

ALASKA LEGISLATURE COMMITTEE FILES 1981-1982 8672

1253

SCRA

MEMO

RE: BOUNDARIES

1253

Sec. 19 AAC 05.010. Annexable territory.

- (a) Territory which is contiguous to a city may be annexed to that city if one or more of the following standards are met:
- (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.

III. APPLICATION OF STANDARDS

The approximate 4.2 square miles of lands, tidelands and submerged lands proposed for annexation to the City of King Cove are contiguous to the current boundaries of the municipality.

With the exception of two areas, the boundaries of the City of King Cove would, upon the annexation of territory proposed in the petition, follow protracted section, half-section and quarter-section lines. The two areas which do not conform to the otherwise north/south east/west proposed boundaries consist of a portion of a tract of land identified as BLM Serial No. AA 2612 and a portion of Section 28, T59S, R86W, Seward Meridian. According to City officials, these areas were excluded from the territory proposed for annexation because the lands did not meet the standards for annexation. Further, the City desired to avoid annexing segments of land tracts, thus bringing only a portion of a tract of land into the city.

The expressed purpose of the annexation effort is to include

within the corporate boundaries of the City, all contiguous lands which are suitable for and are planned for development, as well as the watershed for the City's water source. The 7.2 acre Ram Creek subdivision, located some 1,400 feet south of the existing City boundaries, is the site for a 23 unit housing development currently being constructed by the Aleutian Housing Authority. City officials indicate that an additional 43 housing units are expected to be constructed within the territory proposed for annexation over the next two years.

It is apparent that the territory proposed for incorporation will experience significant population growth, from six residents currently to an estimated 200 over the next two years. These residents will certainly be in need of and avail themselves to the services provided by the City of King Cove, a first class city within the unorganized borough. These services currently consist of: education; police; fire protection; water, sewer and electrical utilities; streets; marine facilities; health facilities; planning, platting and zoning; refuse collection and disposal; cemeteries; and watercourse and flood control facilities.

Annexation of the City's watershed is proposed to insure the continued potability of the City's water supply.

