KRM); thence southerly to the protracted Southeast corner of Township 33 North; Range 15 West, (KRM); thence easterly to the protracted Southwest corner of Township 33 North; Range 12 West, (KRM); thence northerly to the protracted Northwest corner of Township 33 North; Range 12 West, (KRM); thence easterly to the protracted Northeast corner of Township 33 North; Range 11 West, (KRM); thence southerly to the protracted Southeast corner of Township 33 North; Range 11 West, (KRM); thence easterly to the protracted Southwest corner of Township 33 North; Range 6 West, (KRM); thence northerly to the protracted Northwest corner of Township 33 North; Range 6 West, (KRM); thence easterly to the protracted Northeast corner of Township 33 North; Range 5 West, (KRM); thence southerly to the protracted Southeast corner of Township 33 North; Range 5 West, (KRM); thence easterly to the protracted Northeast corner of Township 32 North; Range 7 West, (KRM); thence southerly to the protracted Southeast corner of Township 32 North; Range 7 East, (KRM); thence easterly to the protracted Northeast corner of Township 31 North; Range 11 East, (KRM); thence southerly to the protracted Southeast corner of Township 31 North; Range 11 East, (KRM); thence easterly to the protracted Northeast corner of Township 30 North; Range 15 East, (KRM); thence southerly to 68 degrees North Latitude; thence westerly along 68 degrees North Latitude Line to its intersection with the mean high tide line of the Chukchi Sea; thence continuing in a westerly direction along 68 degrees North Latitude to a point 61 the Chukchi Sea at its intersection with the westerly boundary of the State of Alaska; thence in northerly direction along the westerly boundary of the State of Alaska to a point in the Chukchi Sea at its intersection with the westerly extension of the protracted northern boundary of Township 30 North, Range 29 West, Kateel River Meridian (approximate latitude 68 degrees 2 minutes 7.56 seconds North), the point of beginning, containing 3,298 square miles, more or less, all in the Second Judicial District, State of Alaska.

IN RE:)
THE DETACHMENT FROM THE NORTH)
SLOPE BOROUGH OF TERRITORY)
WITHIN AND ADJACENT TO THE)
NANA REGION)
_____)

EXHIBIT B
THE LEGAL BOUNDARY DESCRIPTION OF THE NORTH SLOPE BOROUGH
SHOULD THE PROPOSED DETACHMENT BE EFFECTED

Beginning at a point in the Chukchi Sea where the westerly extension of the protracted northern boundary of Township 30 North, Range 29 West, Kateel River Meridian (approximate latitude 68 degrees 2 minutes 7.56 seconds North) intersects the westerly boundary of the State of Alaska; thence in an easterly direction along the westerly extension of the protracted northern boundary of Township 30 North, Range 29 West, Kateel River Meridian (KRM) to its intersection with the mean high tide line of the Chukchi Sea; thence continuing easterly to the protracted Northwest corner of Township 30 North, Range 25 West, (KRM); thence northerly to the protracted Northwest corner of Township 32 North, Range 25 West, (KRM); thence easterly to the protracted Southeast corner of Township 33 North; Range 18 West, (KRM); thence northerly to the protracted Northwest corner of Township 33 North; Range 17 West, (KRM); thence easterly to the protracted Northeast corner of Township 33 North; Range 15 West, (KRM); thence southerly to the protracted Southeast corner of Township 33 North; Range 15 West, (KRM); thence easterly to the protracted Southwest corner of Township 33 North; Range 12 West, (KRM); thence northerly to the protracted Northwest corner of Township 33 North; Range 12 West, (KRM); thence easterly to the protracted Northeast corner of Township 33 North; Range 11 West, (KRM); thence southerly to the protracted Southeast corner of Township 33 North; Range 11 West, (KRM); thence easterly to the protracted Southwest corner of Township 33 North; Range 6 West, (KRM); thence northerly to the protracted Northwest corner of Township 33 North; Range 6 West, (KRM); thence easterly to the protracted Northeast corner of Township 33 North; Range 5 West, (KRM); thence southerly to the protracted Southeast corner of Township 33 North; Range 5 West, (KRM); thence easterly to the protracted Northeast corner of Township 32 North; Range 7 West, (KRM); thence southerly to the protracted Southeast corner of Township 32 North; Range 7 East, (KRM); thence easterly to the protracted Northeast corner of Township 31 North; Range 11 East, (KRM); thence southerly to the protracted Southeast corner of Township 31 North; Range 11 East, (KRM); thence easterly to the protracted Northeast corner of Township 30 North; Range 15 East, (KRM); thence southerly to 68 degrees North Latitude; thence easterly along the 68 degrees North Latitude line to 146 degrees West Longitude; thence northerly along 146 degrees West Longitude to 68 degrees 30 minutes North Latitude; thence easterly along 68 degrees 30 minutes North Latitude to the boundary common to the United States and Canada; thence northerly along the boundary common to the United States and Canada to its intersection with the mean high tide line of the Beaufort Sea; thence continuing northerly along the boundary common to the United States and Canada in the Beaufort Sea to the northerly boundary of the State of Alaska in the Beaufort Sea; thence westerly, northwesterly, westerly, southwesterly, southerly, and southeasterly along the boundary of the State of Alaska in

the Beaufort Sea, Arctic Ocean, and Chukchi Sea to a point in the Chukchi sea at its intersection with the westerly extension of the protracted northern boundary of Township 30 North, Range 29 West, Kateel River Meridian (approximate latitude 68 degrees 2 minutes 7.56 seconds North), the point of beginning, containing 84,983 square miles, more or less, all in the Second Judicial District, State of Alaska.

IN RE:)
 THE DETACHMENT FROM THE NORTH)
 SLOPE BOROUGH OF TERRITORY)
 WITHIN AND ADJACENT TO THE)
 NANA REGION)

EXHIBIT C
 A FULL EXPLANATION OF THE BONDED INDEBTEDNESS
 OF THE NORTH SLOPE BOROUGH AS OF JUNE 30, 1984

NORTH SLOPE BOROUGH
 NOTES TO FINANCIAL STATEMENTS
 (Continued)

CHANGES IN LONG-TERM DEBT (Continued)

General obligation bonds payable at June 30, 1984 were comprised of the following individual issues:

\$74,200,000 1978 Series i of which \$7,300,000 is for school facilities, \$7,000,000 for roads, \$40,600,000 for public housing, \$4,775,000 for water facilities, \$4,125,000 for sewage treatment, \$400,000 for airports, \$200,000 for housing and urban development, \$1,700,000 for light, heat and power, \$100,000 for public safety facilities, \$3,100,000 for sanitary facilities, \$100,000 for communication facilities, \$4,100,000 for health facilities, \$700,000 for library facilities, due on November 1, 1991; interest at 6.75 percent	\$ 7,400,000
\$70,000,000 1980 Series L of which \$7,000,000 is for public housing, \$25,700,000 for water facilities, \$32,400,000 for sewage treatment, \$3,000,000 for airports, \$600,000 for housing and urban development, \$1,100,000 for public safety facilities, \$200,000 for health facilities, due on September 20, 1991; interest at 9.25 percent	12,000,000
\$75,000,000 1981 Series M of which \$10,000,000 is for roads, \$18,000,000 for public housing, \$4,000,000 for water facilities, \$12,000,000 for sewage treatment, \$10,000,000 for airports, \$1,000,000 for light, heat and power, \$9,500,000 for public safety facilities, \$10,500,000 for sanitary facilities, due in annual installments of \$9,000,000 through March 10, 1993; interest at 11.25 percent	18,000,000
\$65,000,000 1981 Series N of which \$34,200,000 is for school facilities, \$8,900,000 for roads, \$9,200,000 for public housing, \$2,200,000 for water facilities, \$1,100,000 for airports, \$200,000 for housing and urban development, \$9,000,000 for light, heat and power, \$100,000 for public safety facilities, \$100,000 for sanitary facilities, due in annual installments of \$5,000,000 through June 15, 1993; interest at 11.2 percent	10,000,000

NORTH SLOPE BOROUGH
 NOTES TO FINANCIAL STATEMENTS
 (Continued)

CHANGES IN LONG-TERM DEBT (Continued)

\$80,000,000 1982 Series Q of which \$20,000,000 is for school facilities, \$4,000,000 for roads, \$20,000,000 for public housing, \$12,000,000 for water facilities, \$4,000,000 for light, heat and power, \$20,000,000 for sanitary facilities, due in annual installments of \$4,000,000 to \$10,000,000 through February 10, 1998; interest at 13 to 13.5 percent

\$ 64,000,000

\$80,000,000 1982 Series P of which \$19,500,000 is for school facilities, \$19,000,000 for roads, \$3,000,000 for airports, \$2,500,000 for housing and urban development, \$4,000,000 for light, heat and power, \$18,500,000 for public safety facilities, \$4,000,000 for sanitary facilities, \$40,000 for communication facilities, \$4,000,000 for health facilities, \$1,960,000 for telephone facilities, \$3,500,000 for administration facilities, due in annual installments of \$3,000,000 to \$7,000,000 through June 10, 1995; interest at 12.1 to 12.4 percent

21,000,000

\$100,000,000 1982 Series Q of which \$5,000,000 is for roads, \$18,100,000 for water facilities, \$27,900,000 for sewage treatment facilities, \$9,000,000 for light, heat and power, \$7,000,000 for sanitary facilities, \$21,000,000 for industrial park facilities, \$12,000,000 for health facilities, due in annual installments of \$1,000,000 to \$7,000,000 through June 20, 2006; interest at 8.5 to 10.5 percent

56,000,000

\$100,000,000 1983 Series R of which \$25,000,000 is for public housing, \$35,000,000 for water facilities, \$30,000,000 for sewage treatment facilities, \$10,000,000 for public safety facilities, due in annual installments of \$9,000,000 to \$13,000,000 through February 10, 1995; interest at 9.25 to 9.8 percent

47,000,000

\$100,000,000 1984 Series S of which \$85,000,000 is for retirement of Bond Anticipation Notes, Series A, \$15,000,000 for industrial park facilities, due in annual installments of \$40,925,000 and \$45,600,000 through June 30, 1986; interest at 9.25 to 9.65 percent

86,525,000

NORTH SLOPE BOROUGH
 NOTES TO FINANCIAL STATEMENTS
 (Continued)

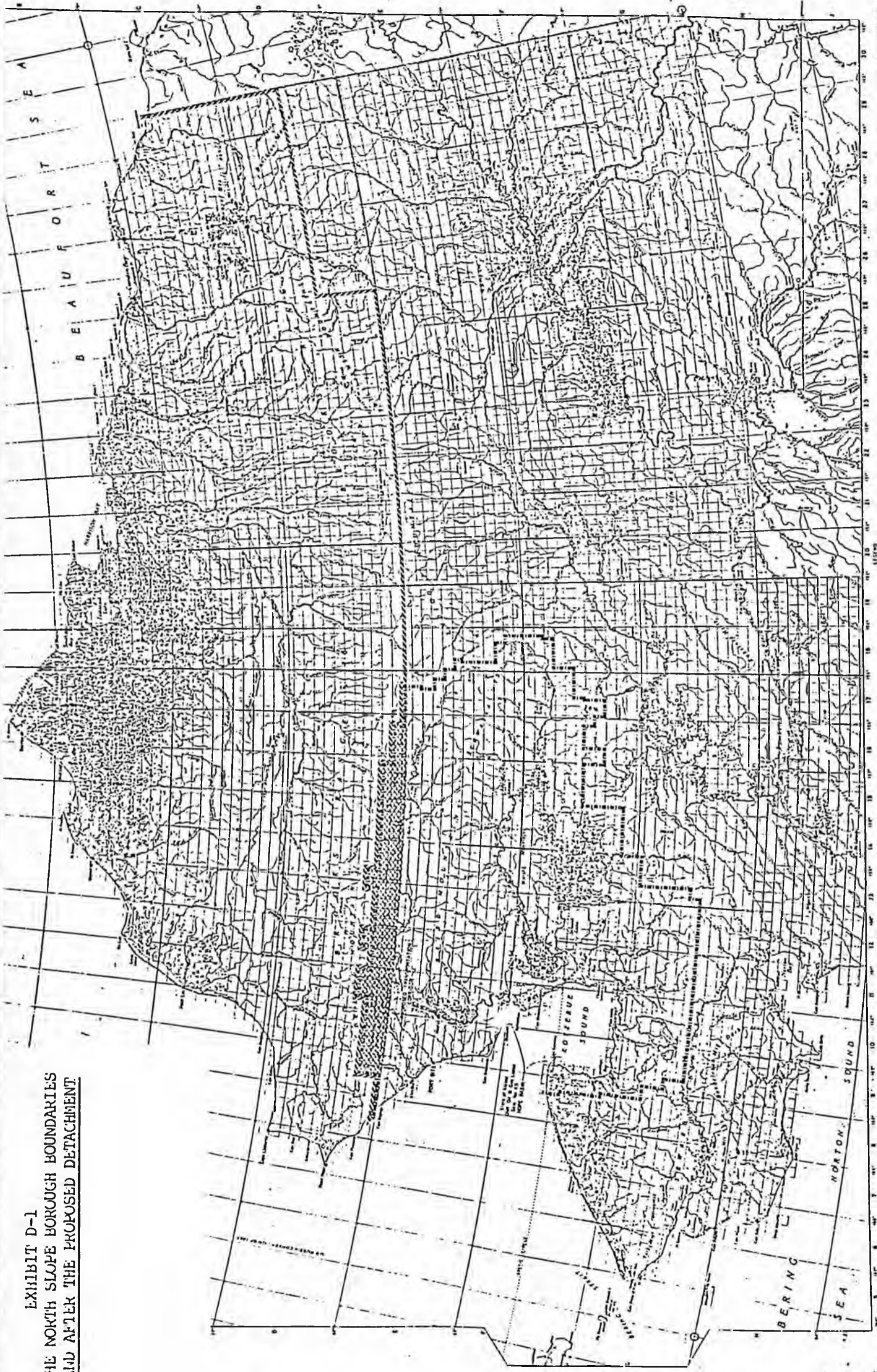
CHANGES IN LONG-TERM DEBT (Continued)

<p>\$100,000,000 1984 Series T of which \$81,908,000 is for retirement of Bond Anticipation Notes, Series A, \$18,092,000 for industrial park facilities, due in annual installments of \$24,200,000 to \$49,400,000 through June 30, 1989; interest at 7.6 percent</p>	<p>\$ 100,000,000</p>
<p>\$108,470,000 1984 Series U of which \$33,092,000 is for retirement of Bond Anticipation Notes, Series A, \$34,555,000 for school facilities, \$2,447,000 for roads, \$74,000 for public housing, \$1,000 for water facilities, \$31,000 for sewage treatment facilities, \$10,048,000 for airport facilities, \$27,000 for light, heat and power, \$30,000 for public safety facilities, \$26,401,000 for sanitary facilities, \$46,000 for communication facilities, \$58,000 for health facilities, \$1,659,000 for library and cultural facilities, \$1,000 for administration facilities, due in annual installments of \$26,500,000 to \$55,000,000 through June 30, 1988; interest at 7.1 to 7.5 percent</p>	<p>108,470,000</p>
<p>\$214,500,000 1983 Refunding Bonds, Series A, due in annual installments of \$4,700,000 to \$19,900,000 through June 30, 2006; interest at 9.5 to 12.25 percent</p>	<p>214,500,000</p>
<p>\$90,800,000 1983 Refunding Bonds, Series B, due in annual installments of \$15,900,000 to \$31,200,000 through June 30, 1990; interest at 8.75 to 13.1 percent</p>	<p>90,800,000</p>
<p>\$213,800,000 1984 Refunding Bonds, Series C, due in annual installments of \$14,000,000 to \$59,200,000 through June 30, 1996; interest at 9.5 to 10.5 percent</p>	<p><u>213,800,000</u></p>
	<p><u>\$ 1,049,495,000</u></p>

Bond anticipation notes payable at June 30, 1984 were comprised of the following individual issue:

<p>\$153,945,000 1984 Bond Anticipation Notes, Series B, of which \$10,983,000 is for school facilities, \$33,387,000 for roads, \$22,961,000 for water facilities, \$28,113,000 for sewage treatment, \$28,130,000 for light, heat and power, \$4,300,000 for communication facilities, \$26,071,000 for administration facilities, due on April 12, 1985; interest at 7.875 percent</p>	<p><u>\$ 153,945,000</u></p>
---	------------------------------

