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NOME

ANNEXATION

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experience I believe and it's the city manager because he was city manager in other areas. But I believe everybody else on the council has no idea of taxing or how to go about it any they don't even have an appraiser in town here that can go around and set the value of land or buildings or anything. So this is my idea that they have nothing to go on to annex such a great amount of land what they want.

Palmer McCarter: Thank you any questions for Mr. Douglas. Okay Virginia White I believe its Virginia White, followed by Robert E. Bean. Is Virginia White here? Robert E. Bean, followed then by Mr. Oleson or excuse me Olafson. Olsen, I'm sorry.

Bob Bean: Ladies and gentlemen of the Commission, citizens of Nome. My name is Bob Bean, and I have been a resident outside the city limits for about the past five years. I currently reside inside the city limits. I would like to correct what I feel is one misstatement made on the city's behalf and that was in reference to one area which undeveloped within the city limits in central core area. It was stated that a subdivision was attempted and applied for and at that point that it was denied and did not progress because the developers did not have the money to support the cost of development. In fact what happened in that particular case was that the city did not have comprehensive plan for a subdivision and consequently the developer approached the city planning commission and requested guidance on how to proceed. He received that guidance on December 18, 1979, and proceeded with that. And when he presented his plan in conformance with that guidance it was rejected and in fact for additional stipulations made at that time. That is why it is in litigation. Basically the other points that I had have already been made and I do not have anything else to add. Thank you very much for your time.

Palmer McCarter: Is there a question of Mr. Bean.

C. B. Bettisworth: Are you in favor of or opposed to the annexation. He didn't even say.

Bob Bean: Well from a personal stand point, if I had an opportunity to read the proposal that the city presented as far as their differential

taxation program, which I requested, a number of months and years ago, and it was equitable I would probably be for it. Our being taxed for services that are being provided and not taxed for those services that were not being provided. I would probably go along with it. But to take a pig in a poke so to speak or to sign on for a job when you don't know what the wages are going to be or the benefits I think is a little bit foolish. If I knew what the music was going to sound like when it was being played, I might be more interested in (indiscernible).

Palmer McCarter: Are there other questions of Mr. Bean? Mr. Olsen followed by Lee Rasmussen.

Martin Olesen: I'm Martin Olesen. A resident of Galovin. I used to live in Nome. I have property in Nome. I am also the chairman of the board of Bering Straits Native Corporation and this is where I get involved because Sitnasauk Native Corporation, King Island Native Corporation and we're theoretically the parent organization although if you read if you read the newspapers we really haven't done very good in that situation. However, I do feel involved. And I don't have a prepared statement. The reason is George is here he made a presentation as the president of Bering Straits Native Corporation to go ahead and put everything out. I stayed home. In fact I'm staying at George's house so I listen to FM radio on KICY. I heard everything on there. I heard all these presentations and what I really read while I was hearing this was somebody went right along and changed the rules in the middle of the road. George was addressing a great big annexation from Cape to Cape Nome and there several people have done that. All of a sudden within the last two or three days you people in collusion with the City of Nome have decided to change that. Why? I think you people are pro-annexation. Why? I thought you were unbiased big brother up here gonna resolve help us resolve our own. Turns out you're not. You propose your own. And the City of Nome went ahead and went along right with you. Now, us people that went

ahead and responded to this original situation in a matter of two or three day we haven't had a chance to go and respond to that. And I don't feel that you people on the Boundary Commission at this present time, due to your pro-annexation philosophy that you have just showed are not in a position to judge this. Because you went ahead and offered advice and offered a little map. You did that. You could have said just here I thought we were addressing one issue. Now all of a sudden we're raising two. There are people here that are not--don't have the time frame to go ahead and respond to this second situation as come up in the last couple of days. So I just don't feel that --.I just don't feel that you're being fair to the land owners in this area. And I think that there should be--this meeting right here should be for this great big vast area Nome originally wanted to annex. And that's it. If they want to change it, go ahead and put out an order, say that we want to change this and we realize the error or our ways and all this you know. But that's not what happened. All of a sudden we--the City of Nome change their position. And you people went right along with them. I don't think it's fair. I don't think its fair for us people that in opposition to Nome's situation to go ahead all of a sudden in about a two day period, be able to come up with a really comprehensive reason why we're--we're given a reason, but then we have to do a little research and everything. And I really don't feel that you people are treating us fair. You're railroading this whole thing through. You right along with the City of Nome. And I don't feel that you people have the authority, the ability, cause you should have seen this yourselves, to go ahead and rule on th's particular move.

Palmer McCarter: Are there any questions or responses to Mr. Olesen, please.

C. B. Bettisworth: I guess what I'd like to say as acting chairman of the Commission is that the proposal has been put before us that the city has accepted for the revised boundaries. The proposal was developed by the staff of the Boundary Commission. Not the proposal

was drawn by any of the three of us or the members who are not here. It was prepared so that we might take it under consideration and that's what we're doing, is taking it under consideration.

- Martin Olesen: In other words, you already said this is going to be annexed so let's go ahead and make it.
- C. B. Bettisworth: This is not true.
- Martin Olesen: You be prepared it in anticipation of that.
- C. B. Bettisworth: No, I'm afraid that's not true.
- Martin Olesen: Well, that's the way I feel about it. Whether it's true or not that's the way I feel about it.
- Palmer McCarter: Mayor Rasmussen.
- L. Rasmussen: Well collusion isn't on my mind. But its interesting to see that the issue of annexation has put our linen on the line and I found that most of it to be dirty tonight. There's one issue I think that would run almost counter to this and the number of people that would show up and I'm going to have to revise my estimates on that, a dog ordinance usually brings out a large crowd but the Boundary Commission has done a better job and my commendations to you for that. I would like to speak I hope rather briefly to what the process was that we went through on this annexation that came forward. The city will be the pundit for what is taking place tonight and I guess rightfully so. But in the process I became mayor in 1977 and there was sort of a ramrod annexation that was taking place at that time, and I felt that as long and as well as the rest of the council did that the public deserved a better shot at the annexation proposal that was coming up. We delayed the action that took place at that time and I sought authority and appointed a committee of 8 members to work in conjunction with the 5 member planning commission to gain a wider input into annexation and its whole scope. There was an attorney appointed who is now the attorney for Sitnasauk Native

Village Corporation, there were three members Sitnasauk Native Village Corporation, one from King Island, there was a member from Icy View, a member of the school board, and the manager of Alaska Gold was a member of that committee. They worked in conjunction over a series--through a series of hearings to begin to put forward a more comprehensive annexation than had been proposed in any of the previous three attempts. I'll remind you annexation has been on the minds of Nome since about 1964 when they first started considering passing ordinances to set up extra territorial rates for their services that were going free beyond their boundaries. And as an alternative annexation came to the forefront and still sits there today as an alternative to going through and setting up a system by ordinance of charging rates for fire, for police, schools, water resources, use of our streets, planning authority now coastal zone, the different sources of revenue that we get one way or another that also encompass the areas outside the city limits. In the planning commission with the 8 advisory members serving as an annexation committee, they went through a process of three public hearings. They made a recommendation to the city council, the council set up an ordinance procedure which went into its first reading and then throughout the next six months the process of four additional public hearings. All seven hearings were advertised for the purposes of gaining input into annexation. (indiscernible) hearing the council at that time by a vote of five to nothing passed the annexation proposal which is before you. And of course until it comes before the boundary commission I suppose nobody wishes to put forth public input. There it is tonight. I really haven't heard much said other than the superintendent's of schools whose spoke in behalf of our schools which exist outside the city limits. We have problems with the REAA. There is slightly more than 1/5 of their students

attending our school here in Nome. I see as solving a majority of the problems for us. We have a great pride in running a first rate first class school system. Its taken a period of time after the state dominated it for a period of years to pick up the remnants and the mess and clean it up to bring it back to what we feel is the good system. I feel that this is a very viable reason for annexation in fact of those that I talked to with exception of a couple who were rabidly against annexation and couldn't be talked to, almost everybody agreed that there were some valid reasons for annexation of which schools was primary. Second was our water resources. And I would mention to some extent that this proposal here does not cover the full scope of water resources. The apparent source of water and this is not substantiated by an engineering report but by a mining report comes basically from the Nome river basin through a fissure in the Anvil Mountain. The airport is a very driving factor. I hear many comments that if we tax the airport the price of ticket goes up. My thoughts on this is how far do you split the price down to increase how much the cost of a ticket. Taxes on the airport would not be that great by any means. In fact if what is going to take place as suggested by the governor in his budget request this year, taxes very likely could be cut in half. If they go even farther with other proposals, property tax may very well be a thing of the past. Just as much as very well oil development may take place offshore. Our proper authority of planning is probably the most important thing. Almost everything that takes place, and mind you there are about three times as many mining operations operating out of Nome than there was last year. They are demanding on our facilities as small as they are and inside our 560 acres and it does not leave us adequate area to move, to plan, to provide for the future. I've been told many times clean up your act and at the same time there is twice as much taking place outside of

our current city limits, that is driving us to operate a maintenance type of operation instead of a futuristic type of operation. If the area is annexed, there will be substantial increases in state revenue sharings. Although that could change with the legislature, I expect the revenue sharing to continue up. Federal revenue sharing does continue at the present time and that would come to the local level for the additional people in the area that we would service. The areas living outside the city of Nome would have at this time no immediately access to grants or other programs that are supplied by the state or federal government and the city in its ultimate wisdom can provide this access of those people, of their areas whether it be the mining company or Sitnasauk Native Village Corporation, or the airlines, to this access of dealing with government. One thing I would like to say, I am mayor of the town, I own a business, I own a house here in town, I also own land in the area that will be annexed or may be annexed. And I too will become a taxpayer out in that area. At the present time its undeveloped land or near developable what we're calling developable land. I will more than willingly pay taxes assuming there are taxes in that area as I feel that as long as I have that land there I too am driving this local government in the direction that it cannot control. I will summarize. I think that we have if annexation takes place, an accomodatable, workable situation in the present city government and that problems that may appear to exist can be solved very accomodatingly with the present government. I would like to commend the Boundary Commission for putting up for the length and the depth and I also would like to thank the people who showed up who've tended to show a very high quality of testimony tonight. We haven't impaired your ears too much. Thank you very much.

Palmer McCarter: Are there any questions of Mayor Rasmussen?  
Bert?

B. Griss: I'd like to hear your position on (indiscernible).

L. Rasmussen:

I have some reservations on the boundaries. That's as an individual. My council has made their, their consensus of what they're going to do. That doesn't preclude that I have different idea. There are areas in there the plans on rezoning the railroad one of these days, that is not in the proposed limits or the consensus limits that we're talking about. The water resources that we will need if we end with oil and gas or well outside. I very well understand we can pass an ordinance to accomodate that situation but your (indiscernible) be in court just as well and you can anything to court.

Palmer McCarter:

As previously indicated on the record the Boundary Commission in one of our brief recessions indicated that although it was an optional item on their agenda for business that they will now be conducting at 9:00 tomorrow there will be no decision made on this Nome annexation either tonight or tomorrow. The decisional meeting will be scheduled it will be properly noticed. Both the city and respondents have been invited to offer written responses to each others briefs prior to that decisional meeting. Are there any other (indiscernible)

Bob Hicks:

(indiscernible) . . . that all briefs have to be in ten days from today or something.

Palmer McCarter:

I'll defer that to the acting chairman.

(Indiscernible conversation.)

Palmer McCarter:

The acting chairman has indicated that the briefs by the city and the respondents will have a deadline of December 5th for submission. Are there any others who came after the time that you were allowed to sign up that would like to offer final comments? Yes sir. Come forward.

?

I'm currently a member of the city council. And I'm in favor of annexation. I think there is a few areas and I would say services most of the sewer and water the town put out by the public health service. Which if the City of Nome had done it themselves we have to put out a very large amount. (Indiscernible.)

expanding their sewer system. You can only expand by how much money. And the city has been in debt, or they were in debt (indiscernible). I think if the city plans to move out in a progressive manner, you have to have more land to progress with. (Indiscernible) to talk to the public. Are there any questions?

C. B. Bettisworth: I take it you're in favor of the revised proposals.

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Part.