IV. CONCLUSION AND RECOMMENDATION

Time and financial constraints made it impractical for DCRA

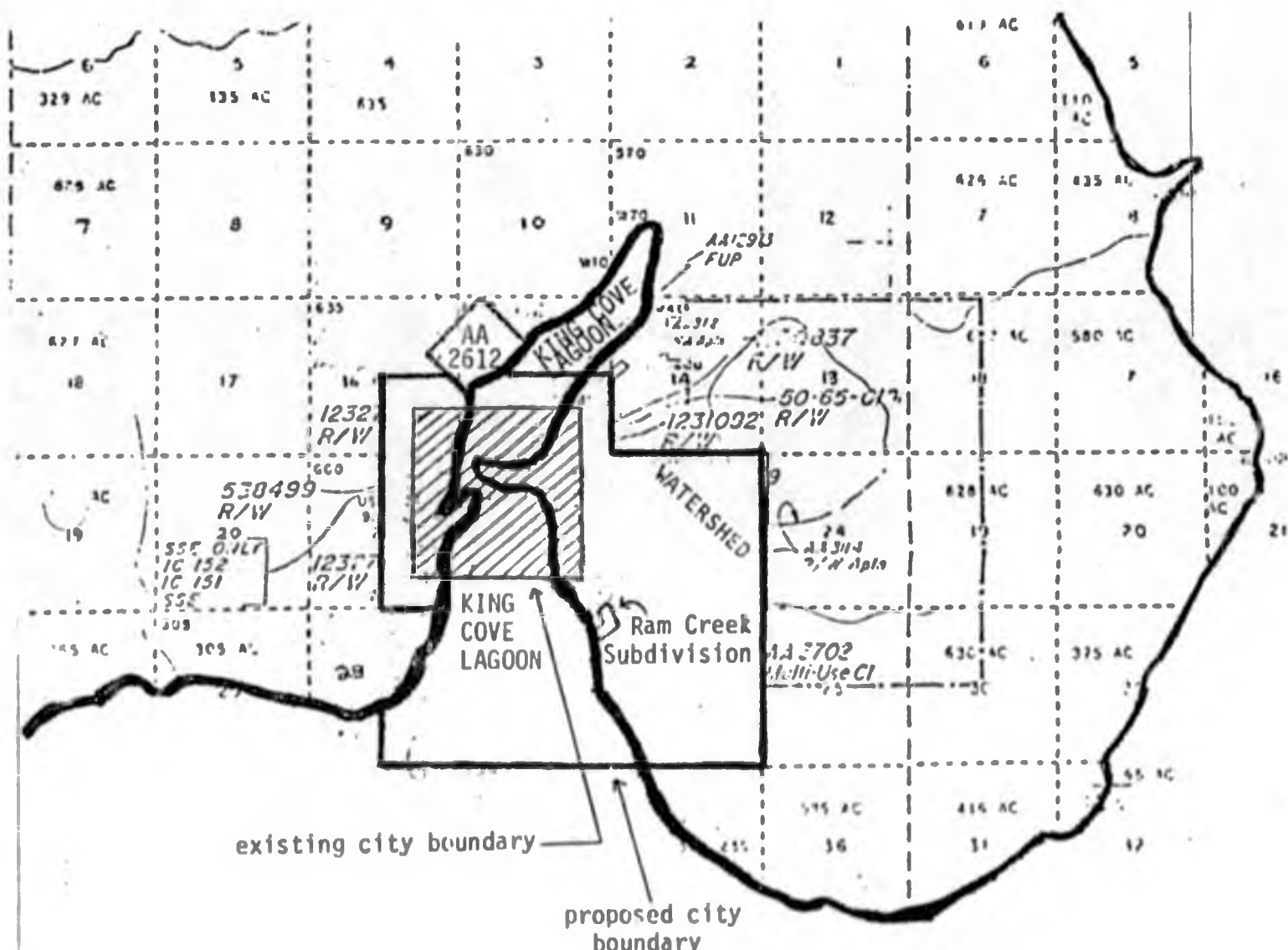
staff to travel to the remote and distant City of King Cove in order to inspect, prior to the preparation of this report, the territory proposed to be annexed. Notwithstanding, it is apparent that the territory proposed for annexation partially or wholly meets several of the standards detailed in section II of this report. The area in and around the Ram Creek subdivision is urban in character and, as a result of anticipated growth and development, will be in need of municipal services which can be provided most efficiently by the City of King Cove. According to City officials, the territory proposed for annexation which lies to the west of the existing corporate limits of the City similarly meets the standards for annexation. The relatively large area to the east and southeast of the City beyond the Ram Creek subdivision is included in the territory proposed for annexation in order to allow the City to regulate development and activities within the City's watershed, thus protecting the health of City residents.

The annexation proposal is fairly simple and straightforward, and is reportedly without opposition from the community.

The proposed boundaries of the city is the only issue of concern to DCRA. The members of the Local Boundary Commission should satisfy themselves that the portion of the BLM land (AA 2612) and Section 28 do not, as stated by the City, meet the standards for annexation while the areas coterminous to these lands do meet such standards.

Upon resolution of the above concern, DCRA recommends to the Local Boundary Commission that the annexation proposal be approved.

A map detailing the existing and proposed boundaries of the City of King Cove and illustrating other features of significance in this report, appears on the following page.



DEER PASSAGE

(Handwritten initials)

ANDREAFSKY TOWNSITE COUNCIL
and
THE CITY OF ST. MARY'S

February 23, 1980

*File
- St. Mary's*

LOCAL BOUNDARY COMMISSION
Dept. of Community and Regional Affairs
Division of Local Government Assistance
225 Cordova St., Building B
Anchorage, Alaska 99501

Dear Honorable members of the Commission:

Enclosed we have sent you an agreement reached at a joint session of our two governing bodies, the Andraefsky Townsite Council and the City Council of St. Mary's. We ask that you review this agreement at your upcoming deliberation on the petition from St. Mary's presently before you, and that you give considerable weight to the opinions we have expressed in that document.