EXHIBIT D-1
 MAP OF THE NORTH SLOPE BOROUGH BOUNDARIES
 BEFORE AND AFTER THE PROPOSED DETACHMENT



US DEPARTMENT OF THE INTERIOR
 GEOLOGICAL SURVEY

Map Scale: 1:100,000

FOR SALES BY GEOLOGICAL SURVEY
 WASHINGTON, D. C. 20508
 UNITED STATES GOVERNMENT PRINTING OFFICE

EXHIBIT D-3
MAP OF THE TRANSPORTATION ROUTES AND FACILITIES
OF THE NORTH SLOPE BOROUGH

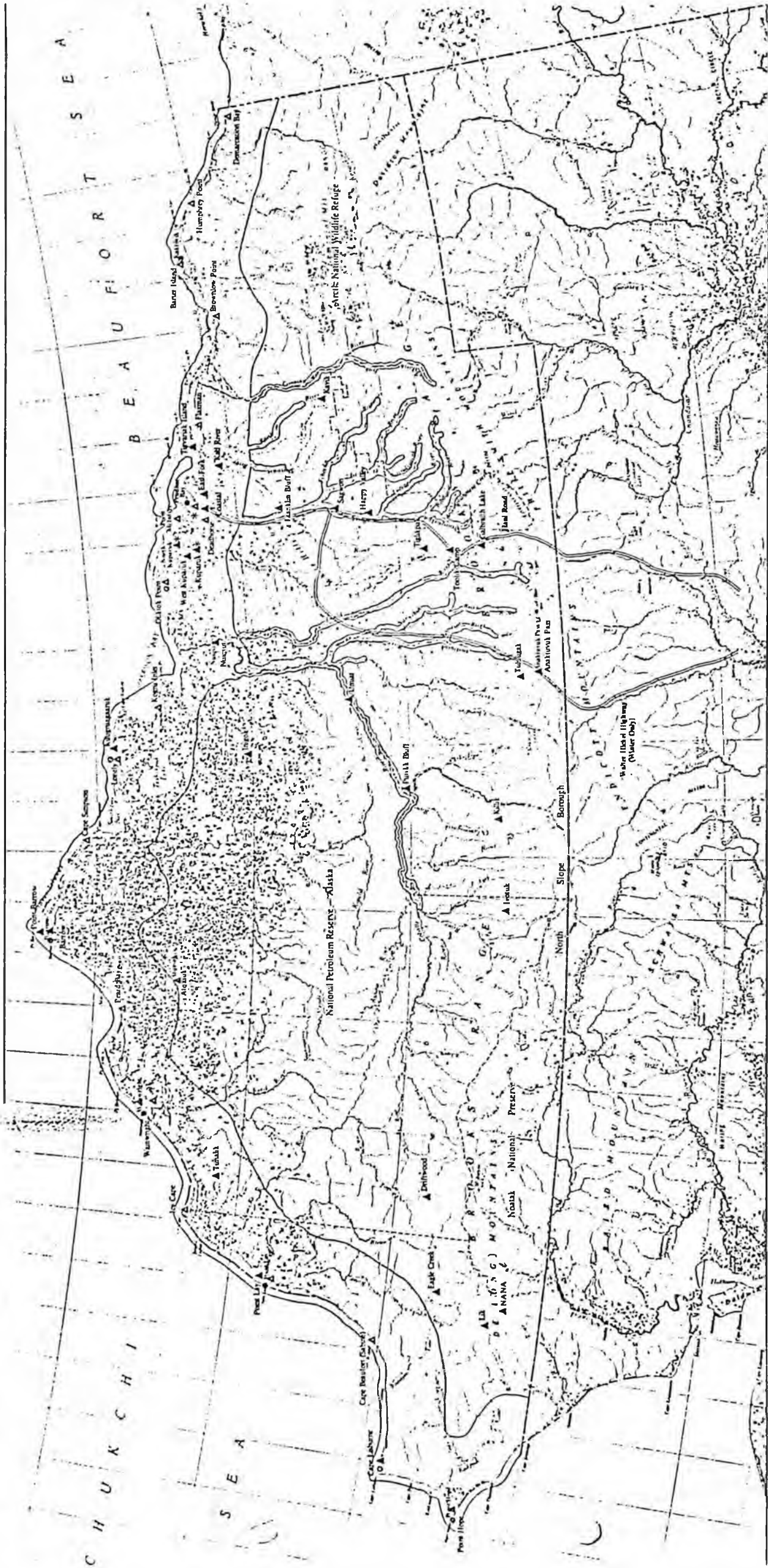
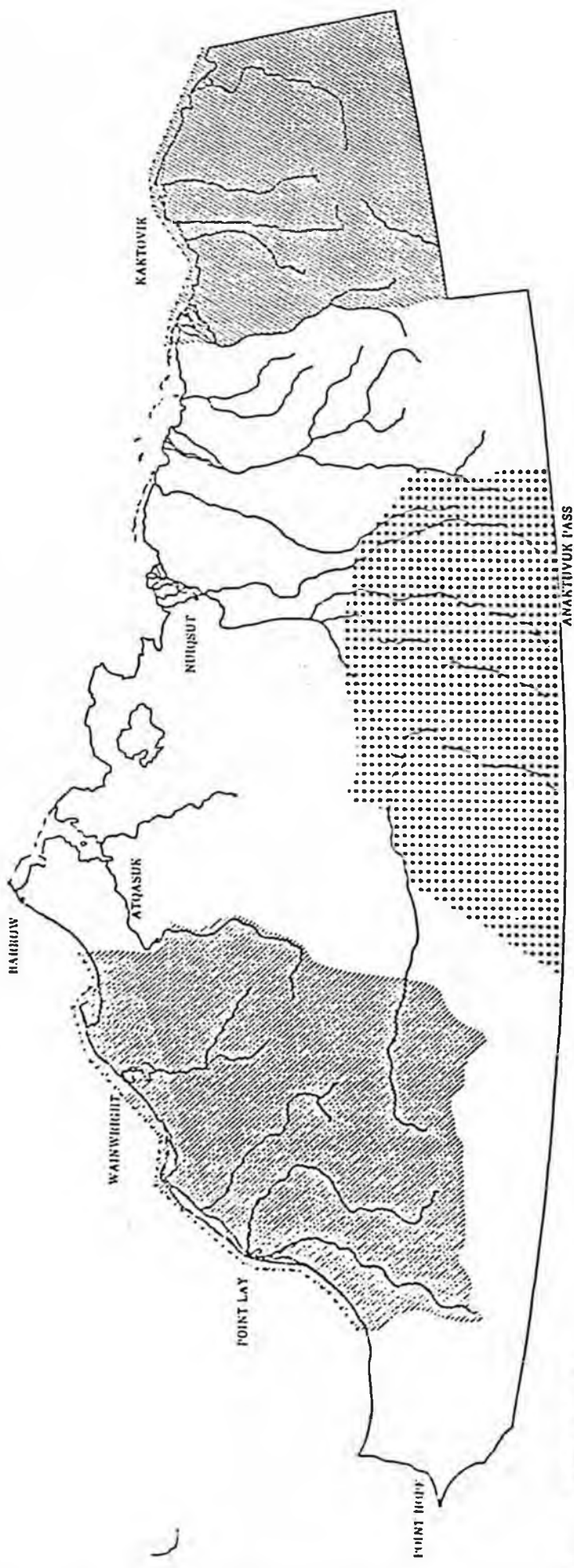


EXHIBIT D-4
 MAP OF THE VILLAGE AREAS OF INFLUENCE
 WITHIN THE NORTH SLOPE BOROUGH

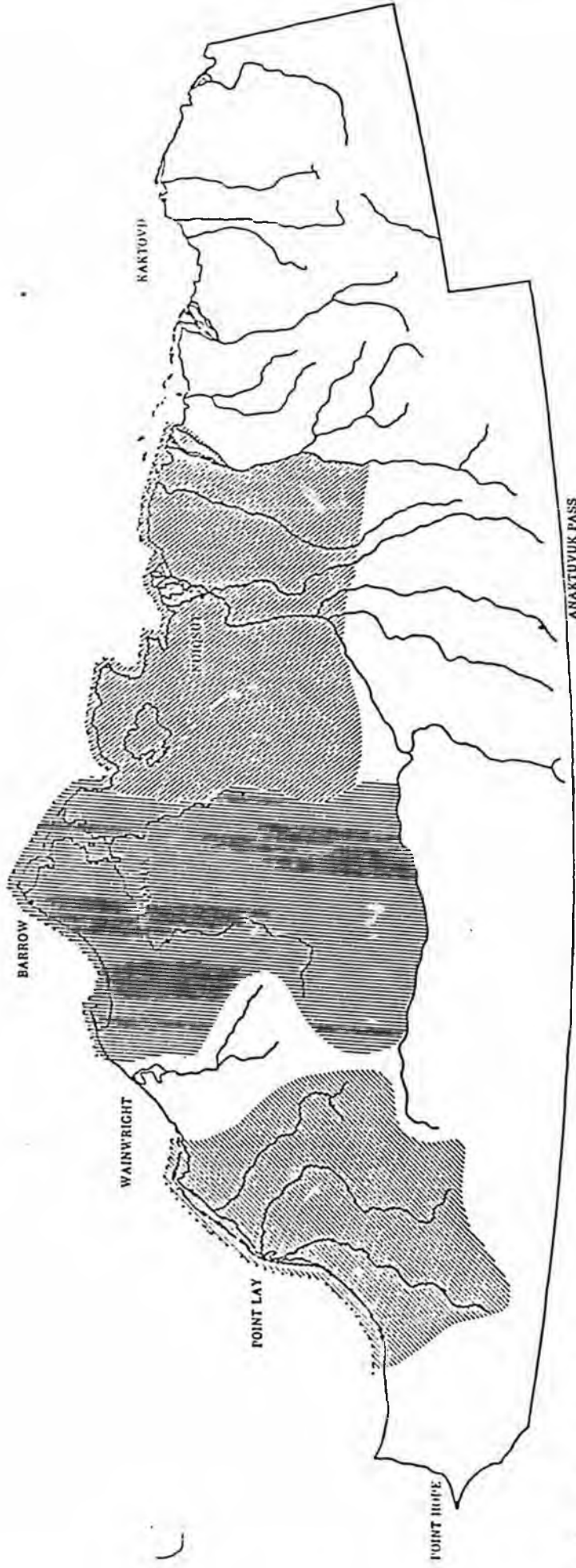


LEGEND
 WAINWRIGHT
 ANAKTUUVUK
 KARTUVIK
 2-Mile Limit (Representational Only)

NORTH SLOPE BOROUGH
 COMPREHENSIVE PLAN
 MAP 11A
 VILLAGE AREAS OF INFLUENCE

JANUARY 1, 1983

WICKERSHAM & FLAVIN



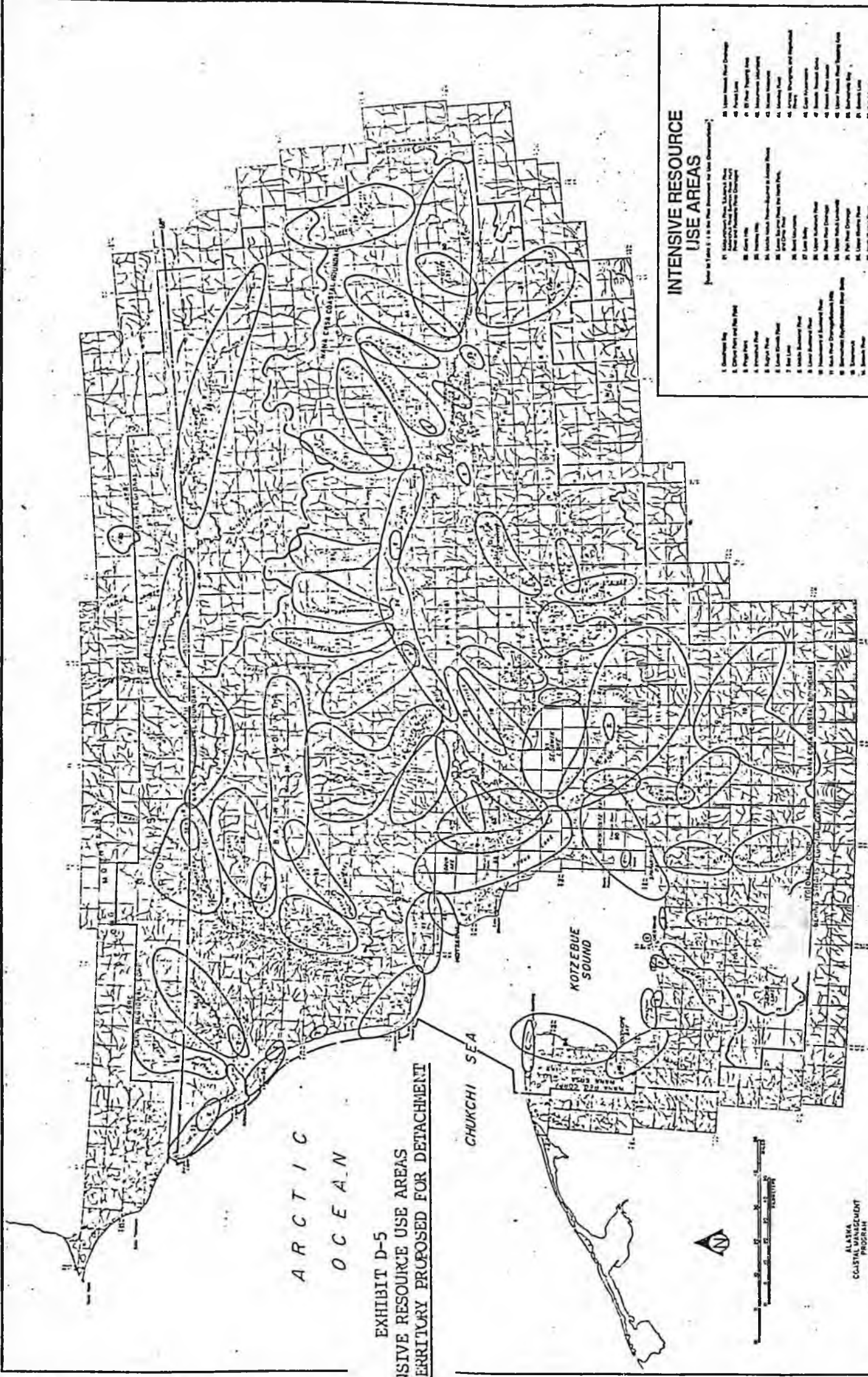
NORTH SLOPE BOROUGH
COMPREHENSIVE PLAN
MAP 11B
VILLAGE AREAS OF INFLUENCE

JANUARY 1, 1983

WICKERSHAM & FLAVIN

LEGEND

-  POINT LAY
-  ATKASUK
-  NIUGOT
-  3-Mile Limit (Representational Only)