Palmer McCarter: Are there any other questions? Okay the public hearing is now closed at 11:05. I appreciate the attendance and the cooperation that all of you gave this hearing.

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1 36. On November 5, 1980, the Nome Council passed resolution  
2 81-11-1 at the request of the Commission's staff in order to  
3 remedy the ordinance's failure to authorize annexation of  
4 Township 12S, Range 32W, Section 17 and 22. The staff  
5 assistant on September 10, 1980, characterized this action  
6 as "necessary". The city has never authorized the annexation  
7 of Township 11S, Range 34W, Sections 1 through 30, 35, and  
8 36. The significance of this failure cannot be belittled.  
9 The referenced sections contain all of the territory contiguous  
10 to the present City of Nome. Non-contiguous territory may  
11 not be annexed except in certain narrow circumstances which  
12 are not met here. 19 A.A.C. 05.010(b). Thus, at least two  
13 of the requirements of the Commission's own regulations have  
14 clearly not been met by the City of Nome. The Alaska Supreme  
15 Court in United States Smelt., R. & M. Co. v. Local Bound.  
16 Com'n., 489 P.2d 140 (Alas. 1971) found that AS 44.19.260(a)  
17 required the development of standards and procedures by this  
18 Commission. If the Commission may ignore those standards  
19 and procedures, it is as if the Commission has no standards  
20 and procedures.

21 Second, our fellow respondent, the Bering Straits  
22 Native Corporation, correctly points out that the census  
23 submitted with the petition entirely fails to meet the  
24 requirements of 19 A.A.C. 10.040(2) (Br. at 12-15.) Population  
25 growth is a significant factor in weighing the necessity for  
26 an annexation, and only the fortuitous delay of these  
27 proceedings until the preliminary 1980 census figures were  
28 revealed prevented this Commission from being substantially  
29 misled.

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1 Third, this respondent reiterates that the city  
2 has completely ignored yet another of the Commission's  
3 regulations, 19 A.A.C. 05.020. That provision states that:

4 No annexation will be approved unless the annexing  
5 city demonstrates to the satisfaction of the  
6 commission that it is capable of extending and  
willing to extend services to the annexed area as  
follows:

7 (1) . . . full municipal services shall be extended  
8 to the annexed area immediately except where  
impossible for want of necessary capital facilities.  
9 Where full municipal services may not be provided  
immediately, the annexing city shall satisfy the  
10 commission that it will provide tho. . services  
within a reasonable time.

11 The City of Nome has given no consideration to what services  
12 it will extend to which areas, and on what timetable. The  
13 City Manager unveiled a three-tiered taxation proposal for  
14 the first time before this Commission on November 21, 1980.

15 This proposal must be seen as a last minute, unofficial  
16 reaction to criticisms leveled by this respondent and  
17 others. Even if the City Manager's proposal were the  
18 reasoned product of a properly convened City Council, it is  
19 entirely insufficient to meet the requirements of law.

20 There has been no consideration given to what percentage of  
21 the territory would fall into which category, what amount of  
22 tax will be levied on each category, and what standards will  
23 determine what territory fits in which category. And the  
24 fact that a plot is deemed "developable", for instance,  
25 promises no nexus between the level of services offered and  
26 amount of tax levied. In short, the city has failed to  
27 address another most significant regulatory standard.

28 Fourth, proceedings thus far are pervaded with the  
29 aura, if not the reality, of ex parte contacts. Resolution  
30 81-11-1, amending the ordinance authorizing annexation, was  
31 passed, according to the minutes of the Nome Common Council's  
32 special meeting of November 5, 1980, because "[t]he local

1 Boundary Commission has requested that the Council pass a  
2 resolution on the two parcels and reaffirming annexation".  
3 Just days before a hearing of November 21, 1980, and  
4 apparently at the request of someone outside the Department,  
5 the Department of Community and Regional Affairs amended its  
6 recommendation to include territory containing a restaurant  
7 popularly known as the Roadhouse. Contacts between the city  
8 and the Commission's staff on the day of the hearing apparently  
9 led to a hastily called meeting wherein the Council purported  
10 to reverse its reaffirmation of November 5 and endorse the  
11 Department's recommendations. Since a Commission understandably  
12 relies to some significant extent on its support staff, and  
13 undoubtedly gives the pronouncements of that staff great  
14 weight, respondent's right to an "impartial tribunal" appears  
15 to have been compromised to the extent that the Commission's  
16 staff and the city have worked in tandem on this matter.  
17 See K & L Distributor v. Murkowski, 486 P.2d 351, 357 (Alas.  
18 1971); United States Smelt., P. & M. Co. v. Local Bound.  
19 Com'n., 489 P.2d at 143.

20 The Department of Community and Regional Affairs'  
21 last minute inclusion of additional territory within its  
22 recommendation was quite possibly prejudicial to the property  
23 owners in the newly included area. Said property owners may  
24 have thought themselves safe after determining that the  
25 city's proposal had no chance of success and after finding  
26 themselves outside the Department's original recommendation,  
27 only to find after the hearing that their sanguineness was  
28 not justified. Such lack of notice does not comport with  
29 our notions of "due notice and opportunity to be heard".  
30 See K & L Distributors v. Murkowski, supra; United States  
31 Smelt., P. & M. Co. v. Local Bound. Com'n, supra.

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1 The "work session" held by the Nome City Council  
2 on November 21, 1980, constitutes a fertile ground for  
3 objection. Attorneys for this respondent called City Hall  
4 on the morning of the 21st, specifically asked whether the  
5 Council would be meeting during that day, and were informed  
6 that the Council had no plans to meet that day. In fact,  
7 the gathering which apparently took place was illegal. AS  
8 29.23.210 requires 24 hours written or oral notice of a  
9 special meeting except in an emergency. No such notice was  
10 given, and this Commission's visit hardly constituted an  
11 emergency. Therefore, the Council members had no authority  
12 to accomplish anything at their gathering. A journal was  
13 not kept of the proceedings, and there were no recorded roll  
14 call votes. AS 29.23.210(b), (d). In short, the City  
15 Council did not authorize an annexation along the lines of  
16 that recommended by the Department of Community and Regional  
17 Affairs. The city has authorized but one annexation petition -  
18 the one filed with the Commission on July 14, 1980. That  
19 is the only annexation petition before this Commission.

20 It is, of course, just as well that the city had  
21 no power to and did not alter its petition at its "work  
22 session" of November 21, 1980. If it had, the lack of time  
23 provided the respondents and the public for reviewing and  
24 preparing comments on the newly-authorized annexation would  
25 have constituted an obvious violation of the regulations,  
26 the statute, and due process of law. Such a procedure is  
27 anything but "consistent with a fair trial". See V & L  
28 Distributors v. Murkowski, supra; United States Smelt., R. &  
29 M. Co. v. Local Bound. Com'n., supra.

30 Lastly, respondent is constrained to reiterate  
31 that this Commission is without authority to alter the  
32 boundary change properly authorized by the City of Nome.

1 The Commission's authority stems in the first instance from  
2 the Alaska Constitution, Article 10, Section 12. The  
3 Constitution says, in pertinent part: "The Commission. . .  
4 may consider any proposed local government boundary change".  
5 In this case the change was proposed and authorized by the  
6 City of Nome, though such proposals may also have their  
7 genesis in the legislature or in the Department of Community  
8 and Regional Affairs. AS 44.19.260(a)(3). The committee on  
9 local government to the Alaska constitutional convention had  
10 recommended that the Commission be allowed to make boundary  
11 changes on its own motion, but that advice was rejected in  
12 the final product. Alaska Constitution Convention, Commentary  
13 on Proposed Article on Local Government, December 19, 1955  
14 at 5. As this respondent noted in its Answering Brief, the  
15 statute as well gives every indication that the Commission  
16 must either accept or reject an annexation petition originating  
17 with a municipal government. See AS 44.19.260(a)(3), AS  
18 44.19.310, AS 44.19.330. The same is true of the pertinent  
19 regulations. As an executive agency mandated by the Constitution  
20 and created by statute, the Commission has only those powers  
21 expressly granted it or necessarily implied. See Civil  
22 Aeronautics Board v. Delta Air Lines, 367 U.S. 316, 322  
23 (1961); Soriano v. United States, 494 F.2d 681, 683 (9th  
24 Cir. 1974). It should be apparent, then, that the Commission  
25 is not authorized to draw boundary lines. Respondents  
26 submit that any action by this Commission amending the  
27 city's petition would be ultra vires and void.

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1 Little more need be said about the city's concern  
2 for its water resource at Moonlight Springs or elsewhere.  
3 The city has ample legal authority to annex the Springs, and  
4 ample legal authority to do what it will with any watershed  
5 beyond its boundaries. It need not annex 235 square miles  
6 of tundra in order to protect its water.

7 The city also reiterates its desire to plan for  
8 future development. Respondent need only observe once again  
9 that future development is entirely speculative, that present  
10 indications are that Nome's population is static, and that  
11 Nome has shown no ability to plan for its present 525 acres.  
12 Environmental Services, Ltd., an Anchorage concern, is  
13 currently in the preliminary stages of preparing comprehensive  
14 plans for both the City of Nome and the surrounding area  
15 under joint federal, state and local auspices. Given Nome's  
16 past planning record, this joint effort promises to achieve  
17 a result by mid-1991 superior to anything the city could  
18 achieve for years to come.

19 If the city's statements at the public hearing are  
20 an accurate guide, the Fire Department's service to the  
21 territory is the city's most compelling reason for seeking  
22 this annexation. The department is, of course, an all  
23 volunteer force. However, the city will contribute \$61,227.00  
24 to the department for such things as training, machinery,  
25 equipment and maintenance in 1980-91. The territory's  
26 proportionate share of this sum, after per capita state  
27 contributions, would be approximately \$1,750.00. (Answering  
28 Brief of Alaska Gold Company at 12-13.) Annexation of 235  
29 square miles is a rather dramatic way of raising \$1,750.00.  
30 A membership or voluntary contribution program seems more  
31 sensible. And respondent doubts that territory residents  
32 should have to pay a strict per capita share, since response

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1 times to a territory fire would almost always be greater  
2 than to a city fire, and since the department simply could  
3 not serve the more isolated territory residents in timely  
4 fashion.

5 The city's representatives were particularly  
6 impressed with the fact that as recently as November 5,  
7 1980, the Fire Department was asked to and did respond to a  
8 fire at the Alaska Gold Company's dredge number five. To  
9 date, at least, cooperation between the City and the Gold  
10 Company has been reciprocal. In the last decade, in excess  
11 of 50 acres of Gold Company land within the Nome city limits  
12 has been sold or conveyed to the city at its request. The  
13 Gold Company donated to the city the 43 acres of thawed  
14 ground which now features the Nome-Beltz School.

15 Although the city has not been able to justify its  
16 annexation attempt under the administrative criteria contained  
17 in Title 19 of the Alaska Administrative Code, it does of  
18 course have its reasons for wishing to absorb the southwestern  
19 portion of the Seward peninsula. Some of these reasons were  
20 evident at the November 21 hearing. There was some evidence  
21 of the civic inferiority complex - i.e., a city of 525 acres  
22 is just not big enough when compared to its Alaskan brethren.  
23 But there is a good and historic reason for Nome's size -  
24 the surrounding land was and is more valuable for mining  
25 than for residential development. Upwards of 20,000 people  
26 were once accommodated in the present Nome city limits.

27 There appears also to be a notion that the Alaska  
28 Gold Company, and eventually the native corporations, represent  
29 a convenient source of tax revenues for services not rendered.  
30 The shortsightedness of such an approach is obvious. Annexation  
31 for taxation alone is also violation of the due process and  
32 other protective provisions of the Alaska Constitution.

1 A notion similar to the last is that the oil  
2 companies will discovery oil in the Bering Sea and be forced  
3 to come ashore in the expanded city of Nome, thereby enriching  
4 the city forever after.

5 Finally, there is a fear in some political quarters  
6 in Nome that the city will one day "be ruled from Teller".  
7 This fear also helps explain the city's difficulties with  
8 the Bering Strait School District, and the city's refusal to  
9 participate in the Bering Sea Coastal Commission. In this  
10 instance, the idea seems to be that an enlarged City of Nome  
11 will help neutralize the possibility of a borough form of  
12 government.