We also extend our apologies to the Commission for not acting on this matter within the time frame the Commission desired. Both Councils were under the mistaken impression that the Commission was willing to act on the question of total annexation based on the testimony given at the hearing held in St. Mary's. It is a misunderstanding we regret. We ask the Commission not to permit the misunderstanding to affect its decision. Now is the time for both of our communities to unite, to put aside the differences that have separated us, and to work jointly toward improving the quality of life for all of the people of this area. We have made our decision. We ask the Commission to accord us the legal framework we need to carry out this purpose.

In the event the Commission should not see fit to grant our request at this time we ask any action on the petition presently before the Commission be delayed until we can resolve the concerns that may arise.

RESPECTFULLY,

Andraefsky Townsite Council

Daniel Stevens Sr.
Dan Stevens, President

City of St. Mary's

Moses Paukan
Moses Paukan, Mayor

*for
LBC - St. Mary*

Joint Agreement of the
ANDREAFSKY TOWNSITE COUNCIL
and
THE CITY OF ST. MARY'S

WHEREAS the City of St. Mary's has filed a petition for the annexation of certain tracts of property within the boundaries of the Townsite of Andreafsky, namely Tract "B" and Lots 1A and 1B of Tract "A" of U.S. Survey #5507;

WHEREAS a public hearing was held in St. Mary's on November 15, 1979 by the Local Boundary Commission concerning the appropriateness of said annexation;

WHEREAS a significant portion of the testimony presented at the public hearing by citizens of Andreafsky Townsite was in favor of a complete annexation of Andreafsky Townsite into the City of St. Mary's, rather than the partial annexation proposed;

WHEREAS the Andreafsky Townsite Council and the City Council of St. Mary's agree that the union of Andreafsky Townsite and the City of St. Mary's will improve the economic base of both communities, provide for the more efficient delivery of services to the public, and enable the people of both communities to more effectively plan for the area;

WHEREAS on the Twenty-second-day of February 1980 the Andreafsky Townsite Council and the City Council of St. Mary's jointly met and all members present agreed the communities should become unified and agreed on the terms of unification set forth below, and have authorized Daniel Stevens, Sr., President of the Andreafsky Townsite Council and Moses Paukan, Mayor of the City of St. Mary's to sign the agreement on behalf of their respective communities.

THEREFORE, IT IS AGREED:

1. That the Andreafsky Townsite Council and the City of St. Mary's have stipulated to the following terms of transition:

A. That the Andreafsky Townsite Council will appoint three citizens from Andreafsky Townsite to sit as advisory members on the Council for the City of St. Mary's until the next general election in November of 1980;

B. That should a vacancy occur on the City Council for St. Mary's before the next general election the City Council will fill the vacancy from the advisory members of Andreafsky Townsite;

C. That the Andraefsky Townsite Council will designate two citizens from Andraefsky Townsite for appointment by the Mayor of St. Mary's as voting members of the St. Mary's Planning Commission;

D. That the City Council for St. Mary's will send a letter to the St. Mary's School Board advising the School Board of the annexation and encouraging the School Board to appoint the current advisory member from Andraefsky Townsite to a voting seat on the School Board in the event a vacancy occurs on the School Board before the next general election in November 1980;

2. That the Andraefsky Townsite Council and the City Council of St. Mary's petition the Local Boundary Commission to use its authority by virtue of the petition now before it to approve the complete annexation of Andraefsky Townsite into the City of St. Mary's.

DATED this 23d. day of February 1980 at St. Mary's, Alaska.

ANDRAFSKY TOWNSITE COUNCIL

CITY OF ST. MARY'S

Daniel Stevens Sr.

Daniel Stevens, Sr.
President

Moses Paukan

Moses Paukan
Mayor

BEFORE ME this 23d day of FEBRUARY, 1980, Notary Public for the State of Alaska, came Daniel Stevens, Sr., known to me personally, and Moses Paukan, known to me personally, and after being duly sworn, stated that the contents of the above document were true and correct, that each was duly authorized to subscribe said document, and thereafter each subscribed his name thereto in my presence.