ARCTIC
OCEAN

EXHIBIT D-5
INTENSIVE RESOURCE USE AREAS
WITHIN THE TERRITORY PROPOSED FOR DETACHMENT

CHUKCHI SEA

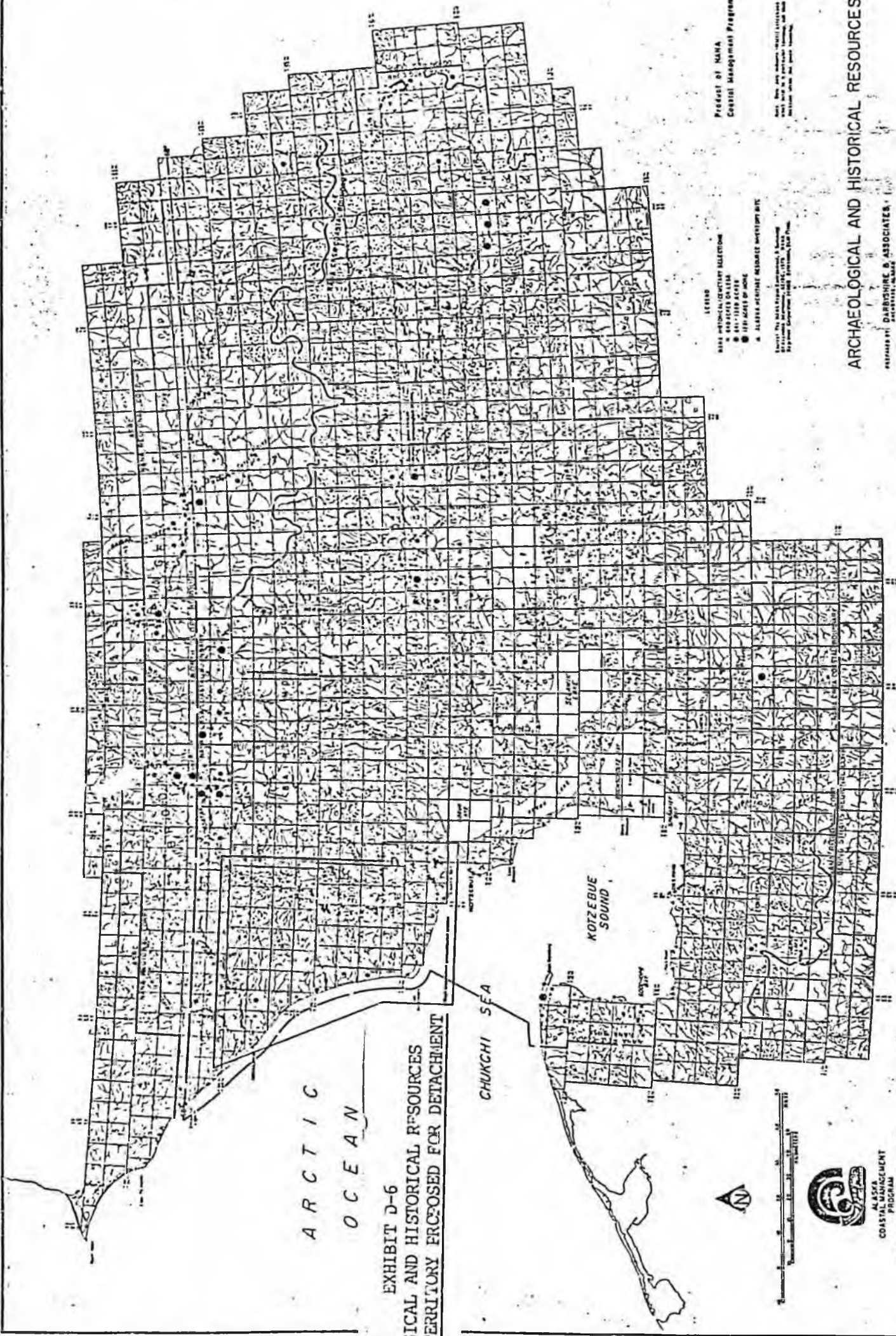
KOTZEBUE
SOUND



ALASKA
COASTAL MANAGEMENT
PROGRAM

INTENSIVE RESOURCE
USE AREAS

- Based on Tables 1 & 2 of the Plan. Intensive Use Areas are shown in shaded areas.
- | | | |
|---------------------------------|---------------------------------|-------------------------------------|
| 1. Commercial Fish | 21. Commercial Fish (Continued) | 41. Limited Access (See Chapter 10) |
| 2. Commercial Fish (Continued) | 22. Commercial Fish (Continued) | 42. Limited Access (Continued) |
| 3. Commercial Fish (Continued) | 23. Commercial Fish (Continued) | 43. Limited Access (Continued) |
| 4. Commercial Fish (Continued) | 24. Commercial Fish (Continued) | 44. Limited Access (Continued) |
| 5. Commercial Fish (Continued) | 25. Commercial Fish (Continued) | 45. Limited Access (Continued) |
| 6. Commercial Fish (Continued) | 26. Commercial Fish (Continued) | 46. Limited Access (Continued) |
| 7. Commercial Fish (Continued) | 27. Commercial Fish (Continued) | 47. Limited Access (Continued) |
| 8. Commercial Fish (Continued) | 28. Commercial Fish (Continued) | 48. Limited Access (Continued) |
| 9. Commercial Fish (Continued) | 29. Commercial Fish (Continued) | 49. Limited Access (Continued) |
| 10. Commercial Fish (Continued) | 30. Commercial Fish (Continued) | 50. Limited Access (Continued) |
| 11. Commercial Fish (Continued) | 31. Commercial Fish (Continued) | 51. Limited Access (Continued) |
| 12. Commercial Fish (Continued) | 32. Commercial Fish (Continued) | 52. Limited Access (Continued) |
| 13. Commercial Fish (Continued) | 33. Commercial Fish (Continued) | 53. Limited Access (Continued) |
| 14. Commercial Fish (Continued) | 34. Commercial Fish (Continued) | 54. Limited Access (Continued) |
| 15. Commercial Fish (Continued) | 35. Commercial Fish (Continued) | 55. Limited Access (Continued) |
| 16. Commercial Fish (Continued) | 36. Commercial Fish (Continued) | 56. Limited Access (Continued) |
| 17. Commercial Fish (Continued) | 37. Commercial Fish (Continued) | 57. Limited Access (Continued) |
| 18. Commercial Fish (Continued) | 38. Commercial Fish (Continued) | 58. Limited Access (Continued) |
| 19. Commercial Fish (Continued) | 39. Commercial Fish (Continued) | 59. Limited Access (Continued) |
| 20. Commercial Fish (Continued) | 40. Commercial Fish (Continued) | 60. Limited Access (Continued) |



ARCTIC
OCEAN

EXHIBIT D-6
ARCHAEOLOGICAL AND HISTORICAL RESOURCES
WITHIN THE TERRITORY ENCLOSED FOR DETACHMENT

CHUKCHI SEA

KOTZEBUE
SOUND



ALASKA
COASTAL MANAGEMENT
PROGRAM

PROJECT OF NANA
COASTAL MANAGEMENT PROGRAM

- LEGEND
- NANA HISTORICAL/ARCHAEOLOGICAL RESOURCES
 - 100 ACRES OR LESS
 - 101 - 1000 ACRES
 - 1000 ACRES OR MORE
 - ALASKA HISTORICAL/ARCHAEOLOGICAL RESOURCES

NOTE: THIS MAP AND INFORMATION CONTAINED HEREIN ARE FOR INFORMATIONAL PURPOSES ONLY AND DO NOT CONSTITUTE A GUARANTEE OF ACCURACY.

ARCHAEOLOGICAL AND HISTORICAL RESOURCES

PREPARED BY: DARRISHINE & ASSOCIATES, INC.
ANCHORAGE, ALASKA

EXHIBIT D-7
DOCUMENTATION OF REQUEST FOR MAPS FROM
ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

MEMORANDUM

State of Alaska
Community & Regional Affairs

TO: Riley Snell
Deputy Commissioner
Department of Transportation
and Public Facilities

DATE: November 21, 1985

FILE NO: 0312L

TELEPHONE NO:

FROM: Jeff Smith
Deputy Commissioner

SUBJECT: Request for North
Slope Borough/NANA
Transportation
Maps

This is to confirm our telephone conversation this morning in which I requested copies of all existing and available DOT/PF maps concerning commercial air and barge routes in the North Slope Borough and the NANA Region, as well as existing and proposed roadways and highways in the North Slope Borough.

I understand that the requested material will be available for pick-up from the Anchorage office of DOT/PF on November 26, 1985.

Once again, thank you for making this material so readily available.

EXHIBIT D-8
DOCUMENTATION OF REQUEST FOR MAPS FROM
NORTH SLOPE BOROUGH

BILL SHEFFIELD, GOVERNOR

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

MUNICIPAL & REGIONAL ASSISTANCE DIVISION

November 21, 1985

Mr. John Lewis, Chief of Staff
North Slope Borough
P.O. Box 69
Barrow, AK 99723

Dear Mr. Lewis:


The Local Boundary Commission, at their November 20, 1985 meeting, directed that the Department request copies of available maps of the North Slope Borough showing all existing and proposed roadways and highways as well as all harbor/ports, air fields and barge and air transportation routes.

I attempted to contact you earlier today and was unable to do so. Therefore, this letter shall constitute a formal request for these maps to be used by the Local Boundary Commission in their consideration of the petition for detachment of the NANA Regional Corporation lands that fall within the North Slope Borough boundaries. I am also delivering this to the Anchorage Office of the North Slope Borough in order to expedite their request.

I appreciate your assistance with this matter, as does the Local Boundary Commission.

Please contact me if you have any questions.

Sincerely,


Irene Rowan
Deputy Director

cc: Local Boundary Commission Members

Marty Rutherford, Director
Municipal and Regional Assistance Division

- POUCH BH
JUNEAU, ALASKA 99811
PHONE: (907) 465-4707
- 949 E. 36TH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99508
 PHONE: (907) 561-8586
 PHONE: (907) 561-8182
- P.O. BOX 348
BETHEL, ALASKA 99559
PHONE: (907) 543-3475
- P.O. BOX 41
NOME, ALASKA 99762
PHONE: (907) 443-5457
- P.O. BOX 280
KOTZEBUE, ALASKA 99752
PHONE: (907) 442-3675
- 1514 CUSHMAN STREET, ROOM 201
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-7126
- P.O. BOX 10041
DILLINGHAM, ALASKA 99576
PHONE: (907) 842-2245

BEFORE THE LOCAL BOUNDARY COMMISSION OF THE STATE OF ALASKA

IN RE:)
THE DETACHMENT FROM THE NORTH)
SLOPE BOROUGH OF TERRITORY)
WITHIN AND ADJACENT TO THE)
NANA REGION)
_____)

EXHIBIT E
AFFIDAVIT OF INFORMATION SOURCES

STATE OF ALASKA)
: ss.
THIRD JUDICIAL DISTRICT)

MARTY RUTHERFORD, being first sworn, deposes and says:

1. I am the representative of the petitioner for the detachment of territory from the North Slope Borough.

2. To the best of my knowledge and belief, the information contained in the petition, exhibits and brief relating to the proposed detachment of territory from the North Slope Borough is accurate and complete.

3. The source of the information contained in the petition is listed below:

(A) The name and mailing address of the Petitioner is from my personal knowledge.

(B) The name, telephone number and mailing address of the representative designated by the Petitioner to receive service, notice and other correspondence relating to the proceedings on behalf of the petitioner is from my personal knowledge.

(C) The stated legal boundary description of the territory proposed to be detached under this petition set forth in Exhibit A was prepared by Bruce D. Webb, Cartographer II, employed by the Municipal and Regional Assistance Division of the Alaska Department of Community and Regional Affairs.

(D) The stated legal boundary description of the boundaries of the North Slope Borough if the proposed detachment is effected set forth in Exhibit B was prepared by Bruce D. Webb, Cartographer II, employed by the Municipal and Regional Assistance Division of the Alaska Department of Community and Regional Affairs.

(E) The stated assessed or estimated value of

taxable real property within the territory proposed for detachment is based upon a memorandum of November 6, 1985, from Michael Worley, State Assessor employed by the Municipal and Regional Assistance Division of the Alaska Department of Community and Regional Affairs. The stated assessed or estimated value of taxable personal property within the territory proposed for detachment is based upon a memorandum of November 14, 1985, from Michael Worley, State Assessor.

(F) The number of permanent residents within the territory proposed for detachment is based upon information provided by Greg Williams, State Demographer employed by the Alaska Department of Labor, and Katherine Roney, Resource Management Specialist, Noatak National Park, employed by the National Park Service. The number of workers who may be residing within the territory and therefore might be counted for operating budget tax levying purposes pursuant to AS 29.53.050(b) is based upon information provided in a letter from Cominco Alaska, to the Alaska Department of Community and Regional Affairs dated November 21, 1985.

(G) The rate at which real and personal property are taxed within the territory proposed for detachment and throughout the North Slope Borough was provided on November 15, 1985, by Karen Burnell, staff of the North Slope Borough, in a telephone conversation with Dan Bockhorst, Local Government Specialist V employed by the Municipal and Regional Assistance Division of the Department of Community and Regional Affairs.


(H) The rates of sales and use taxes levied and collected within the territory proposed for detachment and throughout the North Slope Borough was provided on November 15, 1985, by Kay Brooks, staff of the North Slope Borough, in a telephone conversation with Dan Bockhorst, Local Government Specialist V.

(I) The amount of the outstanding bonded indebtedness for which the territory is wholly or partially responsible is provided from the "Official Statement Relating to the Original Issuance of \$148,400,000 North Slope Borough, Alaska General Obligation Refunding Bonds of 1985 Series E dated May 30, 1985". The full explanation of the outstanding bonded indebtedness for which the territory is wholly or partially responsible is provided from the "General Purpose Financial Statements of the North Slope Borough Alaska Fiscal Year July 1, 1983 - June 30, 1984".

(J) The population of the North Slope Borough for State Revenue Sharing purposes is provided from the letter dated October 11, 1985, from Marty Rutherford, Director of the Municipal and Regional Assistance Division of the Department of Community and Regional Affairs to George Ahmaogak, Mayor of the North Slope Borough. The population for operating budget tax levying


purposes is provided from the "Official Statement Relating to the Original Issuance of \$148,400,000 North Slope Borough, Alaska General Obligation Refunding Bonds of 1985 Series E dated May 30, 1985". The size of the North Slope Borough is based upon information contained in the Certificate of Incorporation of the North Slope Borough signed by H. A. Boucher on July 1, 1972, then Lieutenant Governor of the State of Alaska.

4. To the extent practicable, where other factual sources are referenced in the accompanying brief, these factual sources are included as Attachments to the brief.


Ms. Marty Rutherford, Director
Municipal and Regional
Assistance Division



SUBSCRIBED AND SWORN TO before me this 21st day of
November, 1985.


Notary Public, State of Alaska
My commission expires: 3-13-88

BEFORE THE LOCAL BOUNDARY COMMISSION OF THE STATE OF ALASKA

IN RE:)
THE DETACHMENT FROM THE NORTH)
SLOPE BOROUGH OF TERRITORY)
WITHIN AND ADJACENT TO THE)
NANA REGION)
_____)

EXHIBIT F
AFFIDAVIT OF SERVICE

STATE OF ALASKA)
: ss.
THIRD JUDICIAL DISTRICT)

MARTY RUTHERFORD, being first sworn, deposes and says:

1. I am the representative of the Petitioner for the detachment of territory from the North Slope Borough.

2. In compliance with the provisions of 19 AAC 10.510(a), one copy of the petition, exhibits, brief and attachments has been served upon the North Slope Borough (by certified mail, postage prepaid) at the same time that the petition was filed with the Local Boundary Commission. A second copy of the petition, exhibits, brief and attachments has been made provided to the North Slope Borough to facilitate public review of the documents in Barrow.

3. Pursuant to the provisions of 19 AAC 10.510(b), a copy of the petition, exhibits, brief and attachments has been made available for inspection by the general public at the following location between the hours of 8:00 a.m. to noon and 1:00 p.m. to 4:30 p.m., Mondays through Fridays, except legal holidays of the State of Alaska:

Kotzebue Regional Office
Municipal and Regional Assistance Division
Department of Community and Regional Affairs
Drift Inn, Second Floor
Kotzebue, Alaska
Telephone: 442-3696

4. A copy of the petition, exhibits and the brief has been mailed to each of the individuals listed below, which

to the best of my knowledge, includes individuals who have expressed an interest in receiving copies of such material. This material was hand delivered or sent by mail, postage prepaid, at the same time that the petition was filed with the Local Boundary Commission. Copies of the extensive attachments were not included in the materials sent to these individuals. Copies of these attachments are available from the Petitioner's Representative at a cost of 25¢ per page.

The Honorable George N. Ahmaogak, Sr.
Mayor
North Slope Borough
P. O. Box 69
Barrow, Alaska 99723

The Honorable Edna DeVries
State Senator
P.O. Box 321
Palmer, Alaska 99645

The Honorable Vic Fischer
State Senator
600 Barrow Street
Anchorage, Alaska 99501

Mr. Dennis Roper
Special Assistant to the Mayor
North Slope Borough
P.O. Box 69
Barrow, Alaska 99723

Office of the North Slope Borough
3201 C Street
Anchorage, Alaska

Mr. Kevin Waring
Consultant to the North Slope Borough
3201 "C" St., Suite 602
Anchorage, Alaska 99503

Mr. Earl Finkler
North Slope Borough Planning Director
North Slope Borough
P.O. Box 69
Barrow, Alaska 99723

Ms. Marie Greene
President
Manilaq Association
Box 256
Kotzebue, Alaska 99752

Mr. John Schaeffer
NANA Regional Corporation
Box 49
Kotzebue, Alaska 99752

Mr. Willie Hensley
NANA Regional Corporation
Box 49
Kotzebue, Alaska 99752

Mr. Don Argetsinger
NANA Development Corporation
4706 Harding Drive
Anchorage, Alaska 99503

Mr. Steve Heimel
Alaska Public Radio Network
4640 Old Seward Highway
Suite 202
Anchorage, Alaska 99503

Mr. Ed Busch
Maniilaq Association Consultant
4640 Hunter Dr.
Anchorage, Ak 99502

Mr. Tom Klinkner
Wohlforth and Flint
900 West 5th Avenue, Suite 60
Anchorage, Alaska 9

Mr. Charles Barnwell
Geologist
Arctic Slope Regional Corporation
313 E Street, Suite 2
Anchorage, Ak 99501

Mr. Dean Crews
Vice President
Alaska Land & Grant Consultants, Inc
3000 A Street, Suite 300
Anchorage, Alaska 99503

Mr. Tom Kizzia/Matt Zencey
Anchorage Daily News
P. O. Box 6616
Anchorage, Alaska 99502

Ms. Mary Scarpinato
Anchorage Times
P.O. Box 40
Anchorage, Alaska 99501

Ms. Susan Fischer
Fairbanks Daily News Miner
P.O. Box 710
Fairbanks, Alaska 99707

Ms. Sandy Rabinowich
2525 Gambell Street
National Park Service
Anchorage, Alaska 99503-2892

Mr. Robert Gilmore
Regional Director
U.S. Fish and Wildlife Service
1011 East Tudor Road
Anchorage, Alaska 99503

Regional Manager
Minerals Management Services
Bureau of Land Management
Alaska OCS Region
949 East 36th Avenue
Anchorage, Alaska 99508

Ms. Alice Ahgeak, Borough Clerk
North Slope Borough
P.O. Box 69
Barrow, Alaska 99723

Ms. Lily Nash, City Clerk
City of Point Hope
P.O. Box 169
Point Hope, Alaska 99766

Ms. Alma R. Bodfish, City Clerk
City of Wainwright
P.O. Box 9
Wainwright, Alaska 99782

Ms. Emily Nusunginya, City Clerk
City of Barrow
Box 629
Barrow, Alaska 99723

Mr. Paul Bodfish, Treasurer
City of Atkasuk
General Delivery
Atkasuk, Alaska 99791

Ms. Joy Oyagak, City Clerk
City of Nuiqsut
General Delivery
Nuiqsut, Alaska 99789

Ms. Lynn Ramsey, City Clerk
City of Anaktuvuk Pass
P.O. Box 21030
Anaktuvuk Pass, Alaska 99721

Ms. Mary Sophie, City Clerk
City of Kaktovik
P.O. Box 27
Kaktovik, Alaska 99747

Ms. Mary Williams, City Clerk
City of Ambler
General Delivery
Ambler, Alaska 99786

Ms. Lorraine Geary, City Clerk
City of Buckland
General Delivery
Buckland, Alaska 99727

Mr. John Dimmick, City Clerk
City of Deering
General Delivery
Deering, Alaska 99736

Ms. Florence Clark, City Clerk
City of Kiana
General Delivery
Kiana, Alaska 99749

Ms. Mary Frances Sage, City Clerk
City of Kivalina
P.O. Box 50079
Kivalina, Alaska 99750

Ms. Rosie Ward, City Clerk
City of Kobuk
General Delivery
Kobuk, Alaska 99751

Ms. Linda Brown, City Clerk
City of Kotzebue
P.O. Box 46
Kotzebue, Alaska 99752

Mr. James Adams
Noatak Traditional Council President
P.O. Box 81
Noatak, Alaska 99761


Ms. Vickie Ballot, City Clerk
City of Noorvik
P.O. Box 146
Noorvik, Alaska 99763

Ms. Kathy Jackson, City Clerk
City of Selawik
P.O. Box 49
Selawik, Alaska 99770

Ms. Dolly Custer, City Clerk
City of Shungnak
General Delivery
Shungnak, Alaska 99773

Ms. Kate Roney
Resource Management Specialist
National Park Service
P. O. Box 287
Kotzebue, Alaska 99752

Mr. Joe Britton
GCO Mineral Company
650 West 58th, Unit G
Anchorage, Alaska 99508


Ms. Marty Rutherford, Director
Municipal and Regional
Assistance Division



SUBSCRIBED AND SWORN TO before me this 22 day of
November, 1985.