13 D. CONCLUSION

14 Respondent does not offer the above speculations  
15 regarding the city's motivations as absolute truth. Rather,  
16 they are offered because they may help explain an annexation  
17 effort which is otherwise mysterious. It should be fairly  
18 clear by now that Nome is not growing, has no concrete  
19 prospects for growth, has not to this day managed to serve  
20 the urban core properly or even to plan for the development  
21 of the city, and has given no thought whatever to what it  
22 would do with the territory if it got it - beyond, of course,  
23 taxing the Gold Company, and eventually, the native corporations,  
24 and perchance, the oil companies. The Commission should  
25 emphatically reject this effort at empire building.

26 DATED this \_\_\_\_\_ day of November, 1986.

27 ROBERTSON, MCNAGLE, EASTAUGH & BRADLEY

28  
29 By \_\_\_\_\_

30 Carl Minner  
31 Of Attorneys for Respondent  
32 Alaska Gold Company

ALASKA LOCAL BOUNDARY COMMISSION  
225 Cordova Building B  
Anchorage, Alaska 99501

In the Matter of Annexation )  
by the City of Nome, an )  
Alaska Municipal corporation. )  
\_\_\_\_\_ )

BRIEF OF PETITIONER

I INTRODUCTION

The City of Nome, Alaska is a first class general law municipality organized in 1901 and existing under the laws of the State of Alaska. The original boundaries of the City of Nome encompassing 525.4 acres have remained unchanged since 1901. According to the census certified by the Nome City Council on October 10, 1978, the population of the City of Nome is 2,892. The population within the territory proposed for annexation is 252, plus many summer residents.

In 1970, the City of Nome petitioned for annexation of a smaller area adjoining the present city limits. The Alaska Local Boundary Commission recommended annexation of this proposed territory, and the Alaska Legislature did not disapprove the recommendation. However, United States Smelting, Refining, and Mining Co., Inc. (now known as U-V Industries, Inc. operating as Alaska Gold Company), a major property owner within the territory proposed for annexation, challenged the procedures of the Alaska Local Boundary Commission in the Superior Court, and ultimately the Alaska Supreme Court held that the annexation was invalid and of no effect because the Local Boundary Commission lacked the power to recommend such boundary changes without first developing standards pursuant to AS 44.19.260(a). United

States Smelting, Refining and Mining Co. v. Local Boundary Commission, et al., 489 P.2d 140 (Ak. 1971).

In October, 1977, Mayor Leo Rasmussen appointed a citizen committee to study annexation and make recommendations to the City Council. The committee was led by Mr. Robert Schick, who at the time was also chairman of the Nome Planning and Zoning Board. This citizen committee studied many proposals, held public hearings, and took testimony from interested persons both within the municipality and within the territory proposed for annexation. By resolution, the Nome City Council accepted the recommendation of the citizen committee with modifications, and by Ordinance 78-5-1, the Nome City Council directed the city manager and the city attorney to research, prepare and file this Petition.

## II MUNICIPAL SERVICES

The City of Nome Joint Utilities System currently provides electrical, water, and sewer services to Nome residents. Garbage and solid waste disposal services have recently been transferred from the Nome Joint Utilities System to a private operator. The City of Nome provides maintenance and repair services for city streets and rights-of-way. The City of Nome owns all utility poles within the municipality, and rents some space on these poles to General Telephone Company and North Star Communications, Inc. (cable television).

Law enforcement protection is provided by the Nome Police Department, consisting of the chief, a lieutenant, a sergeant, a corporal and two patrolmen. The animal control ordinance is administered and enforced by one person on contract with the City of Nome. The police department has three radio equipped patrol cars.

Fire protection is provided by the Nome Volunteer Fire Department, consisting of approximately 40 volunteers, comprising 3 truck companies. Major equipment includes a 1976 Ford caterpillar diesel truck with a 55-foot snorkle boom, a 1,000 gallon per minute midship pump, and a storage capacity of 500 gallons of water and 50 gallons of foam; a 1965 Ford F800 truck, with a 1,000 gallon per minute midship pump, and a storage capacity of 900 gallons of water and 50 gallons of foam; and a 1959 Ford F800 with the same capabilities. The volunteer fire department also owns a 1975 Chevrolet pickup hose truck, and a 1974 GMC van outfitted as a rescue vehicle with extrication equipment and medical equipment. The volunteer fire department includes 3 certified EMT instructors and a certified fire service training instructor. The members meet once monthly in a business meeting, and once or twice monthly for training. The only paid employee is a full-time maintenance man at the fire hall.

Medical services for the City of Nome are provided by the Norton Sound Regional Hospital, a private regional health corporation funded by federal sources and municipal revenue sharing.

Ambulance services are provided in Nome by members of a volunteer group through the local hospital.

The City of Nome provides a public library and a museum, housed in a recently remodeled and expanded two-story building. The library contains approximately 10,000 volumes, and is staffed by a full-time librarian, a CETA assistant and local volunteers. The museum is staffed by one curator/coordinator.

Within the present city limits, the physical plant of the Nome City School District consists of an elementary

school and an administrative office building. Commencing with the 1978 school term, the junior high school was combined with the senior high school at the Nome Beltz complex, located outside the city limits and within the area proposed for annexation. <sup>At Nome, Alaska, the City of Nome had donated</sup> The City of Nome had donated approximately 43 acres of land to the State of Alaska for the construction of the Nome Beltz complex in 1964 as a vocational school. Later, with the aid of a \$1,000 grant to the City of Nome, the Nome Beltz complex was expanded for combined services as a regional high school and as the city high school. In 1973, the operation of the facility was turned over to the Nome City School District under a use permit from the Alaska Department of Education. With the creation and implementation of the regional education attendance areas in 1975, the rural students returned to their villages. In January, 1980, the State of Alaska transferred title to the Nome Beltz complex to the City of Nome. Dormitory facilities at the complex are leased as offices, and apartments are leased to teachers and village students in Nome for special training projects.

### III MUNICIPAL SERVICES TO THE PROPOSED TERRITORY

The City of Nome currently provides to the non-resident, within the area proposed for annexation free fire protection services, ambulance services and sanitary fill facilities. At no cost differential, the city provides piped water to the Nome Beltz complex, to approximately 36 customers at FAA housing, and to approximately 10 trailers at the state trailer court. (See Appendix I for locations of referenced sites.) In addition to the piped water system, approximately 60 customers outside the city limits receive trucked water at Icy View, the State Highway Department complex, the Airport, and the East End (including the Roadhouse, the radio station, and the FAA facility). As with piped

water, no price differential is charged for truck water service outside the municipal boundaries.

Forty-three percent of the electrical load on the municipal generators is from energy demands outside the city limits at Icy View, the Nome Beltz complex, the State Highway Department complex, the FAA housing complex, the Airport, the state trailer courts, and the East End facilities. A four-cent-per-kilowatt-hour differential is charged for electricity outside the City of Nome, with the exception of the Nome Beltz complex which pays the same rate as city residents.

The present Nome sewer system serves about one-third of the dwellings within the City of Nome, and does not extend beyond the city limits.

Although the Nome Police Department lacks jurisdiction beyond the city limits, the city police have responded at no charge on numerous occasions to requests from the surrounding territory for both law enforcement and emergency assistance.

Seventy-nine students attending the Nome Public Schools reside outside the city limits. State law provides for a tuition grant to the Nome City School District on a per-capita basis for non-resident students. The Nome City School District has in the past encountered administrative problems obtaining timely payment of the tuition funds. To alleviate that problem, the parents of a large number of non-resident students in 1978-79 petitioned the Commissioner of Education to declare the populated area immediately surrounding the City of Nome as part of the Nome attendance area. Annexation would permanently solve this administrative problem.

The city imposes no extra charges for non-resident use of the municipal library, the port facilities, the cemetery, recreational areas, and other general services.

The only municipally owned real property outside the existing boundaries of the City of Nome are the 43 acres at the Nome Beltz complex and approximately 12 acres of land at Moonlight Springs--the water supply for the City of Nome. The city operates a sanitary land fill approximately one-quarter mile north of the Airport. This land is owned by the Alaska Gold Company, and made available to the City of Nome on a lease permit. The facility is operated six days per week, and serves the disposal needs of the entire area.

#### IV CHARACTERISTICS OF THE TERRITORY PROPOSED FOR ANNEXATION

Approximately 252 people reside outside the city limits and within the territory proposed for annexation. Most of this population resides in an area bounded by Sunset Creek and the Snake River on the west, Banner Peak and Anvil Mountain to the north, and Cape Nome to the east. Much of the land in this populated area is owned by the federal government, the State of Alaska, Sitnusak, Inc., and the Alaska Gold Company. The Alaska Department of Aviation maintains and operates both the Nome Airport and the so-called "city airport." Icy View is a suburban subdivision of 103 lots containing 21 residential structures and one industrial garage. Another subdivision has been platted recently at the intersection of the Snake River and the Nome-Teller road. The single largest land owner in the populated area outside the city limits is U-V Industries, Inc., operating as Alaska Gold Company.

Beyond this area containing most of the population of the territory, the primary land owners are the Alaska Gold Company and Sitnusak, Inc., the Nome village corporation organized under the Alaska Native Claims Settlement Act, 43 U.S.C. §1601 et seq. According to the information presently available, Alaska Gold Company owns approximately 16,000

acres within the territory proposed for annexation, and Sitnusak, Inc. will receive conveyance to approximately 161,280 acres, a substantial portion of which is within the territory proposed for annexation.

There is a relatively high density of permanent summer camps located along Dexter Creek in the same area of the Nome River. Other summer camps are found along the mouths of Cripple River and Penney River, and along the shore between the present boundaries of the City of Nome to Cape Nome.

#### V JUSTIFICATION FOR PROPOSED BOUNDARIES

The municipal boundaries of the City of Nome have not changed since 1901 when the City was originally surveyed. However, municipal boundary changes have been warranted by growth and development in and around the City since World War II. The shortage of housing and unimproved land adequate for construction within the city limits over the years has resulted in the development of residential complexes at sites such as the State trailer court, the FAA housing, the State Highway Department, the Nome-Beltz School complex, the Alaska Gold Company camp, Icy View, and, most recently, along the Nome-Teller Road at the Snake River. For many years, the City of Nome has conferred substantial benefits upon the non-residents and owners of properties within this area outside the city limits, without receiving corresponding tax contributions for these municipal services. These residents within the territory proposed for annexation use the City-owned and maintained utilities, schools, library, museum, cemetery, port facility, and all other municipal facilities, including city streets and roadways. While non-residents benefit from the access to and the use of these municipal services and facilities, they pay nothing for many of their services; they pay no cost differentials for

utilities except electricity; and they pay no real or personal property taxes.

This annexation petition is also motivated by the need to promote and control land use and development through a planning and zoning authority effective throughout the region. In addition to government and company housing, two private subdivisions already exist in the territory. Housing and population density is increasing also along the Dexter-Nome River corridor. Present port facility expansion, offshore oil exploration and a developing fish industry will cause even more development warranting effective planning.

A. The Core Territory Proposed for Annexation is Urban in Character. Most of the year-round habitations in the territory proposed for annexation are located at the State trailer court, FAA housing, the State Highway Department complex, the Nome Beltz School complex, the Alaska Gold Company facilities and Icy View subdivision. The population density at each particular complex approximates the population density of the City of Nome. Property is platted and held for sale for urban, residential or commercial purposes at Icy View subdivision and at another site along the Nome-Teller Road at the Snake River. Alaska Gold Company has sold substantial acreage within this territory on various occasions in the past.

The population of the territory stems primarily from the actual growth of the City of Nome beyond its legal boundaries. The FAA housing was built on tailing piles outside the city limits, because there was not enough undeveloped thawed ground available within the City of Nome. The State trailer court was developed because of the lack of adequate housing for state employees within the City of Nome. Many of the present residents of Icy View were newcomers to the

area unable to find adequate housing within the city limits, or were renters in Nome unable to find suitable property for construction of a home. The Department of Highways also built its complex outside the City of Nome because of the lack of adequate facilities in the City.

The property within the core territory proposed for annexation is valuable primarily because of its suitability for prospective urban purposes. Most of the City of Nome is built on permafrost. All of the mining tailing piles outside the present boundaries of the City of Nome are highly desirable for construction because the permafrost is thawed, making the ground more stable for construction, and lowering design and construction costs.