Richard E. Dool

Notary Public for the State
of Alaska

My Commission Expires: 11/2/82



STATE OF ALASKA
LOCAL BOUNDARY COMMISSION

City of St. Mary's petition for)
annexation of the Andreafsky)
Townsite)

Statement of Decision

WHEREAS, on August 9, 1979, the City of St. Mary's submitted a petition to the Local Boundary Commission through the Department of Community and Regional Affairs pursuant to the provisions of 19 AAC 15.010 - .130 requesting the annexation by election of Lots 1A and 1B of Block 1 in Tract A and all of Tract B, USS #5507, Andreafsky Townsite, a portion of an island within the current boundaries of the City of St. Mary's; and

WHEREAS, on October 4, 1979, the Department found the petition to be sufficient; but for compelling reasons recommended to the Local Boundary Commission that it exercise its authority under the provision of 19 AAC 15.070(e) to treat the petition as a legislative review annexation proposal; and

WHEREAS, the Local Boundary Commission scheduled a public hearing with prescribed public notice; and

WHEREAS the Commission conducted a physical inspection of the proposed annexation territory and held a public hearing in the St. Mary's Council Chambers on November 15, 1979; and

WHEREAS a majority of the testimony presented at the hearing as well as written materials received subsequent to the hearing, including materials from representatives of the City of St. Mary's and the Andreafsky Townsite Council, indicated that the interests of the state, the City of St. Mary's and the entire unincorporated Andreafsky Townsite would best be served through annexation of the whole Andreafsky Townsite; and

WHEREAS the Commission held a public decisional meeting on February 29, 1980;

NOW, therefore the Commission confirms its decision to approve the annexation of the entire Andreafsky Townsite to the City of St. Mary's and enters the following summary of findings in correlation with Commission regulations:

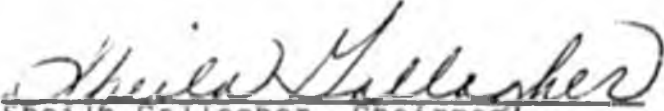
19 AAC 05.010 (a) (4): The territory approved for annexation is in need of St. Mary's City services, is presently benefited thereby, and the City of St. Mary's is capable and willing to provide services. The City is the only local government entity in existence in the area capable of supplying needed services and jurisdiction to residents of the territory.

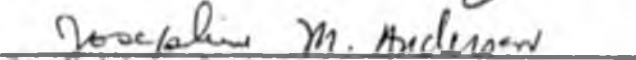
19 AAC 05.101 (a) (5): The Commission finds that the territory approved is growing and developing and is likely to continue to do so; because of this the territory should be under the jurisdiction of the City of St. Mary's for orderly control of this growth.

LOCAL BOUNDARY COMMISSION

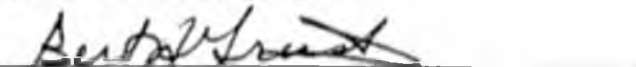
February 29 1980

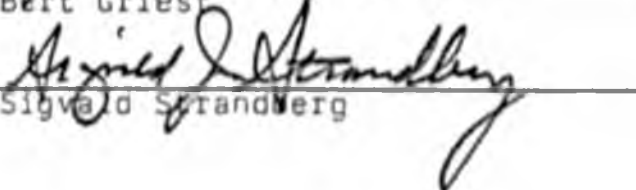
Approved:


Sheila Gallagher, Chairman


Josephine Anderson


Charles Bettisworth


Bert Griest


Sigvald Strandberg

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., trading 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 800 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. ^{later donated to the City of Nome} 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-residents 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 Ice View, the State Highway Department complex, the Airport, and the East End (including the Roadhouse, the radio stations, 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 stratigraphic 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 accommodate support services 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 uses 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.^{1/}

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

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 permits for 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 14th day of July, 1980.