Notary Public, State of Alaska
My commission expires: 3-13-88

BEFORE THE LOCAL BOUNDARY COMMISSION OF THE STATE OF ALASKA

IN RE:)
THE DETACHMENT FROM THE NORTH)
SLOPE BOROUGH OF TERRITORY)
WITHIN AND ADJACENT TO THE)
NANA REGION)
_____)

BRIEF IN SUPPORT OF PETITION FOR DETACHMENT

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	3	A. Incorporation of the North Slope Borough
	8	B. Recent Detachment Proceedings
	10	C. Filing of Petition by Commissioner of DCRA
	11	D. Action is Necessary at this Time
	14	E. Detachment is Critical to the Viability of the Proposed NANA borough
PAGE	19	II. DESCRIPTION OF THE TERRITORY PROPOSED FOR DETACHMENT
	19	A. Physical Characteristics of the Area
	19	B. Mineral Deposits
PAGE	21	III. REGULATORY FACTORS TO BE CONSIDERED
	21	A. Social, Cultural and Economic Characteristics
	24	B. Geographic and Transportation Considerations
	27	C. Service Delivery After Detachment
	28	D. Distribution of Assets and Liabilities
PAGE	29	IV. APPLICATION OF THE BEST INTERESTS STANDARD
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	29	B. Best Interests of the State of Alaska
	31	C. Best Interests of the Territory to be Detached
	32	D. Best Interests of the North Slope Borough
PAGE	35	V. CONCLUSION

INTRODUCTION

In accordance with the provisions of 19 AAC 10.500, this brief is submitted to support the petition for the detachment of approximately 3,298 square miles of territory from the jurisdiction of the North Slope Borough. The territory proposed for detachment is located in the southwestern portion of the North Slope Borough.

This boundary change is proposed to facilitate the establishment of a borough in the NANA Region, an area of the State in which unprecedented growth and change is anticipated

through the development of the Red Dog mineral deposit and other natural resources of the Region. Indeed, as proposed, the detachment petition takes effect only upon the creation of a borough in the NANA region.

A petition to incorporate a borough in the NANA region, including the territory proposed for detachment through this petition, is now being circulated for signature in the NANA region. It is likely that the petition for the incorporation of that borough will be filed with the Local Boundary Commission in January, 1986 (see November 12, 1985, letter from the Maniilaq Association to Mr. Robert Eder, Chairman of the Local Boundary Commission, included as Attachment 1; see also, letter from NANA Regional Corporation dated November 20, 1985, to Emil Notti, Commissioner of the Alaska Department of Community and Regional Affairs, included as Attachment 2).

As examined in greater detail later in this brief, detachment is critical to the development and viability of a borough government for the NANA region. With the prospect of intensive resource development in this region over the next several years, the opportunity for responsive, planned growth and development is best answered through coordinated local government control. Development of the mineral resources in this area of the state poses questions regarding the effect of development on traditional lifestyles and values, as well as on the land itself.

The history of development in other rural areas, such as the North Slope Borough, vividly illustrates the need for effective local governmental control prior to the actual occurrence of significant development. For these reasons, the Commissioner of the Alaska Department of Community and Regional Affairs urges the Local Boundary Commission to review and approve the petition, and to present a recommendation for the proposed boundary change to the Fourteenth Legislature.

I. HISTORICAL AND PROCEDURAL BACKGROUND

Questions concerning the boundary of that portion of the North Slope Borough affected by this detachment petition can be traced to the debate surrounding the North Slope Borough incorporation petition. With the proposed incorporation of a borough in the NANA Region, the detachment of NANA lands from the North Slope Borough is an issue which has generated extensive public review and consideration over the past several years. This section briefly reviews the unique historical and procedural consideration which has led the Commissioner of the Alaska Department of Community and Regional Affairs to file this detachment petition.

A. INCORPORATION OF THE NORTH SLOPE BOROUGH

On April 4, 1971, the petition to incorporate the North Slope Borough as a first class borough was submitted to the Local Affairs Agency (the predecessor of the Alaska Department of Community and Regional Affairs) by the Arctic Slope Native Association (ASNA).

The petition was approved on May 10, 1972, by the Local Boundary Commission without modification of the boundaries of the territory proposed for incorporation (see "Report to the Local Boundary Commission on the proposal for incorporation of a first class borough", included as Attachment 3; and "Statement of Findings and Conclusions on the Petition Proposing Incorporation of a First Class North Slope Borough", included as Attachment 4). The North Slope Borough was formally incorporated on July 1, 1972.

The record of the Local Boundary Commission's consideration of the North Slope Borough incorporation petition contains only a passing reference to a dispute concerning the southwestern boundary of the proposed borough. In a letter to the Director of the Local Affairs Agency, Mr. Robert Newlin, then President of the Northwest Alaska Native

Association Board of Directors, expressed opposition to the inclusion of land in the "established Northwest Alaska Native Association region" (see letter from Robert Newlin, included as Attachment 5).

Little consideration or response to Mr. Newlin's concerns is evident in the record. At the time, there was little anticipation of the formation of the NANA Borough in the immediate future and, as a result, the question of how to draw the boundary between the proposed North Slope Borough and a prospective borough in the NANA region was apparently not a significant concern to the Local Boundary Commission.

To the extent that the issue was addressed, a review of the proceedings before the Local Boundary Commission in consideration of the petition to incorporate the North Slope Borough suggests that the boundaries may well have been drawn in an attempt to conform to the boundaries of the Arctic Slope Native Association.

At the December 2, 1971, public hearing on the incorporation petition, materials were presented to the Local Boundary Commission to demonstrate that the boundaries of the Arctic Slope Native Association and the boundaries of the proposed borough were one and the same (see "Transcript of Public Hearing of the Local Boundary Commission Regarding the Creation of a First Class North Slope Borough, December 2, 1971", included as Attachment 6). Fred Paul, legal counsel to the petitioner's representative, submitted the articles of incorporation and bylaws of ASNA as exhibits and noted:

"...membership and geographic boundaries in the Arctic Slope Native Association include the same boundaries as the borough application." (Attachment 6 - page 3)

Later in that same meeting, Mr. Paul called attention to the people and area represented by ASNA when he stated:

"they describe themselves as the people living north of the 68th meridian."
[Attachment 6 - page 36] Note: Mr. Paul's

intent was to identify the 68th degree north latitude.

Similarly, testimony before the Local Boundary Commission also suggested that the proposed boundaries of the North Slope Borough would be coincident with those of the impending Arctic Slope Regional Corporation, which was to be formed under the provisions of the Alaska Native Claims Settlement Act (ANCSA).

At the close of that hearing, the following exchange took place between Byron Mallott, Director of the Local Affairs Agency, and Mr. John Hedland, Chairman of the Local Boundary Commission concerning Mr. Newlin's letter:

"MR. MALLOTT: Mr. Chairman, I would like to remark for the record that on November 24, 1971, the Local Affairs Agency received a letter from Robert Newlin, President of the Northwest Alaska Native Association, which protests certain portions of the boundary of the proposed North Slope borough while stating strongly that the Northwest Alaska Native Association is greatly supportive of the over all application of the Arctic Slope Native Association for the proposed borough. I would like to ask the Arctic Slope Native Association to obtain a copy, if they do not already have one with the attached map, and to comment on it to the Local Boundary Commission within the time period allowed for testimony, December 23, twenty days from tonight.

MR. HEDLAND: The record will remain open for 20 days after tonight and anyone wishing to make comments or any kind of a presentation whatsoever on this may make them to the Local Affairs Agency in Juneau, Alaska.

MR. PAUL: I have a comment with respect to the Northwest Letter, if I may. I understand that part of the Northwest's apprehension is that there was a feeling that the boundary line was sort of a fence, and with the explanation that it is not a fence and with the explanation that the zoning would protect the subsistence living to the people in that area, that it's actually to the benefit of those people, after that message has gone back to Kotzebue through the Pt. Hope people, there would be an easing of the tension.

MR. HEDLAND: Is there anything further? Then this hearing is adjourned." (see Attachment 6 - pages 45 and 46).

Other than the assurances offered by Mr. Paul, the record offers no other indication that the concerns of Mr. Newlin were addressed.

At the February 23 - 25, 1972 meetings of the Local Boundary Commission, the Commission Chairman John Hedland again discussed the question of the southwestern boundaries of the proposed borough with an unidentified witness (see "Transcript of Meeting of the Local Boundary Commission Regarding North Slope Borough Incorporation, February 23, 1972", included as Attachment 7):

"MR. HEDLAND: The Land Claims Corporation that was set up in Barrow won't include Point Hope?"

Mr. Oh, it will.

MR. HEDLAND: As part of the Arctic Slope?

Mr. It's in the proposed findings there, I described it.

Mr. The Native corporation boundaries for that regional corporation will be almost identical, if not identical, to the proposed borough." [Exhibit 6 - page 34].

Later in that same meeting, Chairman Hedland was again advised that the proposed borough boundaries would be coincident to the boundaries of the Arctic Slope Regional Corporation:

"MR. HEDLAND: The boundaries of the Arctic Slope Land Claims Corporation are what?

Mr. STRANDBERG: They're as is proposed for the borough here." [Exhibit 6 - page 36]

The Alaska Native Claims Settlement Act was adopted by the 92nd Congress on December 18, 1971, at the same time that the Local Boundary Commission was considering the petition for the incorporation of the North Slope Borough. The law required the Secretary of the U.S. Department of the Interior to draw boundaries for the twelve in-state regional corporations provided under the Act. Boundaries were to be drawn "with each region composed as far as practicable of

Natives having a common heritage and sharing common interests" [ANCSA, Section 7 (a)].

On December 11, 1972, the Secretary of the U.S. Department of the Interior informed the President of the Arctic Slope Regional Corporation of the boundaries which he had set for the Corporation. It is significant to note that the established boundaries of the Arctic Slope Regional Corporation were not, "almost identical, if not identical, to the proposed borough" as the Local Boundary Commission had been advised at the North Slope Borough incorporation hearings. In fact, the boundaries set by the Secretary "detached" from the boundaries described to the Local Boundary Commission, virtually the same area which the State now seeks to detach from the North Slope Borough. The Secretary's action was taken on the basis of a standard essentially identical to that required for incorporation of a borough.¹

It is important to note that the action of the Secretary of the Interior was taken nearly six months after the North Slope Borough had been incorporated. Presumably, the Secretary was aware of the boundaries of the Borough when he made his determination of the boundaries of the Arctic Slope Regional Corporation. It is equally important to note that there is no record of any challenge to the Secretary's decision by the Arctic Slope Regional Corporation, the North Slope Borough or others.

In addition to social and cultural factors, it is evident that little consideration was paid during the 1971 - 1972 hearings to the significant geographic features which

¹ Section 7(a) of ANCSA provided that the boundaries of the regional corporations would be developed "with each region composed as far as practicable of Natives having a common heritage and sharing common interests". With respect to the proposed incorporation of a borough, AS 07.10.030(1) provided that, "The population of the area proposed for incorporation shall be inter-related and integrated as to its social, cultural and economic activities."

distinguish the territory currently proposed for detachment from the remainder of the North Slope Borough. This issue is addressed in substance in Sections II and III of this brief.

The State contends that if the testimony provided to the Commission regarding the boundaries of the proposed Arctic Slope Regional Corporation had been correct, the Commission may have modified the boundaries of the proposed Borough to exclude the territory which the State now seeks to detach.

B. RECENT DETACHMENT PROCEEDINGS

The need for borough government in the NANA region has been increasingly recognized at the local level over the past several years. For at least the past three years discussions have taken place between representatives of the NANA region and the North Slope Borough regarding the detachment of a portion of the territory included in the current petition (see Attachments 1 and 2). During 1983, various meetings and worksessions occurred between North Slope Borough and NANA officials in Barrow and Kotzebue. In November of that year "a formal request to the North Slope Borough Assembly to detach lands in the southwest corner of the borough was made...". In January, 1984, the NANA Region followed that detachment request with a formal request to the North Slope Borough Planning Commission to redraw the Borough lines in the area of proposed detachment (see Attachment 2).

More recently, the detachment of territory included in this proposal has been the subject of an extensive number of public meetings involving officials of the North Slope Borough and the NANA Region. The topic was addressed at seven meetings of the North Slope Borough Planning Commission from February, 1985 through August, 1985 (see November 5, 1985, Memorandum from Ronald D. Brower, included as Attachment 8). North Slope Borough Mayor George Ahmaogak has also acknowledged the extent of recent public meetings regarding

this matter in his October 10, 1985, letter to Commissioner Emil Notti (included as Attachment 9):

"Over the past nine months, Borough officials met publicly and with NANA representatives. This matter has been discussed at Planning Commission workshops, public hearings and meetings, and at Borough Assembly workshops, public hearings and meetings. The Borough Assembly traveled to Kotzebue to give NANA region residents an opportunity to express their views."

The Alaska Department of Community and Regional Affairs has also been involved in occasional discussions with representatives of the NANA region regarding the proposed detachment beginning in 1982 (see letter of May 4, 1982, from James C. Sanders, included as Attachment 10).

Following the substantial public review and consideration of the proposed detachment, representatives of the NANA region and the North Slope Borough reached an understanding through which the North Slope Borough would initiate a proposal for the detachment of an estimated 433,000 acres from its boundaries. That understanding, represented by "North Slope Borough Ordinance Serial Number 85-15 Substitute" and the "Memorandum of Understanding" referenced in the Ordinance is included in this brief as Attachment 11. Two earlier versions of the North Slope Borough Ordinance relating to this matter are included as Attachments 12 and 13. The version included as Attachment 13 was one which the North Slope Borough Assembly was considering during a July 22, 1985 worksession which it held in Kotzebue.

Throughout its negotiations with representatives of the NANA region, officials of the North Slope Borough insisted that the terms of any agreement provide, among other things, that the voters of the North Slope Borough must approve an advisory question concerning the proposed detachment (see Attachment 9). Provisions for such an election are not a requirement of the State laws and regulations governing

municipal boundary changes. An advisory proposition regarding the proposed detachment was placed on the October 1, 1985 municipal ballot. The voters of the North Slope Borough defeated the advisory proposition by a margin of 184 (467 to 651 - see Memorandum of October 10, 1985 from Rebecha Miller, included as Attachment 14). Shortly thereafter, Mayor Ahmaogak advised Commissioner Notti that the North Slope Borough would oppose any detachment (see Attachment 9).

C. FILING OF PETITION BY COMMISSIONER OF DCRA

The administrative regulations governing boundary changes such as the one proposed here, provide that in this instance the boundary change may be initiated by the North Slope Borough Assembly, the Commissioner of the Alaska Department of Community and Regional Affairs or registered voters residing within the territory proposed for detachment (see 19 AAC 10.470). In this particular instance, there are no registered voters residing within the territory proposed for detachment. Therefore, the decision of the North Slope Borough not to proceed with the proposed detachment left two alternatives; initiation of the boundary change directly by the State or no action at all.

The alternatives presented no easy choice for the State. It was recognized from the beginning that any decision to initiate the detachment at the State level would be controversial. However, it was also evident that the NANA region would soon undergo unprecedented growth and development and that the interests of the region would best be protected and served through the establishment of coordinated local government control. This circumstance was recognized at the local level when representatives of the region expressed to the State their intention to initiate the creation of a borough in the NANA region.

It was felt by both the representatives of the region

and the State that a borough in the NANA region would not be feasible without the Red Dog mine site. After carefully considering this matter, the overriding public interest associated with this issue compelled Emil Notti, Commissioner of the Alaska Department of Community and Regional Affairs, to chose to initiate the petition directly. On November 1, Commissioner Notti instructed Ms. Marty Rutherford, Director of the Municipal and Regional Assistance Division, to prepare a petition for the detachment.

D. ACTION IS NECESSARY AT THIS TIME

As discussed earlier, residents of the NANA region are currently circulating a petition for incorporation of a borough government. The principal impetus for borough incorporation in that region is, of course, the pending significant social and economic change which will occur with the development of natural resources in the region.

Currently, the most prominent of the sites to be developed is the Red Dog zinc mine. However, there are a number of other resource sites which are also expected to be developed. These include the Lik zinc deposit, as well as oil and gas deposits in Kotzebue Sound and the Outer Continental Shelf in the Chuckchi Sea and Hope Basin.

In addition to resource development issues, the NANA region is also faced with the development of management strategies for the substantial federal holdings within the region. The National Park Service has recently completed a draft General Management Plan/Environmental Assessment for the Noatak National Preserve. Copies of the draft are not yet available, but are expected to be released for public review on December 9, 1985. The National Park Service is also developing a plan for the management of the Cape Krusenstern National Monument. Similarly, the U.S. Fish and Wildlife Service has also begun to prepare its Comprehensive

Conservation Plan for the Selawik National Wildlife Refuge in the NANA region.