B. The Territory Proposed for Annexation is Presently in Need of Municipal Services Which the City of Nome Can Provide More Efficiently Than Any Other Municipality. Nome is the only first class city in the Western and Northern three-quarters of the State of Alaska. The nearest first class cities are Fairbanks and Anchorage. The nearest second class cities are Teller and White Mountain, each approximately sixty aerial miles from Nome.

Except for one track-vehicle operated by the State of Alaska at the Airport, the Nome Volunteer Fire Department provides the only fire fighting equipment within the territory to be annexed. The City of Nome also provides the only rescue vehicle. The Alaska State Trooper service area includes all of the Seward Peninsula and the Islands, south along Norton Sound to St. Michaels. Most of the time of the four troopers assigned to the region must necessarily be spent outside the Nome population center. Although the Nome Police Department has in the past assisted in emergencies and law enforcement in the area proposed for annexation,

the Nome Police Department does not have either legal jurisdiction or primary responsibility for this area. The City of Nome is presently capable of providing fire and police protection to all populated areas of the territory proposed for annexation.

There are approximately 79 students from the area proposed for annexation who attend the Nome public schools. A number of parents of students in this territory have recognized the need for the provision of education by the Nome School District, and have petitioned the Commissioner of Education to declare the territory part of the Nome attendance area. No alternative education facilities are available for these children.

Potable city water is piped outside the municipality to the Nome-Beltz School complex, FAA housing, and the State trailer court. Water presently must be hauled by truck to Icy View, the State Highway Department complex, the Airport and the East end.

There is no alternative source of electrical power within the territory proposed for annexation. Approximately 43% of the load on the city generators is electricity transmitted to these areas outside the city limits.

Finally, despite the actual and inevitable growth of the City of Nome beyond its legal boundaries into the territory proposed for annexation, that larger territory receives no planning or zoning services to ensure an orderly, efficient and aesthetic development.

C. There is A Likelihood That Future Growth and Development of the City of Nome Will Occur Within the Territory, and Annexation of the Territory Will Enable the City to Plan for and Control That Development.

(i) During the summer of 1979, a seventeen-company oil consortium began a program of deep geophysical

exploration activities in the Bering Sea off a coast of Nome. The consortium has applied to the U.S. Geological Survey for permission to undertake a twenty million dollar project including deep stratographic testing, a biological survey, and a "shallow geohazards" survey. The drill ships are operating off Nome during the summer of 1980, with fresh water being supplied by a custom designed pipeline constructed by the Nome Joint Utilities System. Oil leasing is presently scheduled to begin in the Bering Sea in 1982.

The City of Nome has just completed the first of two phases of a pre-engineering study for construction of a medium draft port and harbor facility. Locations directly east and directly west of the City limits are being considered at this time for this development activity. The dock facility would eliminate the need for lightering from barges, would provide a fueling and moorage facility for vessels, and would provide a sizeable staging area for storage of freight. The facility is designed not only to accomodate support service for oil development in the Bering Sea, but also to expand the present function of Nome as the shipping and receiving center of the Seward Peninsula. Rock quarrying activities are scheduled to begin in early summer, 1981, with construction activities to follow either in late summer, 1981, or early spring 1982.

(ii) Most of the vacant lots within the present boundaries of the City of Nome are wetlands and permafrost. During the past fifteen years most expansion and development has occurred in the territory proposed for annexation. Because virtually all of the valuable land within the city limits is already developed, this trend of future growth to the area proposed for annexation can be expected to continue.

Annexation of the territory will enable the City to provide organized planning for growth and development.

The local citizenry in most of the areas outside the City of Nome presently have no direct governmental voice in planning for development in their territory. On the other hand, all of the people of the Nome area have a personal and direct interest in protecting recreational areas, preserving traditional hunting, fishing, grazing and gathering use of the lands, assisting the development of mining reserves, and promoting tourism. All of the people of the Nome area also have a personal and direct interest to prevent interference with water supplies, to control and develop transportation patterns, etc.

Planning and control of development also is essential to providing efficient and economical utility services. It will allow for the orderly development of electrical, sewage and water facilities to particular areas, in accordance with the type and extent of the use in the particular area. Such orderly development in turn will preserve the values of real property for their highest and best use, encouraging industrial development in areas most suitable for that purpose, and encouraging residential development in areas protected from noise, dust, industrial traffic, and other pollution.

D. The Health and Safety of City Residents is Endangered by Conditions Existing or Developing in the Territory, and Annexation Will Enable the City to Remove or Alleviate Those Conditions. Moonlight Springs, the water supply for the City of Nome, is located approximately five miles beyond the city limits. While AS 29.48.037(b) authorizes the municipality to adopt ordinances to protect its water supply and water shed outside its boundaries, the cost of safeguarding and enforcing protection of such a small parcel so far from the community is prohibitive without annexation of the surrounding territory to provide the economy of scale necessary to expand law enforcement services such a distance from the City. Construction and development on Anvil Mountain above

the water of the City of Nome. Hence, control of planning and zoning in that region also is important to the health of the City residents.

Drainage flow patterns of the territory surrounding the City of Nome run directly through the City of Nome. Erosion, destruction of the permafrost, and other changes in ground conditions affect the drainage flow patterns in a manner which can cause serious flood problems and water damage within the City of Nome. New water flow patterns following the paths of least resistance would flow into the gravel corridors of the present city utilidor system (where the permafrost has been eliminated), washing away gravel padding, and causing heaving, caving, freezing and clogging of the municipal sewage system.<sup>1/</sup>

Because the populated areas of the territory proposed for annexation are an intergral part of the social, economic and educational community of Nome, municipal health services and health enforcement are ineffectual unless they include this entire "community" of Nome. Animal control ordinances of the City of Nome, designed to protect the health and safety of the residents of Nome, are unenforceable immediately beyond the boundaries of the City. Hence the protection program by the municipality is hampered to the extent that no restraints exist for the control of stray animals immediately beyond the City limits. These animals can and do roam freely in and out of the City.

Efficient and low cost sanitation services for the entire "community" of Nome are important to the health and safety of the residents of the City of Nome. Expansion of

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1/ Such possibilities are not merely theoretical. In September, 1978, heavy rains and accumulations of water directly Northwest of the city limits drained into newly constructed utilidors causing streets to cave and lateral connections to break loose from residential dwellings.

all of the populated areas surrounding Nome would create an economy of scale making the provision of such services less expensive for all recipients. This financial savings in turn provides the economic flexibility necessary for improving services to all recipients.

The permafrost in the Nome area presents a unique problem for the operation of septic systems. Lack of permeation in the ground can cause clogging and seepage to the surface. This seepage in turn can contaminate surface waters. Even if the area around the septic system does have the necessary permeability, sewage still can contaminate subsurface waters restricted to permafrost ruptures and riverbeds. All of the waterflow from the area north of the City of Nome passes through the City of Nome, or along the Snake River drainage--a major waterway used by the residents of the City of Nome. Health inspection and enforcement of construction of septic systems in the Nome area is necessary to protect the health of the residents of the City of Nome.

The winter supply of petroleum products for the City of Nome is delivered and stored during the summer. The fuel stored outside the city limits presents a potential health and safety hazard to the residents of Nome if fuel leaks contaminate surface or subsurface waters, or if fires rage out of control in areas contiguous to the city limits. Such potential dangers could be eliminated by requiring proper trenching and periodic fire inspections by municipal officials.

In the past it has been necessary for the Nome Volunteer Fire Department to mobilize its equipment for tundra fires outside the city limits, because there is no other adequate fire fighting equipment in the Nome area, and because a tundra fire in the immediate area threatens the City of Nome. The State of Alaska maintains one truck for

this single piece of equipment is totally inadequate for tundra fires. The Bureau of Land Management also flies firefighting crews into the area to fight tundra fires, however, the transportation time causes delays and equipment mobilized is often inadequate. Annexation of the proposed area would provide the tax base necessary to expand the Nome firefighting equipment and skills to tundra fires which threaten the residents of the City as well as the residents of the territory.

E. The Extension Into the Territory of City Utilities and Services is Necessary to Enable the City of Nome to Provide Adequate Services to City Residents, and it is Impossible or Impractical for the City to Extend Such Facilities and Services Unless the Territory is Within the Boundaries of the City.

Investigations and pursuits by the Nome City Police are hampered by boundary limits that do not include the entire community population or area. To provide adequate law enforcement services to the City of Nome, the Nome Police Department must have jurisdiction in that surrounding area. However, this requires not only the legal authority but also the finances to expand personnel and equipment, which could be accomplished by a tax base from the surrounding area to support proper, regional law enforcement.

As noted above, it is necessary for the Nome Volunteer Fire Department to extend its services into the territory to protect city residents from the dangers of fuel storage fires and tundra fires. However, it is impossible for the City of Nome to extend full fire protection to the surrounding territory unless that territory is made a part of the contributing tax base to finance those fire protections.

Similarly, as noted above, the effort of the City of Nome to provide animal control services to the City

residents is hampered by the fact that this service does not extend to the territory proposed for annexation. Yet the cost of expanding the service for the protection of all residents of the area is prohibitive unless the territory is included in the City tax base.

The City of Nome high school and junior high school facilities are located on city-owned property at the Nome-Beltz complex, presently located approximately four miles beyond the city boundary.

The cost of providing utility services in the Nome area is extremely high. Expansion of the property tax base to include the territory presently receiving municipal utility services would reduce the present cost to taxpayers within the city limits, and would establish an economy of scale for improving the same services to all recipients.

F. Residents of, and Owners of Property in, the Territory Proposed for Annexation Receive the Benefits of City Services Without Commensurate Tax Contributions. The residents outside the city limits obtain free fire, rescue and emergency medical services, some free law enforcement assistance, free library facilities and services, free cemetery facilities, free port facilities, and free use of maintained roads within the city and city schools.

The residents outside the city limits pay no ad valorem taxes, yet receive the full benefits of the Nome City School District and community schools programs. While the residents outside the city limits pay for water, sewage, and solid waste disposal, they are not charged a differential to offset the fact that these capital facilities are financed only by the taxing authority and the corresponding bonded indebtedness of the City of Nome.

Electricity is the only utility service for which a cost differential applies to nonresidents of the City of

Nome. While similar cost differentials might be computed for the use of other utility services, that financing method would not enhance the attractiveness of utility bonds for capital improvements because these non-resident users still would not be within the taxing authority of the City of Nome. Other services such as fire protection and law enforcement carry such high costs per unit of use that any unit-fee system would be exorbitantly expensive for the non-resident requiring the service. Fee structures for the use of port facilities, cemetery and library facilities are possible but impractical to administer in a "community" so integrated as the City of Nome and its surrounding territory. A road use fee for non-residents similarly would be impractical if not impossible to administer.

G. Annexation is Necessary to Accomplish Valid Public Purposes. Annexation serves the public purpose of community involvement and democratic participation. The residents of the area proposed for annexation send their children to the Nome Public Schools, yet have no representation on the Nome City School Board. The same citizens receive fire and emergency medical protections and electric, water and garbage collection utility services from the City of Nome, yet they have no voice in the management and operation of these services. Law enforcement in the territory proposed for annexation is fragmented and uncoordinated. Planning and zoning is nonexistent.

As a matter of public policy, the entire Nome "community" including the territory proposed for annexation, has a common interest in protecting industrial development areas, recreational areas, and traditional subsistence areas. The territory proposed for annexation includes an area designed to encompass permanent summer camps and cottages located along Dexter Creek, the Nome River, the mouths of Cripple River and Penney River, and the coastal areas. The

territory includes the Snake River lowhead .. hydroelectric power potential, and a substantial portion of the coastline, to assist and coordinate such activities as the emerging crab fishery, subsistence sea mammal hunting, offshore oil development and coastal zone management. Because the water main from Moonlight Springs is only a ten-inch line, and operating near full capacity, it is necessary for the City of Nome to protect possible future sources of potable water in the Anvil Creek-Snake River area.

For all of these reasons, the City of Nome respectfully petitions this Commission to approve and submit to the Alaska Legislature the annexation described in the accompanying Petition.

DATED this 14<sup>th</sup> day of July, 1980.

By [Signature]  
City Manager

[Signature]  
City Attorney

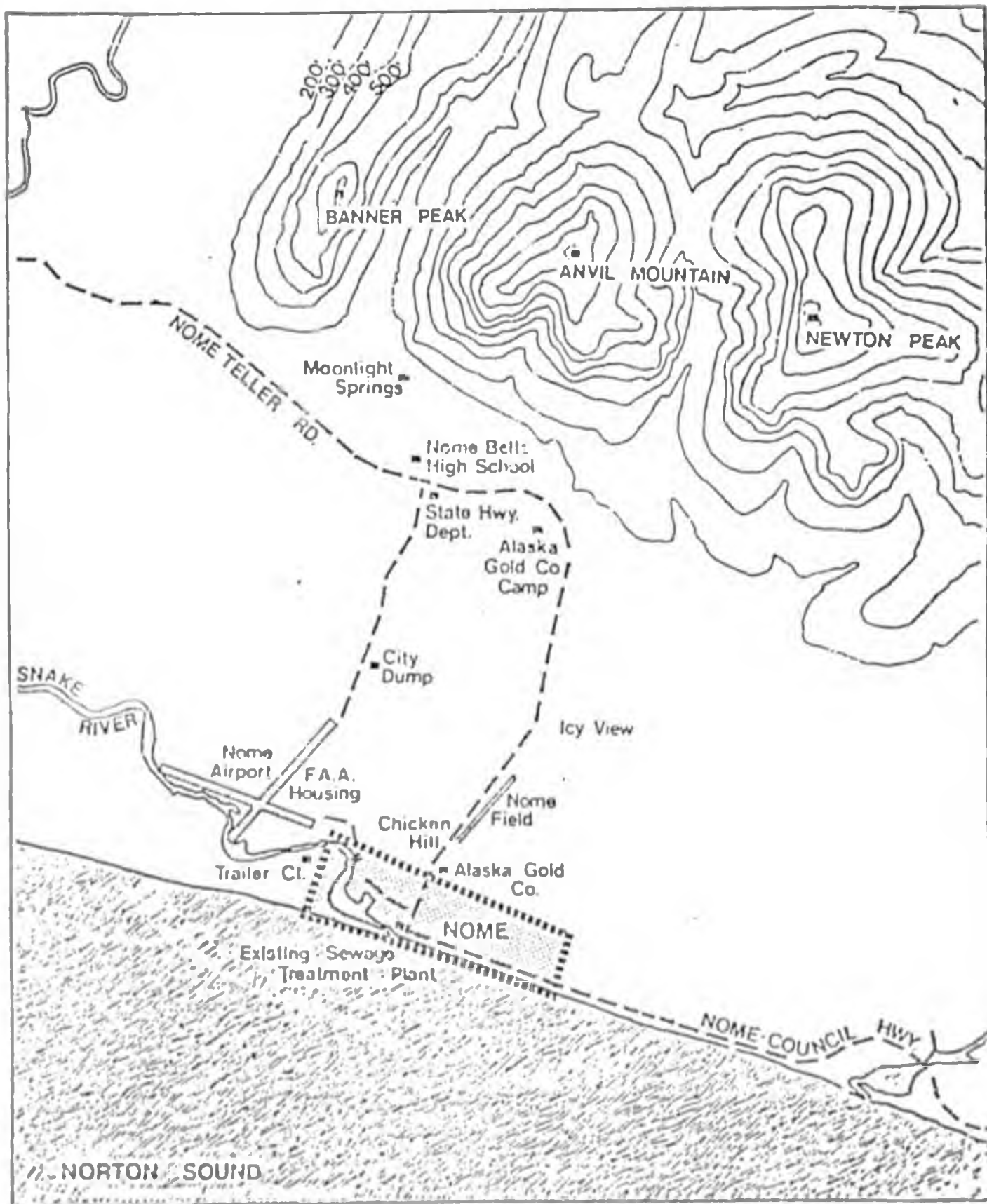


Figure 2-1

	<p>NOME &amp; VICINITY</p>	<p>0 1/4 1/2 1</p> <p>SCALE IN MILES</p>	
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APPENDIX 1

NOME ANNEXATION

17 Feb 81

Page 1

1. Speaking favorably on behalf of Nome City Manager  
(Linda —?)

2. Virginia White  
Member, Nome City Council  
Strongly favor

3. Rosemary Killian  
Member, Nome City Council  
Strongly Favor

4. Leo Pasmussen  
Mayor

5. Robert Baldwin

Mgr, Alaska Gold Company (formerly GSS&M)

Wants mining company - needs flexibility (no zoning) to operate...

6. Alan Karmun

Member Nome City School Board

fully support

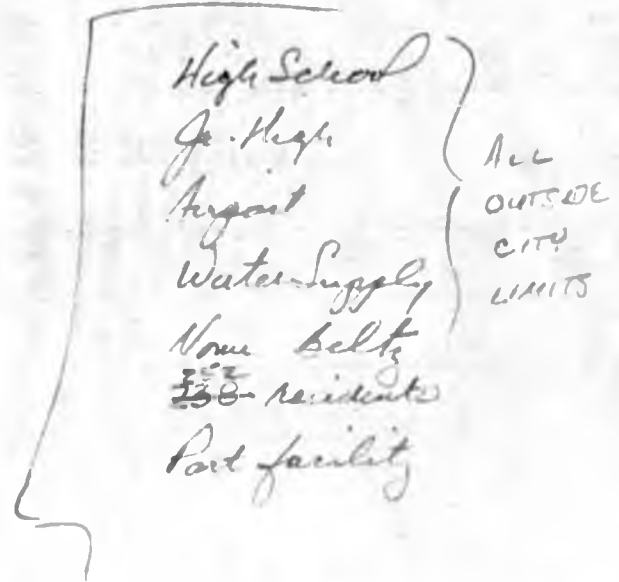
7. Bill Kuddy

Atty for Alaska Gold

"City Hall trying to grab off the Gold Company's property."

\* Did not win previous lawsuit opposing annexation on a "technicality"

(Rather, won on merits of the case.)



8. Charlie Johnson

As, being Straits Native Corporation

- \* Has some 800 to 900 acres land inside proposed area.
- \* Oppose - "not proper for several reasons"
- \* However - could be "supportive"... "more than willing to cooperate..." if they had right opportunity to discuss/participate.

9. John Van Winkle (An Anchorage)

- \* Attorney - Practices in Nome
- \* Represents Sitka Sound Corp (interest)
- \* Poses legal question: has LBL correctly applied its own court-mandated standards?

10. Judy Martenson

Mile 1, Nome-Teller Highway

Very much opposed (Had good facts, figures & points)

11. Doug Doyle

Statement on behalf of Chuck Reader (is an employee)  
"Venomously opposed"

12. John Poling

- \* 12 yrs in Nome, 45 in Alaska
- \* favors annexation

13. Al Doyle

\* former mayor, city council member - Supports

14. Neil Foster

\* Foster aviation - strongly oppose



17 Feb 81

NOME ANNEXATION

(Page 4)

21. Sheila Gallagher

- \* Atty - Chairman of Local Boundary Commission
- \* Agrees @ Atty Bob Hicks that Jack Chenoweth is in error.
- \* Argues (strongly) that LBC has in fact followed regulations

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y. STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 13, 1981

SUBJECT: Annexation to the City of Nome (Local Boundary  
Commission Recommendation No. 3 of the 1981  
session)

TO: Representative John G. Fuller  
Senator Frank R. Ferguson

FROM: John B. Chenoweth  
Legislative Counsel

Overnight, and for several hours this morning, I reviewed briefly the materials pertaining to the proposed Nome annexation which you provided with your inquiry, together with the complete file on the same subject prepared by the Department of Community and Regional Affairs for submission to the House and Senate Community and Regional Affairs Committees.

Without regard to the merits of the annexation, there appear to be, in the documents which are part of the annexation record supplemented by briefs subsequently submitted, sufficient grounds to sustain a court challenge to the annexation. These grounds generally relate to procedures which the City of Nome and the Local Boundary Commission may or may not have followed. Of particular relevance are claims that, under provisions of law formerly designated AS 44.19.260(a) (now AS 44.47.567(a)), the Local Boundary Commission had no authority to alter the boundary description of the area that was the subject of the annexation before accepting and acting on the petition, and questions concerning compliance by the petitioner and the Local Boundary Commission in submitting and accepting a petition and supporting documents containing all information required by the Commission's regulations as a requisite to action on the proposal. Beyond these alleged procedural irregularities, the attorneys for all parties contest whether the Local Boundary Commission properly

Representative John G. Fuller  
Senator Frank R. Ferguson  
Page 2  
February 13, 1981

examined and interpreted evidence relating to substantive provisions of the proposed boundary change, and whether the Commission properly applied its own regulations to evaluate the evidence in the record that permitted acceptance and approval of the petition. I am not saying that those who challenge the annexation and the decision of the Local Boundary Commission will prevail, or even whether they should prevail. I am suggesting that there are certainly sufficient allegations on record and in subsequent briefs -- and certainly sufficient resources of the potential challengers -- to sustain litigation through the Alaska Supreme Court.

I am not familiar with particulars of projects which either of you is concerned with in the area proposed for annexation, and cannot suggest whether extended litigation arising out of this proposed annexation will adversely effect your plans or the execution of those projects.

JBC:ljb

City of Name <sup>CRN</sup> let request 225.65 <sup>mln</sup>

City's water supply  
School

252 people living outside present  
City. - 7% of total pop  
of these 244 live within 68% within  
contiguous to the city.

Education, fire protection, emergency  
law enforcement, museum, libraries  
courts, port facilities

(Municipal water, electrical utilities)

43% of city  
generates land  
outside city  
limits

Adequate level?

10/1/75  
5/1/76  
M

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800


LEGISLATIVE AFFAIRS AGENCY

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Page 2  
February 13, 1981

examined and interpreted evidence relating to substantive provisions of the proposed boundary change, and whether the Commission properly applied its own regulations to evaluate the evidence in the record that permitted acceptance and approval of the petition. I am not saying that those who challenge the annexation and the decision of the Local Boundary Commission will prevail, or even whether they should prevail. I am suggesting that there are certainly sufficient allegations on record and in subsequent briefs -- and certainly sufficient resources of the potential challengers -- to sustain litigation through the Alaska Supreme Court.

I am not familiar with particulars of projects which either of you is concerned with in the area proposed for annexation, and cannot suggest whether extended litigation arising out of this proposed annexation will adversely effect your plans or the execution of those projects.

JBC:ljb

THE FOLLOWING PAGES WERE TREATED AS  
A UNIT IN THE ORIGINAL FILE.

ALASKA  
STATE LEGISLATURE  
**MEMORANDUM**

TO: Rep. Vaska, Vice-Chairman  
Rep. Bylsma  
Rep. O'Connell  
Rep. Randolph

DATE: February 11, 1981

FROM: Rep. Grussendorf, Chairman  
House C & R A Committee

RE: Joint C & R A Teleconference

The House and Senate Community and Regional Affairs Committees will hold a joint teleconference nearing on the Local Boundary Commission recommendation for annexation of territory to the City of Nome. The meeting will be held on Tuesday, February 17, at 3:00 p.m. in the first floor conference room of the Behrends building.

The attached information is for your review and has also been distributed through the information offices for the participating areas.