Again, of all the developments to impact this region, the Red Dog mine project is the most significant. Development associated with the mine is expected to begin in the immediate future. Such development will include the construction of a road from the mine to a seaport facility to be constructed in support of the shipment of ore. The seaport facility and nearly all of the road are outside the boundaries of the North Slope Borough. The location of the mineral deposit, as well as the planned road and seaport facility, are shown on the map included in the petition for detachment as Exhibit C.

Over the past four summers, a total of 159 people have held summer jobs at the Red Dog mine site. Of these, 104 were NANA shareholders (see Attachment 18).

Construction of the mine, road and port facilities is expected to begin during the summer of 1986. Direct employment resulting from construction activities is expected to reach 143 full time equivalent jobs between 1986 and 1988. During the development of the project over the period from 1986 to 1990, there will be approximately 500 construction jobs available (see Attachment 18). One estimate has projected an annual gross payroll of \$8.8 million per year for the period 1986 to 1988 alone (see Red Dog Project Analysis, A Report to Governor Bill Sheffield, February, 1984, included as Attachment 15).

Actual mining of ore may begin as early as 1989 and reach full production by 1994. In terms of ore extraction, the mine is expected to be the largest zinc mining operation in the world (see Attachment 18).

Direct employment resulting from the operation of the mine is projected to reach between 350 and 400 jobs, with an annual payroll of between \$11.2 million and \$12.9 million. Additionally, an estimated 156 to 303 secondary and indirect

jobs are expected to be created. An estimated 78 to 135 of these secondary and indirect jobs are expected to be created in Kotzebue and surrounding villages (see Attachment 15 - page V-47).

Of course, such tremendous development will bring significant social and economic change to Northwest Alaska. The impact of those changes will be felt to the greatest extent within the NANA region. It has been agreed between the NANA Regional Corporation (the owner of the Red Dog mine site) and Cominco Alaska, the developer, that the majority of persons employed in the operation of the mine will be residents of the NANA region and shareholders of the NANA Regional Corporation (see Attachment 2).

To plan and otherwise prepare for such changes at the local level, representatives of the NANA region believe that it is critical that a borough be formed at the earliest opportunity. The State concurs.

Therefore, it is essential that action be taken on this petition in time for possible consideration of the proposed boundary change by the Second Session of the Fourteenth Legislature. Undue delays will only postpone the formation of a borough in the NANA region by at least one year. Given the imminent nature of the very substantial development which will occur in the NANA region, it is essential that a borough be created now which can plan for and control the impacts of such development. Further, the State believes that it would be more fair to the residents of the NANA region for the issue concerning the proposed detachment to be resolved prior to any election on the incorporation of a borough. Representatives of the NANA Region contend that, "to ask them (the voters) to make this choice without first knowing whether additional tax base will be available, would be unfair" (see Attachment 2). At the very least, it would certainly be proper to settle the issue prior to voter

consideration of borough incorporation.

The North Slope Borough has attempted to convince the Local Boundary Commission that this matter could not be properly considered within the timeframe sought by the State. However, on November 20, 1985, the Commission agreed to attempt to deal with this matter in a fashion which would enable the Commission to make a recommendation concerning the proposed detachment to the Second Session of the Fourteenth Legislature. The schedule set by the Commission consisted of the following:

11/22/85 - anticipated date of receipt of petition for detachment from the Commissioner of the Alaska Department of Community and Regional Affairs;

12/09/85 - the Commission will establish the location, dates and times for hearings on the petition for detachment;

12/18/85 - in order for material to be considered for inclusion in the Report and Recommendation to the Commission on this matter, written comments and answering briefs relating to the proposed detachment must be received by Ms. Marty Rutherford, Director of the Municipal and Regional Assistance Division, 949 East 36th Avenue, Anchorage, Alaska 99501 (telephone 561-8586);

12/23/85 - in order to be considered for inclusion in the Report and Recommendation to the Commission on this matter, rebuttals from the Department of Community and Regional Affairs to all written comments and answering brief must be completed;

01/06/86 - a report and recommendation to the Local Boundary Commission regarding this matter is to be completed by the State of Alaska Office of Management and Budget/Mr. Gordon Harrison, Associate Director.

E. DETACHMENT IS CRITICAL TO THE VIABILITY OF THE PROPOSED NANA BOROUGH

The State believes that a borough in the NANA region cannot be formed without the tax base which would be assured through this proposed detachment. An adequate tax base is critical to a local government for two principal reasons. First, a tax base provides the means to support the operating costs associated with local government. Second, a tax base permits the government to access long-term financial markets to fund major capital improvements.

Absent the availability of some source of unusually large revenue other than property taxes, the key indicator of the economic viability of a borough is the value of taxable property in relation to the number of residents served by the the borough (i.e. per capita value). Since none of the municipalities in the NANA region levy property taxes, it is not possible to provide actual assessed value information regarding the region. Nonetheless, projections of the per capita value of taxable property in the NANA Region can be made. Such projections can be developed using estimates of the full and true value of taxable property prepared by the State Assessor's Office (within the Department of Community and Regional Affairs). Based principally on these numbers, which are prepared for State Revenue Sharing purposes pursuant to AS 29.88.020(e)(3), the per capita value of taxable property within the NANA region (excluding the territory proposed for detachment) is projected to be \$30,993.²

However, such per capita property values are developed only for funding formula considerations for State Revenue Sharing purposes. As such, these numbers represent only a highly generalized estimate to be applied to any of a number of small municipalities throughout the state.

When asked to specifically estimate the value of taxable property within the NANA Region, the State Assessor

² Based upon: 1) a value of \$93,245,100 (pop 2,981) for Kotzebue developed from data collected by the State Assessor's Office (within the Department of Community and Regional Affairs) in 1983 and subsequently updated; 2) plus the following estimates of the full and true value of taxable property and population developed by the State Assessor's Office pursuant to AS 29.88.020(e)(3) for State Revenue Sharing purposes: Kivalina \$8,344,960, pop 272; Noorvik \$6,136,000, pop 200; Kiana \$11,136,840, pop 363; Ambler \$8,621,080, pop 281; Kobuk \$2,638,480, pop 86; Shungnak \$8,958,560, pop 292; Selawik \$18,408,000, pop 600; Buckland \$6,718,920, pop 219; Deering \$4,847,440, pop 158; plus 3) an estimated value of \$8,007,480 for Noatak (the only unincorporated community in the region) using the formula of \$30,680 per capita for a population of 261 (source NANA CZM draft plan 9/84).

concluded that, "All things considered, we estimated a reasonable per capita valuation for the subject communities (the ten communities in the NANA Region excluding Kotzebue) to be \$22,500" (see Memorandum of November 21 from Mike Worley, State Assessor to Dan Bockhorst, Local Government Specialist V, included as Attachment 16). Including Kotzebue, the value of the taxable property within the NANA Region is estimated to be \$162,680,100 or \$28,475 per capita.

By comparison, the per capita value of the projected full and true value of taxable property in all 11 existing boroughs and unified municipalities in the state ranges from a high of \$999,667 in the North Slope Borough to a low of \$48,123 in the Haines Borough. The North Slope Borough valuation is more than 35 times the value of the NANA region, while the Haines Borough valuation (the lowest in the state) is more than 1.7 times the value of the NANA region (source: Alaska Taxable, January, 1985, included as Attachment 17).

The per capita values of each of these municipalities as stated in the 1985 edition of Alaska Taxable is listed below:

<u>Name</u>	<u>Full Value</u>	<u>Population</u>	<u>Per Capita Value</u>
Municipality of Anchorage	\$13,199,355,800	244,030	\$54,089
Bristol Bay Borough	112,215,200	1,271	88,289
Fairbanks North Star Borough	3,627,908,630	69,633	52,100
Haines Borough	88,882,900	1,847	48,123
City and Borough of Juneau	1,493,919,200	28,941	51,619
Kenai Peninsula Borough	3,102,640,000	38,919	79,720
Ketchikan Gateway Borough	711,341,600	14,314	49,696
Kodiak Island Borough	651,444,700	13,479	48,330
Matanuska- Susitna Borough	1,773,384,960	34,030	52,112
North Slope Borough	12,354,883,600	12,359	999,667
City and Borough of Sitka	<u>756,351,400</u>	<u>8,221</u>	<u>92,002</u>
TOTAL	\$37,872,327,990	467,044	81,089

The present value of taxable property in the NANA region would likely offer only marginal economic feasibility for a borough. However, by adding the projected \$250 million in taxable improvements associated with the Red Dog mine development (see letter dated November 21, 1985, from Cominco Alaska to Emil Notti, included as Attachment 18), the value of taxable property within the NANA region would increase from the current estimate of \$162,680,100 to \$427,062,860. Based on the present population, the per capita value of taxable property would be raised to \$74,753.

The importance of the requested detachment to the economic viability of the proposed NANA borough is discussed in further detail in the November 19, 1985, letter from the Commissioner of the Alaska Department of Revenue (see Attachment 19). The matter is also discussed in detail in the November 20, 1985, letter from Government Finance Associates, Incorporated, which is the financial advisor to the State of Alaska Bond Committee (see Attachment 20). The borough cost and revenue analysis included in Attachment 2 provides additional information concerning the financial feasibility for creation of a borough in the NANA Region.

In addition to an adequate tax base, an area proposing to incorporate as a borough must have a cash economy to support government operations. A 1983 job availability study performed for the NANA region by Darbyshire & Associates found that there were approximately 1,200 full-time-equivalent jobs in the NANA region (see Job Availability and Market Relations for the NANA Region, 1982 - 1990, Darbyshire and Associates, 1983, Attachment 21). As noted earlier, the Red Dog mine is expected to create between 350 and 400 jobs directly and an estimated 78 to 135 secondary and indirect jobs within the region. As such, the Red Dog mine project would result in a relative increase over the 1983 employment in the region by as much as 44%.

Perhaps equally important, is the fact that the Red Dog mine project will provide the first major source of private sector employment in the region. It has been estimated that approximately 90 percent of all income in the region is directly or indirectly derived from governmental expenditures (see The NANA Regional Economy, Present and Future, Darbyshire and Associates, 1982, Attachment 22). The reliance of the regional economy on government dollars as "basic industry" leaves this region in a highly vulnerable condition, given the combined prospects for declining State oil revenues and the tightening of the Federal budget.

Even the North Slope Borough, which strongly opposes this proposed detachment has recognized through the Borough Assembly the fact that the inclusion of the Red Dog mine site is critical to the economic viability of a borough in the NANA region. North Slope Borough Ordinance Serial Number 85-15 Substitute" (Attachment 11 - page 1) states:

"...that territory [the area west of the Noatak National Preserve within the NANA Regional Corporation's boundaries which also lies within the boundaries of the North Slope Borough, containing approximately 433,000 acres] is critical to the economic viability of the proposed NANA Region borough government..."

II. DESCRIPTION OF TERRITORY PROPOSED FOR DETACHMENT

A. PHYSICAL CHARACTERISTICS OF THE AREA

The territory proposed for detachment is generally bounded by the Delong Mountain Range on the west, north and northeast and also by the Howard Hills on the east, forming a natural bowl emptying into the northern Kotzebue Basin. Moderately sloping foothills, broad stream valleys and coastal lowland lagoon systems tie the area to wetlands on the extreme west and the south. Elevations range from sea level to 4,220 feet at Rough Mountain Peak.

Seven major river systems flow across the area to either drain into the Chuckchi Sea or to feed into the Noatak River which meanders through the southern reaches of the territory. These rivers are the Kivalina, Wulik, Kelly, Kugururok, Nimiuktuk, Anisak and Aniuk. All are fed by various creeks originating in the Delong Mountains and Howard Hills and comprise the southern watershed of the Delong Mountain Range.

Much of the area is within the borders of the Noatak National Preserve. The Gates of the Arctic National Park and Preserve crosses the territory at its southeastern boundary. Both are Federally controlled conservation areas. Additionally, the area is in close proximity to the remainder of the Noatak National Preserve, Cape Krusenstern National Monument, Selawik National Wildlife Refuge, the Kobuk Valley National Park and the Bering Land Bridge National Monument. These latter areas are located within the territory proposed for incorporation as the NANA Borough.

B. MINERAL DEPOSITS

Located within the area of proposed detachment is the Red Dog site. It is approximately 55 miles from the Chuckchi Sea, east-northeast of Kivalina and 82 miles north of Kotzebue. (see Final Environmental Impact Statement, Red Dog Mine)

Project, Northwest Alaska, included as Attachment 23 - pg. IV - 4). The ore deposit defining the mine is located on Red Dog Creek lying at the western base of Deadlock Mountain. The Creek is a tributary of Ikalukrok Creek which is a major tributary of the Wulik River. The deposit is estimated to contain at least 85 million tons of ore which consists of a minimum of 5.0 percent lead, 17.1 percent zinc, 2.4 oz/ton silver and measurable levels of barite. The project has an expected life of at least 40 years under projected production rates, with the possibility of extension if additional ore is found (see Attachment 15).

The Red Dog deposit is but one manifestation of a highly mineralized geologic formation which sweeps northwest from Red Dog Valley. Located approximately twelve miles northwest of the Red Dog mine is a major zinc deposit known as the Lik site. Two additional sites are contained in this find (NANA Coastal Resource Service Area (CRSA) Coastal Management Program, Attachment 24). All deposits appear to be rich in zinc, lead and silver.

Still within the area of proposed detachment is another vein of mineral deposits. Two sites, one containing chromium and another holding zinc and lead, are located east of the Kugururok River channel (see Attachment 24).

It appears that oil and gas reserves are absent from the area of proposed detachment.

IV. REGULATORY FACTORS TO BE CONSIDERED

The administrative regulations governing detachments from an organized borough provide that certain standards must be met in the judgment of the Local Boundary Commission. This section of the brief examines the bulk of these standards; a separate section is used to examine the standards relating to the interests of the entities affected by the proposed boundary change.

A. SOCIAL, CULTURAL AND ECONOMIC CHARACTERISTICS

The regulatory standards governing detachment (19 AAC 10.230) provide that the Local Boundary Commission shall consider whether the social, cultural and economic characteristics of the population of the territory proposed for detachment are substantially different or in conflict with those of the remainder of the population located in the borough.

The Native inhabitants of the NANA Region and the North Slope Borough probably share the same ancestral beginnings. Both areas are home to Inupiat Eskimos who evidence similar language and cultural traditions. However, the indigenous peoples of the two areas are distinctive in the manner discussed below.

The document titled Alaska Natives and the Land, included as Attachment 25, unequivocally establishes that the NANA region is, for the most part, distinguished from the North Slope Region in its physiographic characteristics, cultural composition, societal structure, political organization and economic exchange (pp 99 - 103 and 129 - 170). Interestingly, when dividing the state into fifteen regions which, "offer to us the greatest degree of homogeneity in physiography, ethnography, biotic provinces, natural resource patterns and aggregate potential for meaningful economic analysis" (p. 99), this document identified the region generally prescribed by the

NANA Regional Corporation boundaries as a distinct unit.³

In contrast, the study identified the current North Slope Borough region as a separate area. The document further established a southwestern boundary of this region which excluded the area of proposed detachment from the North Slope Borough region. The area of proposed detachment was included in the NANA Region. (see Attachment 25).

Today the pursuit of subsistence activities continues to provide the foundation for the traditional cultural values, social structures and economic fabrics of each region. The subsistence way of life predominates and is inseparable from the land, the water and the resources they support.

These very ties to each region's natural resources lend further support to the proposal to detach the designated area from the North Slope Borough. Residents of the NANA region, particularly the Villages of Kivalina and Noatak, have commonly used the land and rivers in the area of proposed detachment for harvesting subsistence resources. Seasonal use patterns which occurred during the period 1950-1960 establish this fact (see Attachment 25). Current use patterns confirm continued reliance upon the area of proposed detachment by NANA residents (see Attachments 26 and 27 consisting of Minerals Management Service Technical Reports #101 and #74). Further, seven of the Intensive Resource Use Areas identified in the NANA CRSA Coastal Management Program fall within the area of proposed detachment (see Map of the Intensive Resource Use Areas in the NANA Region, included as Attachment 28 (source NANA Coastal Management Plan). They are:
North Kivalina Coast Upper Kivalina River

³ The southwestern boundary of the NANA Regional Corporation deviates from the boundary established by this document. However, since this boundary is not under present consideration, discussion beyond this point is unnecessary.

Middle Noatak River

Narvakrak Lake

Upper Noatak River
Drainage

Upper Noatak River
Trapping Area

Feniak Lake

In contrast, little if any of the area has been or is being used by residents of the North Slope Borough. Once again, the 1950-1960 seasonal use maps from the document Alaska Natives and the Land demonstrate an absence of use by residents of the North Slope Borough. Only the Village of Point Hope demonstrated a marginal interest in the area during that period. However, the area of proposed detachment shows no actual use by Point Hope residents. Not surprisingly, the Delong Mountains appear to form a natural barrier for western access to the region. Current day absence of land use by North Slope residents is confirmed by the North Slope Borough Comprehensive Plan, included as Attachment 29. It fails to identify use of the area proposed for detachment by North Slope residents. Further, when discussing conflicts between NANA Coastal Resource Service Area boundaries and North Slope Borough coastal boundaries, the North Slope Borough has stated, "Borough residents do not utilize these fish (in the rivers within the territory proposed for detachment) for subsistence or commercial purposes" (see Attachment 30 letter from Karla Kolash to Amy Kyle, February 8, 1985). Additionally, transportation routes to the area of detachment are virtually nonexistent for North Slope residents. Without adequate access routes to the area, use is difficult (see Map of Transportation Routes and Facilities of the North Slope Borough, included as Attachment 31).