*[Handwritten signature]*  
2/11/81

TELECONFERENCE ON PROPOSED ANNEXATION OF TERRITORY TO

CITY OF NOME

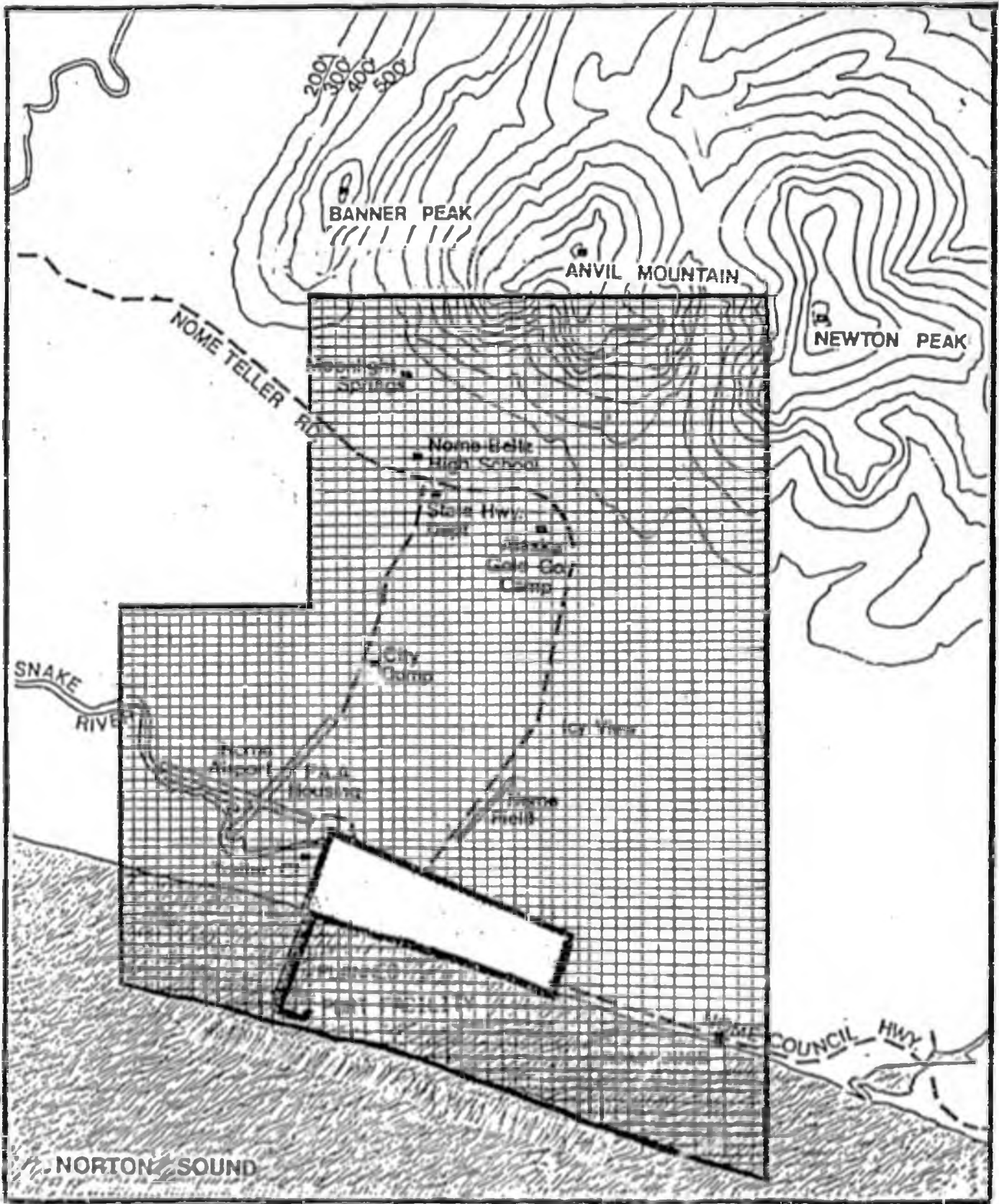
The House and Senate Community and Regional Affairs Committees will hold a joint teleconference hearing on the Local Boundary Commission's recommendations for annexation of territory to the City of Nome on Tuesday, February 17, starting at 12:00 p.m. Bering Standard Time (3:00 p.m. Pacific Standard Time).

The Local Boundary Commission has recommended that approximately 17.83 square miles of territory be annexed to the City of Nome. This recommendation was presented to the Legislature on January 21, 1981. The proposed annexation becomes effective forty five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house (Article X, Section 12 of the Alaska Constitution and AS 29.68.010).

AREA RESIDENTS INTERESTED IN PRESENTING TESTIMONY OR OBSERVING THE HEARING MAY PARTICIPATE VIA THE LEGISLATIVE TELECONFERENCE AT THE FOLLOWING SITES:

Nome Teleconference contact at 443-3555  
Juneau Teleconference contact at 465-4980

Copies of the proposal and additional information are available from the Information Office in areas listed above.



CITY OF NOME



 Territory recommended for annexation (approximately 17.83 square miles)

STATE OF ALASKA  
LOCAL BOUNDARY COMMISSION

RECOMMENDATION NUMBER THREE TO THE FIRST  
SESSION OF THE TWELFTH LEGISLATURE

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RECOMMENDATION FOR THE ANNEXATION OF TERRITORY  
TO THE CITY OF NOME

WHEREAS, on July 14, 1980 the City of Nome submitted a petition to the Local Boundary Commission (hereinafter "Commission") through the Department of Community and Regional Affairs (hereinafter "Department") in accordance with applicable laws and regulations of the State of Alaska, requesting the annexation of approximately 235.65 square miles; and

WHEREAS, on July 25, 1980 the Department determined the petition to be acceptable in form and content; and

WHEREAS, on November 21, 1980 the Commission conducted a physical inspection of the area proposed for annexation and held a public hearing on the matter, with prescribed notice, in the Nome City Council Chambers; and

WHEREAS, on December 11, 1980 the Commission held, with prescribed notice, a meeting to render a decision on the petition for annexation;

NOW, THEREFORE, based upon the extensive briefings of the Petitioner and the Respondents, the investigation and the report as amended by the Department, the physical inspection of the territory by two members of the Commission, and the information obtained from the public hearing, the Commission recommends that the following described territory be annexed to the City of Nome:

Beginning at the protracted NW corner of Section 11, T11S, R34W, Kateel River Meridian; thence east to the protracted NE corner of Section 7, T11S, R33W, K.R.M.; thence south to the protracted SE corner of Section 31, T11S, R33W, K.R.M.; thence continuing south along the same line to a point 4,000 feet seaward of the mean high tide line of Norton Sound; thence meandering northwesterly along a line 4,000 feet seaward of and paralleling the mean high tide line of Norton Sound to a point due south of the protracted SW corner of the SE 1/4 of the SE 1/4 of Section 28, T11S, R34W, K.R.M.; thence north to the protracted NW corner of the NE 1/4 of the NE 1/4 of Section 21, T11S, R34W, K.R.M.; thence east to the protracted SE corner of Section 15, T11S, R34W, K.R.M.; thence north to the protracted NW corner of Section 11, T11S, R34W, K.R.M., the point of beginning; excepting the area now comprising the City of Nome; containing 17.83 square miles, more or less, situated in the Second Judicial District, State of Alaska

REPORT TO THE LOCAL BOUNDARY COMMISSION  
ON THE CITY OF NOME'S PETITION TO ANNEX  
TERRITORY TO THE CITY OF NOME

DEPARTMENT OF COMMUNITY  
AND REGIONAL AFFAIRS

October 29, 1980

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## I. INTRODUCTION

The City of Nome, a first class city within the unorganized borough, was incorporated in 1901. The original corporate boundaries of the City of Nome, which are identical to those of today, contain 525.45 acres (0.82 square miles).

In 1968, the City of Nome successfully petitioned the State of Alaska for the annexation of approximately 9,802 acres (15.32 square miles) of territory. However, the action was subsequently challenged by what is now the Alaska Gold Company, owner of an estimated 75 percent of the territory affected. In 1971, the annexation was invalidated by the Alaska Supreme Court on the basis that the Local Boundary Commission judged the matter in the absence of required standards.

## II. PROCEEDINGS TO DATE

On August 28, 1978, the Council of the City of Nome adopted Ordinance Number O-78-5-1 authorizing the current petition for annexation. Nearly two years later, on July 14, 1980, the City of Nome formally submitted its petition for the annexation of approximately 150,816 acres (235.65 square miles) of land contiguous to the existing municipal boundaries. The petition, however, requested the annexation of territory beyond that authorized in Ordinance Number O-78-5-1 (Sections 17 and 22,

T12S, R32W, Kateel River Meridian). The Department has requested a resolution of the Council of the City of Nome affirming its current support of the annexation proposal and remedying the discrepancy of land proposed for annexation.

The petition was determined to be sufficient as to form and content and was accepted by the Department on July 25, 1980. The requirement that the petitioner give public notice of filing the petition was fulfilled through the publication of such notice on August 15, 1980 in the Bering Straights, a newspaper of general circulation in the Nome area. The Local Boundary Commission public hearing on the annexation proposal has been scheduled for November 21, 1980 at 7:30 p.m. in the City of Nome Council Chambers. Notice of the hearing is to be published three times in the Nome Nugget, a newspaper of general circulation in the Nome area. Staff from the Department visited Nome on October 13-14 to review the territory proposed for annexation and to discuss the matter with City officials and other interested parties.

### III. STANDARDS FOR ANNEXATION

Section 10, Chapter 5, Title 19 of the Alaska Administrative Code contains the standards for annexation of contiguous territory to a city; these standards are presented on the following page:

(1) all land to which the territory is contiguous is within the city's boundaries; or

(2) all land in the territory is wholly owned by the city; or

(3) the territory is urban in character. In determining whether territory is urban in character, the commission may consider, without limitation, whether the property is platted or held for sale for urban, residential or commercial purposes, whether the population density of the territory approximates that of the annexing city, whether the population of the territory stems primarily from actual growth of the city beyond its legal boundaries, and whether the property is valuable primarily by reason of its suitability for prospective urban purposes; or

(4) the territory is presently in need of a municipal service or services which the city can provide more efficiently than another municipality; or

(5) there is a likelihood that future growth and development of the city will occur within the territory and annexation of the territory will enable the city to plan for and control that development; or

(6) the health or safety of city residents is endangered by conditions existing or developing in the territory and annexation will enable the city to remove or alleviate those conditions; or

(7) the extension into the territory of city water, sewer, street, or other facilities, or of city police, fire, health or other services is necessary to enable the city to provide adequate service to city residents; and it is impossible or impractical for the city to extend such facilities or services unless the territory is within the city's boundaries; or

(8) residents of, or owners of property in, the territory receive or may be reasonably expected to receive the benefit of city services without commensurate tax contributions whether such services are rendered or received inside or outside the territory. In determining whether this standard is met, the commission will consider alternate methods available to the city for offsetting the cost of providing services to individuals or property beyond its property taxation powers; or

(9) the annexation is otherwise necessary to accomplish a valid public purpose.

#### IV APPLICATION OF STANDARDS

The annexation proposal fails to meet the first standard, in that all of the territory proposed for annexation lies outside the City's boundaries.

A small portion of the territory proposed for annexation is owned by the City; therefore, to a limited degree the second standard is met. The City owns 43 acres at the Nome Beltz complex, the site for the City school, located some two and one-half miles north of the existing municipal boundaries. The City also owns approximately 12 acres of land at Moonlight Springs, the City's water supply, located three miles north of the existing municipal boundaries.

The petition correctly states that a part of the territory proposed for annexation is urban in character; therefore, a portion of the territory meets the third standard. In 1978, the City of Nome conducted a census which identified 252 individuals residing in the general area outside its municipal boundaries year-round. These individuals represent the equivalent of 8.7% of the population of the City of Nome. The statement in the petitioner's brief that most of these 252 individuals reside "In an area bounded by Sunset Creek and the Snake River on the west, Banner Peak and Anvil Mountain to the north and Cape Nome to the east", however, certainly warrants refinement. The foregoing area encompasses in excess of 100

square miles. However, of the 252 individuals identified in the census, 244 (96.8%) live within only a six square mile area contiguous to the City.

It is apparent that the 244 individuals immediately beyond the existing City boundaries need the municipal services of the City of Nome and generally receive many such services without paying property taxes for same; thus, a portion of the territory meets the fourth and eighth standards. These services include: education, fire protection, emergency medical services, law enforcement assistance, museum, library, cemetery, and port facilities. Municipal water and electrical utilities are also available and provided to these residents. Electrical utility customers outside the City's boundaries (except at the Nome Beltz complex) pay an additional 4 cents per kilowatt hour (20.4% price differential). No price differential is charged to nonresident municipal water customers served by pipeline, which includes the Nome Beltz complex, FAA/weather bureau housing, and the State trailer court (approximately 55% of the residents). The remaining nonresident water customers receive water delivered by truck and pay a \$5 fee, per dwelling unit, in addition to the same charge for water paid by residents.

Of the remaining eight individuals who reside in the territory year-round, six live within a small subdivision at 7 Mile,

control development, is the primary basis for the City's petition for an expansion of its boundaries substantially beyond the populated territory. The City proposes to push its boundaries 24 miles to the west, 12 miles to the east and as much as 11 miles to the north. The petitioner's brief cites the following as the basis for the need to extend planning to the area outside the existing municipal boundaries:

1. Likelihood of continued residential growth in the area beyond the current City boundaries.
2. Potential for offshore petroleum exploration and development.
3. Construction of a modern port facility to expand Nome's role as the regional shipping center.

The City's desire and the need to plan and regulate residential and commercial growth in the area immediately beyond the City is certainly legitimate. Most of the land contained in this area is privately owned, and given its proximity to Nome's infrastructure, will be the most readily developed area as future routine growth occurs.

The same does not hold true for the outlying areas. These areas are virtually unpopulated, have little access to the community's infrastructure and are generally of restricted ownership. Further, there is no evidence that significant

growth in the community is imminent. It is not yet known whether petroleum resources exist in the Norton Sound/Bering Sea area in quantities sufficient to allow feasible development. The first petroleum lease sale (OCS lease sale #57) will not take place for two years. If it occurs at all, OCS development which will have a significant impact on Nome is several years away. The Nome port facility is planned to be constructed near the Snake River at the west end of the existing corporate boundaries of the City of Nome. The total cost of the project (1980 dollars) is estimated to be \$26.2 million. Project funding is contingent upon Statewide voter approval of future State G.O. Bond issues. While the new port facility, if constructed, will greatly facilitate shipping (by eliminating the necessity to lighter materials ashore) its impact in terms of growth will not be significant in the foreseeable future.

The Sitnasuak Native Corporation, which has an interest in the greatest amount of land in the outlying area, is currently finalizing its plan for the use of such lands. The draft plan relates to virtually all of the planning issues affecting the outlying lands which are detailed in the petitioner's brief (i.e. recreational, subsistence, grazing and mining uses). If local government planning is warranted at all in the area beyond Nome's populated area, it is of a regional nature. Only the populated territory outside the boundaries of the City of Nome meets the fifth standard.

The sixth standard, that territory to be annexed to mitigate a threat to the health and safety of City residents, applies with respect to the need to control animals and to insure the protection of the City's water supply. Under the current circumstances it is difficult for the City to properly regulate and control animals that frequent the City but are owned by nonresidents. Also, the City's water supply at Moonlight Springs is exposed and virtually unprotected; it is legitimate that the City desires to extend its jurisdiction to include that area. However, with respect to the watershed above Moonlight Springs, the review of the territory by the Department staff showed no evidence of "construction and development on Anvil Mountain above Moonlight Springs (which) could pose a serious pollution problem to the water of the City of Nome" as stated in the petitioner's brief. Should this concern prove legitimate, the City need only to employ the provisions of AS 29.48.037 (b) which allows a municipality to protect a watershed located beyond its corporate boundaries.

Similarly, police and fire protection services to the City residents, as outlined in the Petitioner's brief, would be enhanced by the annexation of the populated territory; thus the populated territory meets the seventh standard.

The ninth and final standard, that annexation be carried out to accomplish a valid public purpose, is a catchall provision. It applies only indirectly in this instance. As stated in the petitioner's brief, those individuals who live outside the City

boundaries who have access to virtually all of the municipal services should have the right to participate in municipal affairs.

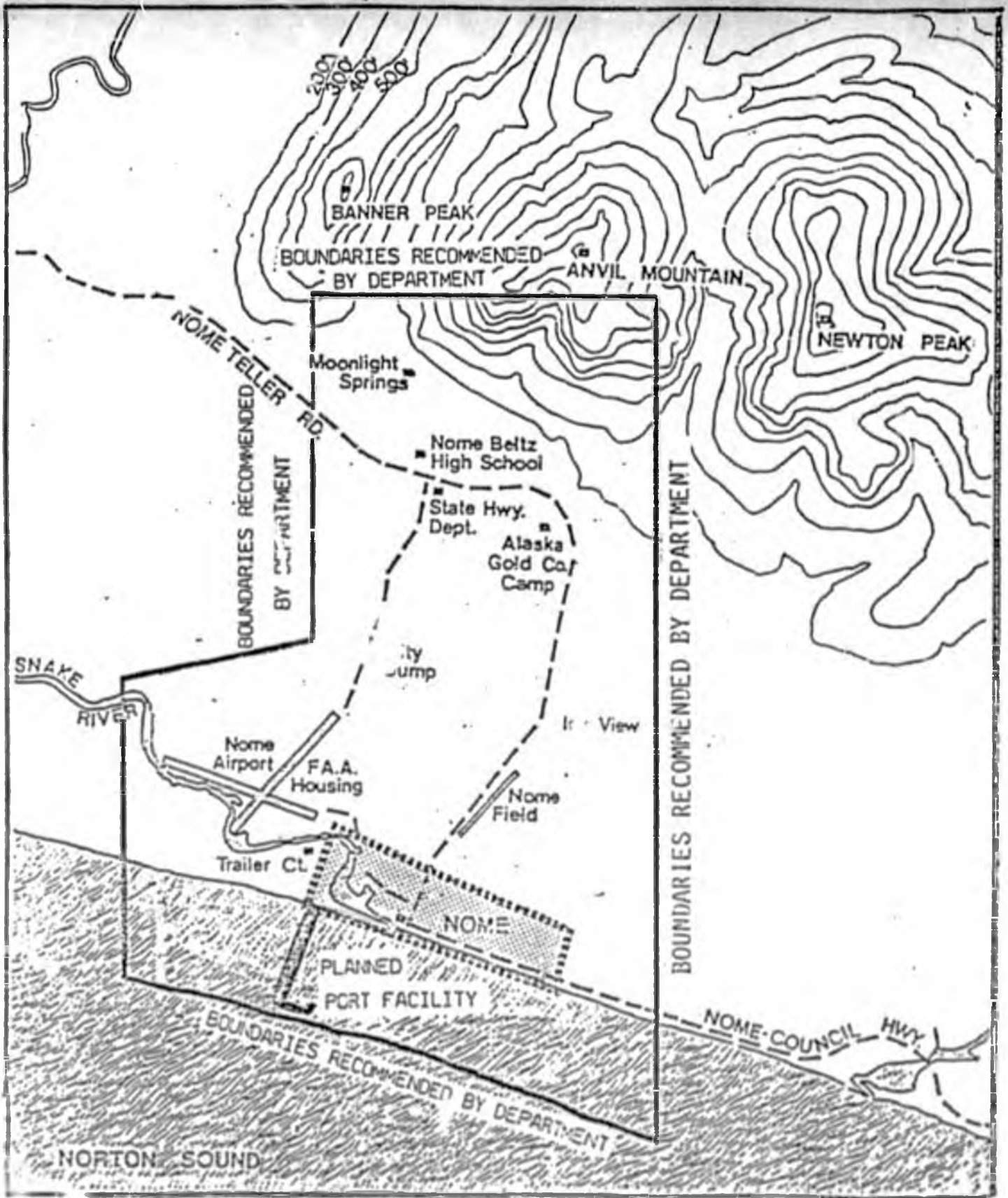
#### V. CONCLUSION AND RECOMMENDATION

As outlined in the preceding section, the populated and developed area outside the City boundaries meets virtually all of the standards for annexation. However, the territory beyond these lands meets virtually none of the necessary standards. Therefore, the Department recommends that the Local Boundary Commission reduce the boundaries of the territory proposed for annexation to the following:

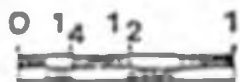
Beginning at the protracted NW corner of Section 11, T11S, R34W, Kateel River Meridian; thence east to the protracted NE corner of the NW 1/4 of the NW 1/4 of Section 7, T11S, R33W, K.R.M.; thence south to the protracted SE corner of the SW 1/4 of the NW 1/4 of Section 31, T11S, R33W, K.R.M.; thence due south to a point 4,000 feet seaward of the mean high tide line of Norton Sound; thence meandering northwesterly along a line 4,000 feet seaward of and paralleling the mean high tide line of Norton Sound to a point due south of the protracted SW corner of the SE 1/4 of the SE 1/4 of Section 26, T11S, R34W, K.R.M.; thence north to the protracted NE corner of the SE 1/4 of the SE 1/4 of Section 21, T11S, R34W, K.R.M.; thence easterly to the protracted NE corner of the SE 1/4 of Section 22, T11S, R34W, K.R.M.; thence north to the protracted NW corner of Section 11, T11S, R34W, K.R.M., the point of beginning, containing 13.7 square miles, more or less; situated in the Second Judicial District, State of Alaska.



ANNEXATION PROPOSAL  
CITY OF HOME



AREAS OF SIGNIFICANT DEVELOPMENT  
OUTSIDE EXISTING CITY BOUNDARIES



SCALE IN MILES



BOUNDARIES RECOMMENDED BY DEPARTMENT

ADDENDUM NUMBER ONE TO THE  
OCTOBER 25, 1980 REPORT TO THE  
LOCAL BOUNDARY COMMISSION ON  
THE CITY OF NOME'S PETITION  
TO ANNEX TERRITORY TO THE CITY  
OF NOME

Department of Community  
and Regional Affairs

November 18, 1980

The Department feels that an oversight was made in its October 29, 1980 report to the Local Boundary Commission in that the Fort Davis Roadhouse was not included within the territory proposed for annexation. This addendum remedies that oversight by recommending the extension of the boundaries to include that property.

The Fort Davis Roadhouse is located along the Nome-Council Highway approximately one-half mile beyond the eastern boundary initially recommended by the Department. The Fort Davis Roadhouse is a substantial commercial establishment serving significant numbers of the public. Electricity and trucked water utility services are provided by the City of Nome.

Clearly the third, fourth and eighth standards for annexable territory outlined in the October 29, 1980 report warrant the inclusion of the property within Nome's municipal boundaries. Therefore, the Department amends its October 29, 1980 report to recommend that the boundaries of the City of Nome be expanded as described on the following page and shown on the attached map.

- 
- 19 AAC 05.010
    - (3) The territory is urban in character...
    - (4) The territory is presently in need of municipal services...
    - (8) Residents of, or owners of property in the territory receive...the benefit of city services without commensurate tax contributions...

Beginning at the protracted NW corner of Section 11, T11S, R34W, Kateel River Meridian; thence east to the protracted NE corner of the NW 1/4 of the NW 1/4 of Section 7, T11S, R33W, K.R.M.; thence south to the protracted SE corner of the SW 1/4 of the NW 1/4 of Section 31, T11S, R33W, K.R.M.; thence east to the NE corner of the SE 1/4 of Section 31, T11S, R33W, K.R.M.; thence due south to a point 4,000 feet seaward of the mean high tide line of Norton Sound; thence meandering northwesterly along a line 4,000 feet seaward of and paralleling the mean high tide line of Norton Sound to a point due south of the protracted SW corner of the SE 1/4 of the SE 1/4 of Section 28, T11S, R34W, K.R.M.; thence north to the protracted NW corner of the SE 1/4 of the SE 1/4 of Section 21, T11S, R34W, K.R.M.; thence easterly to the protracted NE corner of the SE 1/4 of Section 22, T11S, R34W, K.R.M.; thence north to the protracted NW corner of Section 11, T11S, R34W, K.R.M., the point of beginning, containing 14.5 square miles, more or less; situated in the Second Judicial District, State of Alaska.

THE PRECEDING PAGES WERE TREATED AS  
A UNIT IN THE ORIGINAL FILE.

February 15, 1981

MEMORANDUM

TO: Representative Jack Fuller  
FROM: Cheryl Frasca *CFrasca*  
SUBJECT: Nome Annexation

The City of Nome originally petitioned to annex 235.65 square miles. The Department of Community and Regional Affairs, acting as staff to the Local Boundary Commission, reviewed the petition to determine which of the standards for annexation were met. Based on its evaluation, C&RA recommended annexation of 13.7 square miles. The reduction was because only the populated areas met virtually all standards. C&RA then amended its recommendation to 14.5 square miles so that the Roadhouse was included in the annexed territory. The Local Boundary Commission's recommendation to the legislature is for 17.83 square miles. The area was increased so that the boundaries could be drawn on existing section lines.