Without doubt, the river systems which traverse the area, particularly, the Wulik, Kivalina, and Noatak, are the major sources of subsistence resources for NANA region residents. Any impacts to the water quality of these river systems would seriously affect the subsistence resources upon

which the NANA region is dependent. The importance of these riverine systems and the NANA region's desire to protect them is confirmed by the inclusion of these areas within the NANA CRSA Coastal Management Program's coastal boundaries. These boundaries extend to the area of proposed detachment and terminate at the point of political jurisdiction by the North Slope Borough. These coastal boundaries are artificially constrained by jurisdictional claims. Absent the North Slope Borough boundary running the 68° 00' N Latitude, the boundaries of the NANA Region's coastal area would extend to include the riverine systems in the area of proposed detachment.

This present day use and ancestral dependence upon resources in the area is further documented by the existence of archeological and historical sites located there. The NANA Regional Corporation has identified fourteen sites under the provisions of Section 14(h)(1) of the Alaska Native Claims Settlement Act and the Alaska Heritage Resource Inventory has identified 41 major sites within the area of proposed detachment and attributed to the residents of the NANA region (see Archeological and Historical map, included as Attachment 32). In contrast, the North Slope Borough Coastal Management Program and Comprehensive Plan have identified no historical or archeological sites in the same area.

In summary, the people of the NANA region have traditionally used and still rely upon the area to be detached, while the residents of the North Slope Borough have little, if any, past or present reliance on resources in this area. To help protect the resources through municipal planning powers and the coastal management program, it is important for these resources to fall within the jurisdiction of the NANA region.

B. GEOGRAPHIC AND TRANSPORTATION CONSIDERATIONS

The regulatory standards governing detachment further provide that the Local Boundary Commission shall consider

whether the geographic location or configuration of the territory precludes the provision of borough services provided other areas of the borough or make the provision of borough services impractical; and whether the lack of transportation facilities precludes the communication and exchange necessary for responsive and integrated local government.

The geographic location and configuration of the area proposed for detachment suggests that it be included in the proposed NANA borough for the express purpose of service delivery. The area proposed for detachment is clearly related to the Kotzebue Basin by natural geographic corridors following the southern riverine systems. The mountains encircling the area on the west, north and east, isolate it from all other areas. The transportation infrastructure being developed for the Red Dog mine accesses these routes.

At present, the North Slope Borough delivers a variety of services (e.g. planning, sewer, waters, solid waste disposal, health and education) to the communities in the Borough. Most of the services are delivered from Barrow, the seat of borough government. Although the North Slope Borough provides services to communities as distant as 250 miles, it is far more practical to deliver services to the area of proposed detachment from the NANA region. Physical proximity alone would dictate manageable service delivery through the region lying directly south of the area. Access by the region to the north is impeded by the mountains surrounding the area.

The modes of transportation to the area of proposed detachment support the proposal to detach the lands for incorporation in the NANA Borough, particularly for purposes of service delivery. Available transportation also makes it far more practical to deliver services from the proposed NANA Borough. Road, marine and air access will be available to the detached area from the NANA region. The only mode of transportation to the area of detachment from the North Slope Borough is

aircraft, and it is generally more difficult and more lengthy to reach the area from Barrow than from Kotzebue, the presumed seat of NANA Borough government.

The length of time to travel by air from Kotzebue to the Red Dog mine site is less than half the time required to travel from Barrow to the Red Dog mine site. That is, it takes approximately 0.6 to 0.7 hours air time to travel one way from Kotzebue to the Red Dog site. From Barrow, it takes 1.9 to 2 hours to travel one way to the same site. Also, a greater variety of aircraft can be used to fly from Kotzebue because of its closer proximity to the area (absence of refueling), and the flight can be completed successfully more often because of the lesser distance to travel.

The cost of air travel from Kotzebue to the Red Dog site and the greater portion of the area of proposed detachment is considerably less than from Barrow. For example, one way charter costs from Kotzebue to the Red Dog site via a Twin Otter are approximately \$700, and were estimated to be \$80 per seat by Bakers Aviation (Kotzebue air carrier, conversation with Wayne Marshall, Planner, DCRA, 11/13/85). The costs for one way Twin Otter charter from Barrow to the Red Dog site are approximately \$1,900 and were estimated to be \$210 per seat by Cape Smyth Air (Barrow air taxi operator, conversation with Wayne Marshall, Planner, DCRA on 11/13/85). This sampling of air fare comparisons is reflective of costs to access the area from the actual and anticipated seats of either borough government.

The NANA Borough will also have the distinct advantage of delivering services via two modes of transportation that are not available from Barrow. These are marine and road. Development of the Red Dog mine entails construction of a marine port south of Kivalina and an access road to the Red Dog site from the port on the coast. The marine port and road may reduce the costs and increase the dependability of delivering

bulk goods to the area. The North Slope Borough presently has no plans to construct a port and/or road access to the area. In addition, the Noatak River is presently used to barge goods as far inland as Noatak, and might be used to barge goods to the area of proposed detachment. The North Slope Borough does not have a similar inland marine transport system.

In summary, the NANA region is in a much better position to deliver borough services to the area proposed for detachment. There are at least three modes of access from the NANA region, while there is only one from the North Slope Borough. In addition, since the main users of the area of proposed detachment will be residents of the NANA region, they will be responsive in the delivery of Borough services. This will not be the case for the North Slope Borough. It is more reasonable for service delivery to originate from the NANA Borough. Services are offered more easily from Kotzebue as the regional center because of closer geographical proximity.

C. SERVICE DELIVERY AFTER DETACHMENT

19 AAC 10.240 provides that the Local Boundary Commission will not approve a detachment unless the petitioner demonstrates to the satisfaction of the Commission that the service requirements of the territory will be met following the detachment.

This standard would be met by the Commission's approval of the condition upon which the State seeks this detachment, i.e., that the detachment occur simultaneously with the inclusion of such territory within the boundaries of a borough to be created within the NANA region. The NANA borough would, upon incorporation, assume the service responsibilities for education, planning and tax assessment, which are mandatory under the provisions of State law. Other services would be made available to the region as the demand for those services arose.

D. DISTRIBUTION OF ASSETS AND LIABILITIES

According to 19 AAC 10.250, the Local Boundary Commission shall determine the manner in which the assets and liabilities of the municipality from which detachment is sought shall be distributed.

There are no assets of the North Slope Borough within the territory proposed to be detached. Accordingly, no proceeds from the sale of bonds by the North Slope Borough have been used directly for improvements within the territory proposed for detachment. Finally, the territory proposed for detachment has virtually no current taxable value (less than five one-thousandths of one percent of the North Slope Borough's 1984 total assessed valuation). Therefore, it is the State's contention that it is unnecessary and inappropriate for any liabilities of the North Slope Borough to be "distributed" to the State or any other current or future entity as a result of the proposed detachment.

V. APPLICATION OF THE BEST INTERESTS STANDARD

A. ROLE OF THE LOCAL BOUNDARY COMMISSION

The State Constitution and laws provide that the establishment and change of borough boundaries should primarily be the responsibility of the State. As is noted in the publication "Borough Government in Alaska" by Thomas A. Morehouse and Victor Fischer (pages 51-52), this was done because the framers of the Constitution concluded:

"first, the delineation of boroughs required a statewide analysis of pertinent considerations; second, the state had a direct interest, since the borough was to serve not only as a local government but also as a unit for the provision of state services; third, it was generally believed that an objective analysis of relationships between adjacent local units could only be made at a higher level and fourth was the belief that strictly local political decisions do not usually create proper boundaries".

The Local Boundary Commission was created as the mechanism to carry out this State interest. As is discussed below, the State truly believes that the proposed detachment is in the best interests of the State, the territory to be detached and the North Slope Borough.

B. BEST INTERESTS OF THE STATE OF ALASKA

In order to approve the boundary change, 19 AAC 10.230 requires that the Local Boundary Commission determine that the proposed detachment is in the best interests of the State.

The State has two major interests that will be served by the proposed detachment. First, the detachment will promote local self-government in the NANA region. Second, the detachment will promote resource development and employment in northwest Alaska. The proposed detachment involves no significant detriment to any State interest.

The greatest interest of the State regarding this

proposed boundary change is in maximizing local self-government in the NANA region. It is the State's goal, expressed in Article X § 1 of the Alaska Constitution, "to provide for maximum local self-government." This goal will be best served by formation of a borough in the NANA region.

As was indicated earlier, residents of the NANA region are presently circulating a petition for the creation of a borough in their region. Formation of a borough for this area has long been a goal of a number of the principal institutions in the region such as the NANA Regional Corporation, the Maniilaq Association and the Northwest Arctic School District and others. As was also indicated earlier, the area proposed for detachment is an indispensable part of a new borough for the NANA region. Hence, the proposed detachment is an essential and vital prerequisite to providing maximum local self-government to northwest Alaska and the NANA region.

Only 26 percent of the state of Alaska is within the jurisdiction of an organized borough or unified municipality. During the past seventeen years, only one borough government has been formed in this state. No borough government has been created in Alaska for more than thirteen years. The State of Alaska now has an opportunity to assist in the creation of a new borough.

Apart from promoting local self-government, the State believes that the proposed detachment and subsequent formation of a borough in the NANA region will promote resource development and employment in the region. The proposed Red Dog Mine will be served by the State-financed Delong Mountain Transportation system, consisting of a road and port facility for the export of ore from the mine. The port facility and the road will be located within the NANA region.

The efficient and orderly development of the Red Dog mine, and of other mineral deposits that could be served by

the Delong Mountain Transportation system, will be best served if one political subdivision provides local government planning, regulation and services for the entire area affected by the Delong Mountain Transportation system and the Red Dog and neighboring mineral deposits.

A unified approach to such matters as land use planning and regulation, environmental protection, and local government permitting will substantially reduce the regulatory burden of the State in the development of these projects. It also will better serve the public interest by providing comprehensive and consistent planning and regulation for the entire region.

Additionally, the physical proximity of a borough government for the NANA region, most likely based in Kotzebue, as compared to the North Slope Borough government located in Barrow, should enhance the efficiency and effectiveness of local government decision-making, especially as it relates to the Red Dog and other nearby mineral developments.

C. BEST INTERESTS OF THE TERRITORY TO BE DETACHED

In addition to being in the best interests of the State, 19 AAC 10. 230 requires that the Local Boundary Commission also determine that the proposed detachment is in the best interests of the territory to be detached.

As development of the Red Dog mine proceeds, the territory proposed for detachment will be occupied on a rotating basis by persons employed in mining-related construction, operations, or support services. The majority of these individuals will be residents of the NANA region, as will individuals employed at the Lik mine site (see letters from GCO Minerals Company and Noranda Exploration, Incorporated, to Emil Notti, included as Attachments 33 and 34). The association of these persons with communities in the NANA region, rather than with communities in the North Slope

Borough, indicates that a borough serving the NANA region will be more closely aligned with the social, economic and cultural characteristics of the inhabitants of the territory to be detached than would the North Slope Borough.

It would be more practical to provide municipal services to the territory proposed for detachment from a borough serving the NANA region than from the North Slope Borough. The regional transportation center for the territory to be detached will be Kotzebue, also the likely headquarters for borough government in the NANA region. Development of the Lik mine site anticipates use of Kotzebue as the main service center (see Attachment 34).

Two villages that would be part of a NANA region borough, Kivalina and Noatak, are in very close proximity to the territory proposed to be detached. Their presence will assure the delivery of borough services to the vicinity of the detached area.

In contrast, the North Slope Borough is headquartered in Barrow, hundreds of miles from the territory to be detached. Moreover, the new borough serving the NANA region can execute its mandatory planning power effectively only if this major area of regional employment can be included within its boundaries.

As discussed in detail in Section IV-B of this brief, transportation capabilities between Kotzebue and the territory to be detached are better than from the North Slope Borough.

D. BEST INTERESTS OF THE NORTH SLOPE BOROUGH

Finally, 19 AAC 10.230 requires that the Local Boundary Commission determine that the proposed detachment is in the best interests of the North Slope Borough.

The North Slope Borough will lose little from the proposed detachment. The proposed shift of the jurisdictional boundaries of the North Slope Borough affects 3.7 percent of

the total area within the Borough. The \$607,180 present value of taxable property within the area proposed to be detached represents less than five one-thousandths of one percent of the North Slope Borough's 1984 total assessed valuation of \$12,268,737,790 (including \$11,732,896,800 in oil and gas properties) (see Attachment 17).

The North Slope Borough has alleged that the detachment would have a significant adverse impact upon the financial affairs of the North Slope Borough (see November 6, 1985, letter from E.F. Hutton to James P. Sharpe, Director of Administration and Finance for the North Slope Borough, included as Attachment 35). These allegations have been carefully examined by financial experts on behalf of the Petitioner. The conclusion of these experts was that, "it would appear unlikely that the proposed detachment would be of either interest or significance in determining the creditworthiness of the North Slope Borough" (see letter of November 18, 1985, from the Commissioner of the Alaska Department of Revenue, included as Attachment 36; see also Attachment 20).

The only thing which the North Slope Borough stands to lose, is the prospect of increasing the value of taxable property within its boundaries. However, even as significant as the Red Dog mine development is to the NANA region, the value of that development would be of little consequence to the North Slope Borough. As was stated earlier, it is estimated that the capital improvements to the Red Dog mine would be valued at approximately \$250 million. That figure represents only 2 percent of the 1984 value of the taxable property within the North Slope Borough.

On the other hand, the detachment will save the North Slope Borough the cost and logistical difficulties of providing services to territory on its remote periphery, which may be served much more efficiently from a regional center

located outside the North Slope Borough. Moreover, most of the persons to be served in the territory to be detached now have and will continue to have economic, social and cultural ties to the NANA region rather than to the North Slope Borough, increasing the difficulty of communication and participation necessary to the effective delivery of local services from the North Slope Borough.

Further, retainage of the territory proposed for detachment within the boundaries of the North Slope Borough has strained the relationships between the peoples of the two regions. The Inupiat people have long prided themselves on values which include cooperation and sharing. Residents of the NANA region correctly believe that the territory proposed for detachment rightfully belongs within the jurisdiction of their region (see Attachment 1). The detachment of the territory will preclude the exacerbation of the conflict currently brewing in the area.

All things considered, particularly the threat to harmonious relations among the people within the area and the relative difficulty which the North Slope Borough would have in serving the area, the State contends that the proposed detachment is in the best interests of the North Slope Borough.

V. CONCLUSION

The State has shown through its petition and brief that the social, economic and geographical considerations which the Local Boundary Commission is required to examine in such circumstances support the proposed detachment.

The State has also shown that little consideration was paid to the social, cultural and geographic differences between the territory proposed for detachment and the remainder of the North Slope Borough during the 1971 - 1972 hearings of the Local Boundary Commission. Further, if the testimony provided to the Commission regarding the boundaries of the proposed Arctic Slope Regional Corporation had been correct, the Commission may have modified the boundaries of the proposed Borough to exclude the territory which the State now seeks to detach.

The State has also shown through its petition and brief that all standards for the detachment have been satisfied with respect to this proposed boundary change.

- ° The proposed detachment is in the best interests of the State in that it will promote local self-government as well as resource development and employment in the NANA region.
- ° The proposed detachment is in the best interests of the territory to be detached in that local government services to an area physically and culturally associated with the NANA region would be best served from that region.
- ° The proposed detachment is in the best interests of the North Slope Borough in that the detachment will save the North Slope Borough the cost and logistical difficulties of providing services to territory on its remote periphery, which may be served much more efficiently from a regional center located outside the North Slope Borough. Moreover, the present threat to harmonious relations among the people within the area would be resolved through the detachment. The detachment would have little adverse impact upon the Borough.

The State has proven through its petition and brief that the service requirements of the territory proposed for detachment will be met following detachment. The State

proposes that the detachment occur simultaneously with the inclusion of such territory within the boundaries of a borough to be created within the NANA region.

The State has shown that the detachment will not result in the need to distribute any of the assets and/or liabilities of the North Slope Borough.

Therefore, the Commissioner of the Alaska Department of Community and Regional Affairs respectfully requests the Local Boundary Commission to concur with the position of the State and approve the current petition for detachment. The Local Boundary Commission is further requested to recommend the boundary change proposed in this petition to the Second Session of the Fourteenth Legislature.

Emil Notti

Emil Notti, Commissioner
Alaska Department of Community
and Regional Affairs

LIST OF ATTACHMENTS TO THE BRIEF

Attachment 1 - three page letter dated November 12, 1985, with two pages of attachments, from Suzy Erlich, Chairman of the Board of Directors of the Maniilaq Association to Robert Eder, Chairman of the Local Boundary Commission.

Attachment 2 - letter from NANA Regional Corporation dated November 20, 1985, to Emil Notti, Commissioner of the Alaska Department of Community and Regional Affairs

Attachment 3 - "Report to the Local Boundary Commission on the proposal for incorporation of a first class borough" prepared by the Local Affairs Agency on December 2, 1971.

Attachment 4 - "Statement of Findings and Conclusions on the Petition Proposing Incorporation of a First Class North Slope Borough", approved by the Local Boundary Commission on May 10, 1972.

Attachment 5 - letter from Robert Newlin to Byron Mallott, with one page attachment.

Attachment 6 - "Transcript of Public Hearing of the Local Boundary Commission Regarding the Creation of a First Class North Slope Borough, December 2, 1971".