The commission held a public hearing in Nome on November 21, 1980. At a work session earlier that day, the city council informally supported C&RA's recommendation of 14.5 square miles. This caught a number of people who were prepared to testify off guard as they were prepared to testify on the original plan of over 235 square miles. Objections, however, ranged from concern that subsistence activities would be hampered to the fact that the city does not presently provide

adequate level of services to some areas within its present boundaries to concern for increased taxes.

The city, however, has proposed a differential taxation system with three categories: developed, undeveloped and developable land. Areas farther away from the city will be taxed at a lesser mill rate. (Concern for increased property taxes may be minimized with the movement toward full funding of municipal assistance and revenue sharing so as to virtually eliminate personal property taxes. With the increased population the city of Nome may also receive increased state and federal funds that are based on a per capita formula.)

A brief summary of testimony at the hearing also follows.

WHAT HAPPENED WHEN:

- August 28, 1978 city authorized annexation petition for 235.65 square miles
- July 25, 1980 the Department of Community and Regional Affairs accepted the petition
- October 29, 1980 C&RA issues its recommendations and report to the Local Boundary Commission
- November 5, 1980 the Nome City Council passes a resolution (at the request of C&RA staff) to authorize annexation of Township 12S, range 32W, section 17 and 22 which had been left out of original petition
- November 18, 1980 C&RA issues an addendum to its October

WHAT HAPPENED WHEN:

- August 28, 1978 city authorized annexation petition for 235.65 square miles.
- July 25, 1980 the Department of Community and Regional Affairs accepted the petition.
- October 29, 1980 C&RA issues its recommendations to the Local Boundary Commission reducing the amount of territory to 13.7 square miles from the 235.65 square miles originally petitioned for by the city.
- November 5, 1980 the Nome City Council passes a resolution (at the request of C&RA staff) to authorize annexation of Township 12S, range 32W, section 17 and 22 which had been omitted from original petition. The council also reaffirmed its original petition to annex 235.65 square miles.
- November 18, 1980 C&RA issues an addendum to its October 29, 1980 report changing the boundaries to include the Roadhouse, increasing the size of the annexed territory to 14.5 square miles.
- November 21, 1980 the Nome City Council held a work session at which it informally supported C&RA's annexation recommendation of 14.5 square miles.
- November 21, 1980 Local Boundary Commission conducts a public hearing in Nome.
- December 11, 1980 Local Boundary Commission takes official action adding some territory to square up boundaries along

Nome Annexation  
What Happened When (continued)

section lines of C&RA proposal. Final plan of annexation adds 17.8 square miles to the City of Nome.

~~29th report changing the boundaries to include the  
Roadhouse~~

- ~~November 21, 1980 Local Boundary Commission conducts  
public hearing in Nome~~

#### CHALLENGE BY ALASKA GOLD COMPANY

In the city's original petition, the Alaska Gold Company and Sitnasauk and King Island Village Corporations were the largest land owners (pending conveyance completion). Under the scaled down annexation plan, Alaska Gold Company is. Following the November public hearing, their attorneys issued a post-hearing brief stipulating the basis for challenging the Local Boundary Commission's report due to procedural violations. Jack Chenoweth reviewed the challenge as well as documents of the proceedings and finds that there are sufficient allegations made by Alaska Gold Company to sustain litigation through the Alaska Supreme Court.

The basis for the challenge is that the petition that was originally adopted by the city council failed to include by reference a section of land that was contiguous to the present city limits. After CLRA brought this to the city's attention, on November 5th, 1980, the city council passed a resolution including this area in the territory to be annexed as well as reaffirming the annexation petition. Alaska Gold Company contends that two violations occurred -- non-contiguous land cannot be annexed so the original petition is in error and that

the city council failed to properly authorize the land to be annexed.

Alaska Gold Company also contends that the commission is without authority to alter boundary changes that were authorized by the city. The commission must either accept or reject an annexation petition -- it is not authorized to draw boundaries. As a result, actions amending the petition is beyond the commission's legal authority and void.

#### STANDARDS FOR ANNEXYATION

Territory to be annexed must meet at least one or more of established standards. The following summarizes determinations and comments made by the Department of Community and Regional Affairs in its report to the Local Boundary Commission, the City of Nome, Alaska Gold Company and the Local Boundary Commission's final determination.

STANDARD #1: All land to which the territory is contiguous is within the city's boundaries

C&RA: This standard is not met as all territory is outside the city's boundary.

STANDARD #2: All land in the territory is wholly owned by the city

C&RA: This standard is met to a limited degree as a small portion of the land is owned by the city: 43 acres at the

Nome Beltz Complex and 12 acres at Moonlight Springs.

STANDARD #3: The territory is urban in character. In determining whether territory is urban in character, the commission may consider, without limitation, whether the property is platted or held for sale for urban, residential or commercial purposes, whether the population density of the territory approximates that of the annexing city, whether the population of the territory stems primarily from actual growth of the city beyond its legal boundaries, and whether the property is valuable primarily by reason of its suitability for prospective urban purposes.

NOME: The populated areas of the territory is the same density as that of Nome. The reasons for people living outside the present city limits is due to lack of suitable residential areas within the city's legal boundaries. The core of the territory is desirable because much of the permafrost has thawed so it is more suitable for construction.

C&RA: This standard is met as part of the proposed annexed territory is urban with 8.7% of Nome's population living in its boundaries (252 people). Of the 252, 96.8% (244) live within a six square mile area that is contiguous to the city.

COMMISSION: Agree that the populated areas of the territory are urban in character. Concurred with C&RA's determination.

STANDARD #4: The territory is presently in need of a municipal

service or services which the city can provide more efficiently than another municipality.

NOME: Nome Volunteer Fire Department provides the only fire fighting equipment for the annexed area. The city has the only rescue vehicle. Only four State Troopers are in the region and are often elsewhere. The city's police have assisted in the territory but have no legal jurisdiction. The city is presently capable of providing fire and police protection and the city has the only schools. The city presently pipes water to some of the residential areas and has the only source of electricity (43% of the city's generator load presently goes outside the city limits).

C&RA: This standard is met. The 244 people living in the territory presently receive a number of services without paying property taxes. The only differential paid by those outside the city limits is for electricity (20.4% or 4¢/kwh) and a \$5.00 fee/unit for truck delivered water.

ALASKA GOLD COMPANY: The city has given no consideration of what services it will extend to where as well as under what timetable they will operate.

COMMISSION: Standard is met. Concurred with department's findings.

STANDARD #5: There is a likelihood that future growth and development of the city will occur within the territory and annexation of the territory will enable the city to plan for

and control that development.

NOME: The city needs to expand its sphere of planning influence outside existing boundaries because of the likelihood of population growth in that territory, potential for OCS development and planned port construction. The present land available for construction within the city's boundaries is unsuitable for building and therefore any growth must occur outside its limits. The city, therefore, must have the ability to plan for this growth and development.

C&RA: This standard is met only by the populated areas of the territory. In fact, this is the primary basis for the petition. The city has a need to regulate growth in the area that is adjacent to the present city limits but this does not hold true for the outlying areas that are sparsely populated. There is insufficient evidence as of yet as to what impact any offshore development will have on Nome. In addition, proposed port development will not have a significant impact on Nome's growth.

ALASKA GOLD COMPANY: Future development is speculative. Nome has not shown the ability to plan for its present 525 acres and what makes it think it can do it for an expanded area.

COMMISSION: This standard is met. No suitable lots are in the city's present boundaries -- Icy View is an example of how people have to go outside the city to develop residential areas. The city does need to have the ability to plan and control this type of development.

STANDARD #6: The health or safety of city residents is endangered by conditions existing or developing in the territory and annexation will enable the city to remove or alleviate those conditions.

NOME: There are presently no restraints on animals outside the city limits and the city needs to be able to exercise animal control. Even though the city has the statutory authority to safeguard its water supply, it is presently too expensive to protect an area so far from town. If police protection is expanded into the proposed territory, it will provide the economy of scale necessary to expand services so far from the city. Expansion of services to all populated areas will make it less expensive for a-1.

C&RA: This standard is applicable as the city does need the ability to control animals as well as protect its water supply at Moonlight Springs.

ALASKA GOLD COMPANY: The city already has the authority to protect its water supply -- "it doesn't need to annex 235 square miles of tundra in order to protect its water".

COMMISSION: This standard is met. The health and safety of the residents is endangered by problems that are related to the city's ability to control animals, flood control, fire protection, law enforcement and sewage disposal. Annexation will provide expanded jurisdiction, allow for planning and regulation and expand the tax base in order to pay for the services.

STANDARD #7: The extension into the territory of city water, sewer, street, or other facilities, or of city police, fire, health or other services is necessary to enable the city to provide adequate service to city residents; and it is impossible or impractical for the city to extend such facilities or services unless the territory is within the city's boundaries.

NOME: City police are hampered as they have no jurisdiction outside the city limits. Expanded tax base will also allow for expanded fire and police protection and animal control service.

C&RA: This standard is met by the populated areas. Police and fire protection service would be enhanced.

ALASKA GOLD COMPANY: The ability to provide fire protection is the most compelling reason for annexation. However, annexing 235 square miles is a rather dramatic way of expanding the tax base or a volunteer fire department.

COMMISSION: This standard is met. Adequate, effective level of protection can't be met unless the tax base is expanded.

STANDARD #8: Residents of, or owners of property in, the territory receive or may be reasonably expected to receive the benefit of city services without commensurate tax contributions whether such services are rendered or received inside or outside the territory. In determining whether this standard is met, the commission will consider alternate methods available to the city for offsetting the cost of providing services to individuals or property beyond its property taxation powers.

NOME: Those outside the city limits have free fire protection, emergency medical services, law enforcement, libraries, cemetery, port facilities and use of maintained roads. They don't pay ad valorem taxes yet use the schools. They pay the same rates for water, sewage and solid waste disposal. Only differential charged is for electricity.

C&RA: This standard is met for the same reasons expressed in discussion of Standard #4.

COMMISSION: This standard is met. Those outside the city limits do receive benefits without contribution to the tax revenue. Charging differentials does not contribute to the bonding base necessary to replace or upgrade capital facilities.

STANDARD #9: The annexation is otherwise necessary to accomplish a valid public purpose.

NOME: Those outside the city's boundaries presently can not vote in local elections. They should have the right to participate.

C&RA: This standard is met indirectly. Those who have access to municipal services should have the right to participate in municipal affairs.

COMMISSION: This standard is met. Annexation will promote a sense of community in the entire Nome area.

## THOSE WHO TESTIFIED

Other than representatives from the city and Alaska Gold Company, the following individuals testified at the November public hearing:

- George Walters, President, Bering Straits Regional Corporation. Objected to original annexation plan due to subsistence activity interruption of the village corporations selected lands. Presented resolution passed at the AFN convention opposing the annexation of native lands.
- John Van Winkle on behalf of Sitnasauk Native Corporation. Objected for similar reasons as expressed by Mr. Walters.
- John Garrison, employee of Sitnasauk Native Corporation. Objected to original plan for similar reasons as above. Agreed that land that is urban in character should be included.
- (Dennis Maloney) representing Wien Air Alaska. Objected because of the increased taxes that will have to be paid by Wien. The increased costs will be passed on to consumers in higher freight rates, tickets. Asked that a different formula be established for taxing the airport based on the services provided.
- Vernon Kuzruk of Teller. Objected for similar reasons as Mr. Walters. Also concerned that if airport is included the cost of higher taxes will be felt in surrounding villages.

airport stay under the jurisdiction of the state because of a fear that higher taxes will result in increased passenger and freight fares.

- Ron Sheardown of Greatland Exploration. Objects because if there is planning in the area it will probably destroy mining.
- Louise Bockman representing NSHC. Objected because the annexation will not improve or enhance the health status of residents. While the city has made improvements in health care, there is still a long way to go just in the present city limits.
- Barbara Shaffer supported annexation just as she did while on the city council. There is much validity in planning based on a larger area.
- Doug Doyle objected because of potential taxes on mining property.
- Thom Frank of the Nome branch of Alaska Miners Association objected and presented a petition passed by the association opposing annexation.
- L. A. Douglas objected as may injure economic well-being of Alaska Gold Company for which he works.
- Bob Bean indicated support assuming the taxation plan offered by the city is equitable.