Attachment 7 (a) and (b) - "Transcript of Meeting of the Local Boundary Commission Regarding North Slope Borough Incorporation, February 23, 1972" and "Volume II Local Boundary Commission North Slope Borough Petition".

Attachment 8 - November 5, 1985, Memorandum from Ronald D. Brower, to Earl Finkler.

Attachment 9 - October 10, 1985, letter from North Slope Borough Mayor George Ahmaogak to Commissioner Emil Notti.

Attachment 10 - May 4, 1982, letter from James C. Sanders, Staff Assistant to the Local Boundary Commission to Don Argetsinger.

Attachment 11 - Adopted "North Slope Borough Ordinance Serial Number 85-15 Substitute" and the "Memorandum of Understanding" referenced in the Ordinance.

Attachment 12 - Earlier version of "North Slope Borough Ordinance Serial Number 85-15" (not adopted).

Attachment 13 - Version of "North Slope Borough Ordinance Serial Number 85-15" under consideration at North Slope Borough Assembly workshop held in Kotzebue on July 22, 1985 (not adopted).

Attachment 14 - Memorandum of October 10, 1985 from Rebecha Miller to Dan Bockhorst.

Attachment 15 - "Red Dog Project Analysis, A Report to Governor Bill Sheffield, February, 1984".

Attachment 16 - Memorandum of November 21 from Mike Worley, State Assessor to Dan Bockhorst, Local Government Specialist V.

Attachment 17 - Alaska Taxable, January, 1985.

Attachment 18 - two letters dated November 21, 1985, from Cominco Alaska to Emil Notti.

Attachment 19 - November 19, 1985, letter from Mary Nordale, Commissioner of the Alaska Department of Revenue to Robert Eder, Chairman of the Local Boundary Commission.

Attachment 20 - November 20, 1985, letter from Government Finance Associates, Incorporated, (the financial advisor to the State of Alaska Bond Committee) to Emil Notti.

Attachment 21 - Job Availability and Market Relations for the NANA Region, 1982 - 1990, Darbyshire and Associates, 1983.

Attachment 22 - The NANA Regional Economy, Present and Future, Darbyshire and Associates, 1982.

Attachment 23 - Final Environmental Impact Statement, Red Dog Mine Project, Northwest Alaska, 1984.

Attachment 24 (a) and (b) - NANA Coastal Resource Service Area (CRSA) Coastal Management Program, 1984.

Attachment 25 - Alaska Natives and the Land, Federal Field Committee, 1961.

Attachment 26 - Minerals Management Service Technical Reports #101 Barrow Arch Socioeconomic and Sociocultural Description, 1984.

Attachment 27 - Technical Report #74, Chuckchi Sea Sociocultural Systems Baseline Analysis, 1983.

Attachment 28 - Map of the Intensive Resource Use Areas in the NANA Region (source NANA Coastal Management Plan).

Attachment 29 - North Slope Borough Comprehensive Plan, 1984.

Attachment 30 - letter dated February 8, 1985, from Karla Kolash to Amy Kyle, Office of the Governor, Division of Governmental Coordination.

Attachment 31 (a) and (b) - Map of Transportation Routes and Facilities of the North Slope Borough and North Slope Borough Coastal Management Program.

Attachment 32 - Map of the Archaeological and Historical Resources in the NANA Region (source NANA Coastal Management Plan).

Attachment 33 - letter dated November 19, 1985, from GCO Minerals Company to Emil Notti.

Attachment 34 - letter dated November 20, 1985, from Noranda Exploration, Incorporated, to Emil Notti.

Attachment 35 - letter dated November 6, 1985, from E.F. Hutton to James P. Sharpe, Director of Administration and Finance for the North Slope Borough.

Attachment 36 - letter of November 18, 1985, from the Commissioner of the Alaska Department of Revenue to Robert Eder, Chairman of the Local Boundary Commission.

Attachment 37 - U.S. Department of the Interior Geological Survey Map of the North Slope Borough, including the territory

proposed for detachment, and the NANA Region (1:1,000,000 scale).

Attachment 38 - NANA Regional Strategy updated 1984- 1985.

REPORT TO THE LOCAL BOUNDARY COMMISSION
ON THE PETITION TO DETACH CERTAIN LANDS
FROM THE NORTH SLOPE BOROUGH

Gordon S. Harrison
Office of Management and Budget
State of Alaska

January 3, 1986

Report To The Local Boundary Commission
On The Petition To Detach Certain Lands
From The North Slope Borough

I. Introduction

In a memorandum dated November 20, 1985 (Attachment 1), the Commissioner of the Department of Community and Regional Affairs (DCRA) delegated to me the responsibility of preparing a report to the Local Boundary Commission under 19 AAC 10.570 on the petition before the Commission regarding the detachment of certain lands from the North Slope Borough. This document is my report on the matter, in accordance with that delegated responsibility.

II. Summary and Background of Petition

The petition for detachment submitted to the Local Boundary Commission by DCRA seeks to detach approximately 3,298 square miles of territory from the North Slope Borough. The proposed detachment area includes the Red Dog Mine development site, several other known mineral deposit areas, and additional

lands. The petition asks that any decision in favor of detachment take effect only upon the incorporation of a borough within the Northwest Alaska Native Association (NANA) region, which borough shall include the proposed detachment territory.

The Red Dog Mine development site is the most noteworthy feature of the territory proposed for detachment. The mine site is located on land principally owned by NANA Regional Corporation, Inc., and is slated for joint development by NANA and Cominco Alaska, Inc. The mine site occupies approximately 1,336 acres (2.1 square miles) of a total 2.1 million acres (3,298 square miles) proposed for detachment. If developed, the mine is expected to create approximately three hundred and fifty to four hundred jobs and have a lifespan of approximately fifty years.

The territory proposed for detachment, particularly the Red Dog Mine development site, also bears directly on a separate proposal which may soon come before the Local Boundary Commission. This proposal is for the creation of a borough for the NANA region, to be called the Northwest Arctic Borough. NANA region representatives, who view the proposed detachment as essential for the proposed borough's viability, currently are preparing an incorporation petition for the proposed borough.

During the past three years, NANA region representatives and North Slope Borough representatives met on a number of occasions to discuss the possibility of detaching the Red Dog Mine site and additional lands from the North Slope Borough. Also, several public workshops and hearings on the matter were held in the Kotzebue and Barrow areas. (Details on the discussions and hearings involved can be found in the detachment petition, briefs, and attachments.) These discussions and meetings were not sufficient to resolve the question of detachment, however. On October 1, 1985, North Slope Borough residents voted against a proposition for detachment in a borough-wide advisory (non-binding) referendum. On November 22, 1985, DCRA submitted its petition for detachment to the Local Boundary Commission.

Ordinarily, DCRA reviews all petitions submitted to the Local Boundary Commission. Because DCRA is the Petitioner in the present case, however, the Office of Management and Budget, Division of Strategic Planning, was designated to serve as the reviewing agency.

Review requirements for Local Boundary Commission petitions encompass two levels of review. One is a compliance review (required under 19 AAC 10.520), to assure that the petition and accompanying brief submitted to the Commission are in the proper form and contain the factual information required by existing regulations (19 AAC 10.450-530). I fulfilled this

review requirement in my November 22, 1985, memorandum to the Petitioner, which held that the DCRA petition substantially complied with established form and content requirements (Attachment 2).

The second level of mandatory review is a report (required under 19 AAC 10.570) to the Local Boundary Commission on the boundary change proposed by the petition. The report must summarize the issues raised in the petition and briefs, comment on issues relevant to the proposed action, and contain recommendations to the Commission. The present report fulfills this requirement.

III. Discussion of Petition

I have carefully reviewed the DCRA petition, the brief supporting the petition and attachments thereto, the briefs and attachments submitted by the NANA Regional Corporation and the North Slope Borough, and the reply of the Petitioner to the opposing brief by the North Slope Borough. Further, I have independently researched certain issues raised in the petition, such as the designation of the southern boundary of the North Slope Borough and the potential public financial impact of detachment on the North Slope Borough.

There are two aspects to the detachment proposal: one is substantive, and the other is procedural. Careful consideration must be given to each aspect, as each conditions the recommendation made in this report.

A. Substantive Aspects

From a substantive point of view, I believe that a persuasive case exists for the proposed detachment. The case is based on considerations of equity, and is discussed below.

The North Slope Borough has access to public wealth that, when viewed in per capita terms, is staggering. The tax base of the North Slope Borough currently exceeds \$12 billion, for example, while the number of its permanent residents is less than 8,000. The magnitude of such wealth is indicated by the fact that the Borough's 1984 per capita assessed value exceeded the statewide average per capita assessed value by a factor of 12, and the per capita assessed value of the Anchorage Municipality by a factor of 18. Further, it is expected that the North Slope Borough tax base will continue to increase at least through the end of this decade, and may exceed \$16 billion by the early 1990's.

The North Slope Borough's access to the full value of the real and personal property within its jurisdiction, for purposes of raising revenue for Borough operations, is limited by Alaska law (AS 39.53.050). As a result, the Borough currently may access approximately 20 percent of its \$12 billion tax base to raise revenue for its operating expenses. At present, the Borough is taxing well below this legal limit, presumably to keep its millage rate within bounds considered tolerable by residential property owners./1

For purposes of servicing general obligation debt, however, the North Slope Borough is not fettered in its access to the full value of the tax base within its jurisdiction. As a consequence, the North Slope Borough has incurred over \$1.2 billion in general obligation debt. This amounts to \$400 million more than the current outstanding general obligation debt of the State of Alaska./2 In 1984, North Slope Borough per capita general obligation debt was more than 17 times greater than the average per capita general obligation debt of all Alaska municipalities and the State of Alaska combined (including the North Slope Borough), and almost 67 times greater than the per capita general obligation debt of the Municipality of Anchorage (\$97,373 vs. \$1,455)./3

Altogether, North Slope Borough bond issues have fueled a capital improvement program so large that it has attracted

national media attention. Projects undertaken through this program have included education and service center facilities; public roads; watercourse and flood control facilities; airport and airport terminal facilities; urban development projects; light, power and heating systems; public safety facilities; sanitation facilities; advanced communications systems; health facilities; library facilities; construction equipment acquisition; and other miscellaneous capital improvement projects./4

Further, overall Borough expenditures for capital projects and operating programs (expenditures which are supported by property and sales tax revenues, bond proceeds, State and federal revenue sharing and grant receipts, plus interest income from the Borough's cash balances) have generated substantial employment and personal income for permanent residents of the North Slope Borough./5

By contrast, the neighboring NANA region knows nothing of such wealth. It has no regional government; no industrial or commercial tax base; no bonded indebtedness; and no capital improvement program except that which can be financed through uncertain competition in the State's annual budget process.

Petitioner thus argues persuasively that, without the taxable property of the Red Dog Mine development, formation of a local borough government in the NANA region is not feasible. The

meager tax base that currently exists in the region comprises little beyond the homes and personal equipment of many low-income families; and even much of this limited potential tax base would disappear if the new NANA-area borough government were to allow a personal exemption of the first ten thousand dollars of assessed value, as is currently allowed by the North Slope Borough.

As a matter of broad public policy, consequently, a redistribution of public wealth in the present circumstances is certainly justifiable.

The mal-distribution of public wealth from the North Slope is well known, and has been raised as a public issue in the past. It was first addressed by the Alaska Legislature early in the 1970's, when Governor Egan introduced a comprehensive legislative proposal for redistributing public wealth among the unorganized rural areas of the State. Writing about the overall problem at the time, Assistant Attorney General Richard W. Garnett, III, made these observations:

"Most of the valuable property that will appear in the unorganized borough will be located in accordance with the distribution of natural resources. Because this distribution bears little relation to the pattern of local jurisdictions and fiscal needs, there will be increasing variation in wealth and services among regions unless an equitable statewide distribution of revenue from Alaska resources can be achieved."/6

In arguing for a comprehensive scheme of public wealth redistribution among the rural areas of the State, Garnett remarked:

"The general welfare in Alaska will be advanced if local government organization precedes rather than follows economic development. New industrial development will create stresses manageable only by application of governmental powers. Planning and zoning will be particularly important in reconciling industrial development with subsistence living, and taxing power will be needed to insure local benefit from development activity. Municipalities which form after major economic interests have become established may be too late to influence significantly the activities of those interests. On the other hand, it may be futile to extol the desirability for self-determination to people who presently lack the economic resources necessary to the effective exercise of local government power."/7

Although a comprehensive redistribution plan along the lines of Governor Egan's proposal was not adopted, something of a redistribution mechanism in the form of the statewide oil and gas property tax was subsequently enacted (AS 43.56).

It is noteworthy that Congress, too, recognized the problem of the unequal distribution of natural resource wealth in Alaska. Section 7(i) of the Alaska Native Claims Settlement Act, for example, requires that each of the twelve regional corporations in Alaska must redistribute seventy percent of the revenues it derives from the development of natural resources on its lands. Congress was particularly mindful of Alaska's North Slope petroleum resources when it included this provision.

In addition to the glaring mal-distribution of public wealth in Alaska's Arctic regions, which is the distinguishing feature of this case, other unique and extraordinary circumstances exist which support the case for the proposed detachment.

First, residents of the NANA area are now seeking the means of local government control to help cope with a major industrial development that may profoundly affect the lifestyle of people in an entire region. In this respect, the rationale for borough government in the NANA region today is the same one used by proponents of borough government on the Arctic Slope in the early 1970's. Viewed in this context, the case made by Petitioner for coordinated management and governmental control over the entire Red Dog Mine project (port, road and mine site) is logical, reasonable, and convincing.

Second, the State of Alaska has today, as it did at the time of North Slope Borough incorporation, a strong interest in promoting local self-government in rural Alaska. Further, it has a compelling constitutional mandate to do so, as contained in Article X of the Alaska Constitution.

Third, is the fact that the territory proposed for detachment is located entirely within the boundaries of the NANA regional corporation. Regional corporation boundaries are widely recognized in Alaska as authoritative geographical delineations

of cohesive socio-cultural subregions of the State's rural areas./8 A boundary revision along the lines of the detachment proposal would therefore complement existing statutory standards for borough incorporation, not offend them./9

In contrast to the broad public benefits of borough formation in the NANA region, which are achievable through the acquisition of an industrial tax base, the harm to the North Slope Borough from detachment of the mineralized lands in question seems to be inconsequential. While the fiscal impact of detachment on the North Slope Borough is measurable, it would be relatively insignificant when viewed in the context of the per capita revenues the Borough now receives and may receive under existing law./10

Finally, it must be said that imposing a boundary change on a local government against its express wishes is an unusual act. The Local Boundary Commission must carefully consider the significance of any precedent, as well as the appearance of any precedent, that might be set by such an imposition. My careful reading of the material submitted in this case, however, leads me to the conclusion that the circumstances justifying the proposed detachment are so extraordinary and unique that they do not constitute an ominous precedent for either the North Slope Borough or other local governments in the State.

B. Procedural Aspects

Notwithstanding the substantive aspects of the detachment proposal, and the elaboration of them that is possible, the procedural aspects of the proposal must also be addressed. Here, a key question of legal interpretation and judgement is immediately confronted that is outside my professional competence.

The issue is this: How narrowly and literally should the regulatory standards for detachment at 19 AAC 10.230-250 (Attachment 3) be applied in this case?/11

I can offer only a layman's opinion on the matter, and so recommend that the Commission hear directly from the Office of the Attorney General for advice on the best interpretation of the law. It was my hope that written advice on this question from the Attorney General would be available at the time I prepared this report. Such advice has not been forthcoming, however, in response to the request I submitted on December 6, 1985 (Attachment 4).

My own view is that the existing regulatory standards for detachment (19 AAC 10.230-250) thwart the very constitutional purpose of the Local Boundary Commission. That purpose is to decide boundary disputes in situations precisely like the one

at hand; i.e., where local interests cannot agree on a mutually satisfactory resolution./12 It is therefore unreasonable that the Commission should be bound by regulations that effectively give any party to a dispute a veto power over a boundary decision by the Commission, thereby frustrating exercise of the Commission's constitutional responsibility. Nevertheless, that is the practical effect of the "best interest" criterion established at 19 AAC 10.230(a):

"Territory which is part of a borough may be detached from that borough if, in the determination of the Commission, the detachment would be in the best interests of the State, the territory to be detached, and the borough affected by the detachment." (Emphasis added.)

Furthermore, the considerations required under the Commission's established detachment regulations clearly contemplate circumstances very much unlike the ones encountered in the present proceeding. The detachment regulations envisage a permanent residential population (in a territory proposed for detachment) that would require the normal range of services and representation expected in a borough that is responsibly fulfilling its governmental obligations. Because an entirely different situation exists in the present proceeding (i.e., an industrial enclave rather than a permanent residential community), I regard these regulatory considerations as irrelevant and unsuitable to the task before the Commission. Application of them and close scrutiny of arguments pro and con are a

distracted for the Commission, and hinder its understanding and evaluation of the broad policy issues that are involved.

For these reasons, I believe the Commission is fully justified in taking a view of these regulatory provisions that allows it to step up to its constitutional duties and to weigh the interests of the parties concerned. If this is done, I believe the record shows that the combined interests of the State of Alaska and the residents of the NANA region far outweigh in significance and import the interest of the North Slope Borough.

If, however, the Commission interprets the law as requiring the Commission to apply the detachment regulations literally, then my assessment of the matter is that the DCRA petition fails, and should be rejected. The basis for this assessment is that, if the detachment regulations are applied literally, the arguments of the North Slope Borough (that the petition does not comport with the standards in 19 AAC 10.230-250) are not successfully rebutted by the Petitioner. This conclusion is elaborated below, in terms of the applicable regulatory standards for detachment.

Best Interest Determination While the regulations require the Commission to make its own determination of the best interest of the North Slope Borough (19 AAC 10.230[a]), common sense suggests that the voters and elected officials of the Borough

are a very good judge of their own interests. A very compelling and well-documented case would have to be presented to the Commission to support an administrative finding of fact that the DCRA petition is in the best interest of the North Slope Borough. While arguments to this effect have been advanced by the Petitioner, my own conclusion is that Petitioner's arguments do not suffice to overcome the North Slope Borough's assessment of its own best interests.

Social, Cultural and Economic Characteristics Petitioner writes that he "does not claim that the social, cultural and economic characteristics of the population of the territory proposed for detachment are substantially different from or in conflict with those of the remainder of the population located in the borough...Rather, the Petitioner claims that the area of the NANA region is distinctive and distinguished from the North Slope Region."/13 (Emphasis in original.) I fail to see how a plain reading of the regulatory language allows the distinctive nature of the area to be of any relevance. The regulatory test (19 AAC 10.230[a][1]) is simply whether a substantial difference or conflict exists, or not.

Geographic Location Here the question is whether the provision of services by the North Slope Borough to the area proposed for detachment is impossible or impractical (19 AAC 10.230[a][2]). The question is not, as Petitioner argues, whether the provision

of services by a different political subdivision of the State might be more practical. Petitioner does argue convincingly that it would be more efficient to provide services from Kotzebue than from Barrow, but fails, in my judgement, to establish that the geographic location or configuration of the territory proposed for detachment would make the provision of services by the North Slope Borough so substantially difficult as to be impossible or impractical.

Transportation Again, Petitioner argues the comparative efficiency of providing responsive government from Kotzebue, and again misses the point of the regulation (19 AAC 10.230[a][3]). The regulatory test here is whether the lack of transportation facilities precludes responsive government in the area proposed for detachment, not whether government from a different location would be more responsive. In short, Petitioner fails to provide evidence that a lack of transportation facilities in the area proposed for detachment would preclude effective and responsive governance by the North Slope Borough.

In sum, whether or not the Brief of the North Slope Borough contains, as the Petitioner urges, allegations and arguments that are irrelevant, specious, incomplete, out of context, unpersuasive, and misleading, the case it makes for the failure of the petition to pass the test of a literal reading of 19 AAC 10.230-250 survives.

IV. Recommendation

Because a decision by the Local Boundary Commission must withstand judicial scrutiny, I recommend that the Commission seek the advice of the Office of Attorney General on the latitude it has in interpreting and applying the standards for detachment at 19 AAC 10.230-250. My layman's view is that the constitutional mandate of the Commission is inhibited by a literal application of these standards; that the standards are unsuited to resolving the issues raised by the petition; and that the Commission is justified in broadly construing its legal decision-making authority. On this basis, I recommend that the Commission approve the detachment petition and forward it to the Legislature for review.

However, what seems right and reasonable under the present circumstances may not also be technically legal. If the Commission feels that its proper course of action is to render a decision on this petition that is based on a close reading and literal application of the existing detachment regulations, I do not see how the petition can be approved. The petition fails the "best interest" standard as applied to the North Slope Borough, and, significantly (but perhaps not fatally in the absence of the failure of the best interest standard), it does not satisfy any of the three explicit considerations found in the detachment regulations.

FOOTNOTES

- /1 If the North Slope Borough taxed at the full legal limit, it could raise approximately \$70 million in FY 1986 for its operating budget. However, the Borough expects to raise about \$23 million in FY 1986 with a mill rate equivalent of 1.78 mills. North Slope Borough Budget Document, FY 1985-86, p. 22.
- /2 Principal outstanding on June 30, 1985, on State of Alaska general obligation bonds was \$816.1 million. Alaska State Bond Committee, Alaska: Credit Trends in a Maturing Economy, p. 40.
- /3 Alaska Department of Community and Regional Affairs, Alaska Taxable 1984, pp. 9-10.
- /4 See North Slope Borough Planning Department, North Slope Borough Capital Improvement Program FY 1986-FY 1991.
- /5 See Alaska Consultants, Inc., Barrow Arch Socioeconomic and Sociocultural Description, Social and Economic Studies Program Technical Report No. 101 (Anchorage, Minerals Management Service, Alaska OCS Office), January 1984.
- /6 Richard W. Garnett, III, "Equalization of Local Government Revenues in Alaska," ISER Occasional Papers No. 9 (Fairbanks, University of Alaska), January 1973, p. 9.
- /7 Ibid., pp. 11-12.
- /8 See, for example, AS 14.08.031, and AS 46.40.120.
- /9 See AS 39.18.030.
- /10 In FY 1986 the North Slope Borough expects to receive approximately \$328,700,000 as general fund revenue, or about \$41,000 for each permanent resident of the Borough. In contrast, the State of Alaska expects to receive about \$6,000 per capita. Alaska has the highest per capita general fund receipts among all the fifty states (State Policy Research, Inc., Arlington, Virginia).

The North Slope Borough estimates that the annual loss of revenue to the Borough at the time the Red Dog Mine is fully developed (assuming an assessed value of \$250 million), on the basis of the present levy of 18.37 mills, would be \$4,592,500. Actually, under current law and State policy, the same millage rate would yield something slightly more than that amount, because the Borough's

population would increase by about 200 people (assuming 400 total employment at the Red Dog Mine, and a shift rotation of 1:1). In any case, the potential revenue loss does not constitute a significant fiscal impact for the North Slope Borough under the circumstances.

Testimony in the record makes it clear that, in itself, the proposed detachment would have no impact on the credit worthiness of the North Slope Borough. Rather, such an impact would result only if a future detachment reached the oil and gas property at Prudhoe Bay. It seems clear from the unique circumstances of this case, and from the clearly demonstrated aversion of the Commission in previous cases to threatening the fiscal integrity of an established borough (e.g., the Lake Louise detachment petition), that this detachment is not a forerunner of other detachments that could cause alarm among bond rating agencies and underwriters.

A potential fiscal impact of any major development is the cost of providing public services to new residential population attracted directly and indirectly by the activity. In this case, no socioeconomic impacts to Barrow or other North Slope Borough communities are expected to occur, so the Borough can not claim fiscal impact from this source.

- /11 This issue is addressed in the North Slope Borough's opposition Brief at pp. 2-4.
- /12 See, for example, Fairview Public Utility District No. 1 v. City of Anchorage (368 p. 2d. 540).
- /13 Reply to North Slope Borough Brief in Opposition to Petition for Detachment, pp. 9-10.

ATTACHMENTS

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MEMORANDUM

State of Alaska

Community and Regional Affairs

TO: Gordon Harrison
Office of Management
and Budget

DATE: November 20, 1985

FILE NO: EM/IR/sj/00430

TELEPHONE NO: 465-4700

FROM: *Emil Notti*
Emil Notti
Commissioner

SUBJECT: Delegation

The Department of Community and Regional Affairs (DCRA) intends to file a petition with the Local Boundary Commission (LBC) on November 22, 1985, which proposes the detachment of certain land from the North Slope Borough (NSB). As proposed, the petition would only take effect upon the incorporation of a NANA Borough which includes all of the detached land.

As you know, DCRA typically provides staff support to the LBC. In particular, under 19 AAC 10.570, DCRA staff prepares a report which both summarizes the issues raised in the petition and which states a recommendation.

Because of DCRA's involvement in the presentation of the detachment petition, concerns have been raised regarding DCRA's ability to objectively perform our typical staff functions. While I believe DCRA could properly and fairly discharge the staff functions envisioned by the regulations, I nonetheless request that you perform these functions on behalf of DCRA. Accordingly, I delegate to you the full authority to review the petition for form and content and to subsequently prepare a report for submission to the LBC. Your exercise of this delegated authority is entirely committed to your discretion, and is not, in this regard, subject to my review.

I certainly appreciate your willingness to assist in this matter.

OFFICE OF
MANAGEMENT & BUDGET

NOV 21 1985

STRATEGIC PLANNING

MEMORANDUM


State of Alaska

TO: Marty Rutherford, Director
Municipal & Regional Assistance Div.
Department of Community &
Regional Affairs

DATE: November 22, 1985

FILE NO:

TELEPHONE NO: 561-8586

FROM: Gordon Harrison 
Associate Director
Office of Management and Budget
Division of Strategic Planning
Office of the Governor

SUBJECT: Petition for
Detachment of
Territory from the
North Slope Borough

I have reviewed the petition to the Local Boundary Commission prepared by you and your staff pursuant to AS 29.69.010(a) for detaching approximately 3,298 square miles from the North Slope Borough. Further, I have reviewed your supporting brief for the proposed action and the notice of petition that you will have published to notify interested parties. It is my understanding that you will by the close of business today, serve by certified mail the petition and brief, together with accompanying exhibits, upon the North Slope Borough. I have evidence before me that you have caused to be published forthwith in the Anchorage Daily News and the Tundra Times the notice of petition. Further, I have evidence that you intend to mail this day copies of the petition, notice of petition, and supporting brief (without attachments) to a substantial list of individuals and organizations who have expressed an interest in the proposed detachment or who may be expected to have an interest in the matter.

In my opinion, the petition conforms substantially to the regulations governing submissions of this type to the Local Boundary Commission under AS 29.68.010(a), namely 19 AAC 10.450 - 10.530 (with the exceptions agreed to by the Local Boundary Commission at its meeting November 20, 1985). I perceive no significant procedural deficiencies that should prevent the petition from being presented to the Local Boundary Commission for its consideration.

discretion, approve an equitable agreement between the municipalities affected but will independently review the proposed agreement.

(c) Territory which is part of an organized borough may not be annexed to another borough unless the commission determines the annexation to be in the best interests of the annexing borough, the borough from which the annexed territory is taken, and the annexed territory.

(d) Separate or additional proceedings are not required for detachment of territory from an incorporated city or borough which becomes annexed to another borough. The detachment is affected by, and at the same time as, the annexation itself. (Eff. 2/21/82, Reg. 81)

Authority: Art. X, Sec. 12
Alaska Const.
AS 44.47.567

Editor's Note: 19 AAC 10.210 is based on former versions of 19 AAC 05.130 and 19 AAC 15.040.

19 AAC 10.220. STATUTORY STANDARDS.
(a) In addition to the requirements of 19 AAC 10.190 - 19 AAC 10.220, the commission will approve and recommend to the legislature the annexation of territory to an organized borough only if it finds that the resulting boundaries of the expanded borough conform substantially to the standards set forth in AS 29.18.030.

(b) In approving organized borough boundary changes, the commission, with the assistance of the department, will, if necessary, determine proposed assembly reapportionment plans applicable to the organized boroughs whose boundaries are to be affected by the change. (Eff. 2/21/82, Reg. 81)

Authority: Art. X, Sec. 12
Alaska Const.
AS 44.47.567

Editor's Note: 19 AAC 10.220 is based on a former version of 19 AAC 05.140.

ARTICLE 8. STANDARDS FOR DETACHMENT FROM ORGANIZED BOROUGHS

Section

- 225. Applicability
- 230. Detachable territory
- 240. Application of standards
- 250. Distribution of assets and liabilities

19 AAC 10.225. APPLICABILITY. The provisions of 19 AAC 10.230 - 19 AAC 10.250 apply to a proposal for detachment by local action (19 AAC 10.630 - 19 AAC 10.730) or by legislative review (19 AAC 10.455 - 19 AAC 10.620). (Eff. 2/21/82, Reg. 81)

Authority: Art. X, Sec. 12
Alaska Const.
AS 44.47.567

19 AAC 10.230. DETACHABLE TERRITORY.
(a) Territory which is a part of a borough may be detached from that borough if, in the determination of the commission, the detachment would be in the best interests of the state, the territory to be detached, and the borough affected by the detachment. In determining whether to approve a detachment, the commission will consider, but is not limited to, the following factors:

(1) whether the social, cultural and economic characteristics of the population of the territory are substantially different or in conflict with those of the remainder of the population located in the borough;

(2) whether the geographic location or configuration of the territory precludes the provision of borough services provided other areas of the borough or make the provision of borough services impractical;

(3) whether the lack of transportation facilities precludes the communication and exchange necessary for responsive and integrated local government.

(b) The commission will, in its discretion, conduct public hearings or investigations after the effective date of an annexation to determine whether the extension of services is progressing in a reasonable manner. If the

...commission determines that the extension of services is not progressing in a reasonable manner, it will, in its discretion, begin detachment proceedings. (Eff. 2/21/82, Reg. 81)

Authority: Art. X, Sec. 12
Alaska Const.
AS 44.47.567

19 AAC 10.240. APPLICATION OF STANDARDS. (a) The commission will not approve a detachment unless the petitioners demonstrate to the satisfaction of the commission that the service requirements of the territory will be met following the detachment.

(b) If, in fulfilling the requirement of (a) of this section, the petitioners have proposed the incorporation of a new municipality, the commission will, in its discretion, condition approval of the detachment upon voter approval of the incorporation proposal. (Eff. 2/21/82, Reg. 81)

Authority: Art. X, Sec. 12
Alaska Const.
AS 44.47.567

19 AAC 10.250. DISTRIBUTION OF ASSETS AND LIABILITIES. (a) If territory sought to be detached consists entirely of a city having authority and responsibility for the powers formerly provided by the borough from which detachment is sought, the commission shall determine the manner in which the assets and liabilities of the borough shall be distributed between it and the detaching city.

(b) If territory sought to be detached consists entirely of territory not within a city or consists of a city not having authority to provide services currently provided by the borough from which detachment is sought, the commission shall determine the manner in which the assets and liabilities of the municipality from which detachment is sought shall be distributed between it and the state. (Eff. 2/21/82, Reg. 81)

Authority: Art. X, Sec. 12
Alaska Const.
AS 44.47.567

ARTICLE 9. STANDARDS FOR DISSOLUTION OF ORGANIZED BOROUGHS

Section	
260.	Dissolution
270.	Application of standards
280.	Dissolution effected by annexation

19 AAC 10.260. DISSOLUTION. (a) borough may dissolve if it has no indebtedness bonded or otherwise, or has proposed a method of repayment which will protect the interest of its creditors and if the following standards are met:

(1) the borough has ceased to exercise all the mandatory powers of a borough;

(2) the borough has failed to conduct two more consecutive regular elections in the manner provided by law; and

(3) the borough no longer meets the standards for incorporation as provided by law and regulation.

(b) The commission will, in its discretion, conduct public hearings or investigations after the effective date of an incorporation to determine whether the provision of the municipal services is proceeding in a manner consistent with that outlined in the petition for incorporation. If the commission determines that the provision of services is not proceeding in a manner consistent with that outlined in the petition, the commission will, in its discretion, begin dissolution proceedings. (Eff. 2/21/82, Reg. 81)

Authority: Art. X, Sec. 12
Alaska Const.
AS 44.47.567

19 AAC 10.270. APPLICATION OF STANDARDS. (a) If the commission determines that it will recommend to the legislature that a borough be dissolved, the borough may not make an expenditure without first receiving the written approval of the commissioner.

(b) The assets of the borough being dissolved become the assets of the state.

(c) If the liabilities of a borough being dissolved

MEMORANDUM

State of Alaska

TO: The Honorable Hal Brown
Attorney General
Department of Law

DATE: December 6, 1985

FILE NO: 86F-391

TELEPHONE NO 465-3568

FROM: Gordon S. Harrison *gsh*
Associate Director
Office of Management and Budget
Division of Strategic Planning

SUBJECT: Role of 19AAC 10.230(a)
in North Slope Borough
Detachment Petition
Proceedings

I would like your views on a matter pertaining to the petition before the Local Boundary Commission for detachment of certain territory from the North Slope Borough. As you know, in this case the Commissioner of the Department of Community and Regional Affairs is the petitioner, and I am performing certain staff functions to the Local Boundary Commission. The question I am bringing to you in this memorandum is a legal one that will surely be asked by the Commission, and that I am unqualified to answer. In order to expedite the decision-making process, I would like the Commission to have, as early as possible, an understanding of all the options it has in this matter.

My question is whether 19AAC 10.230(a) should stand in the way of a decision to approve the detachment, if the Commission were to decide that as a matter of general public policy the detachment is desirable. This regulation reads, in part:

Territory which is part of a borough may be detached from that borough if in the determination of the Commission, the detachment would be in the best interests of the State, the territory to be detached, and the borough affected by the detachment.

Therefore, in order for the Commission to approve the detachment, it would have to decide (1) that detachment is in the best interest of the North Slope Borough (despite Borough opposition), or (2) to ignore, nullify, or otherwise circumvent the regulation on the basis of a judgement that other interests have precedence over the interests of the Borough.

My own understanding is that the intent of the framers of the Constitution of the State of Alaska in creating the Local Boundary Commission was to empower a body to make boundary determinations, if not from Olympian heights, at least from the perspective of the broad public interest as well as local interests. Does the regulation at 19AAC 10.230(a) frustrate this constitutional purpose? Also, the existing regulation arguably does not contemplate the situation at hand, but was

written with different circumstances and different problems in mind. It seems that the regulation may establish a deliberately difficult standard for detachment in order to preserve the integrity of boroughs from the efforts of fringe communities (or absentee landowners) to escape borough taxation and regulation, as in the recent case of Lake Louise.

I expect that the Local Boundary Commission will want to know your views on these matters in order to determine what options it has in the detachment petition, and I am therefore presenting this request to you at the present time.

GSH/dmc