By [Signature]
City Manager

[Signature]
City Attorney

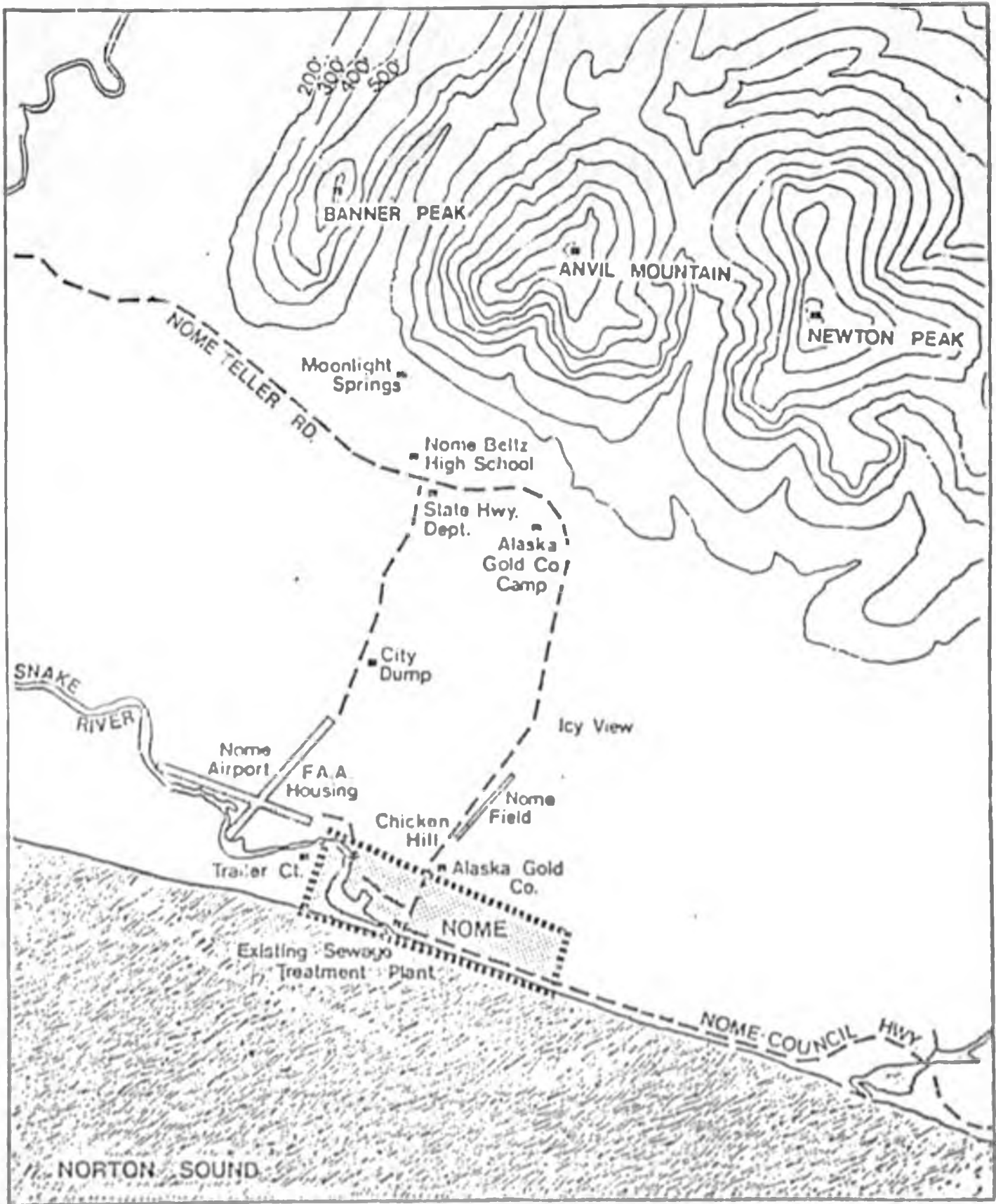


Figure 2-1

	<p>NOME & VICINITY</p>	<p>0 1/4 1/2 1</p> <p>SCALE IN MILES</p>	
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Alaska 1

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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ALASKA STATE ARCHIVES
400 UNIVERSITY PLAZA
P.O. BOX 628, ANCHORAGE, ALASKA 99510
PHONE (907) 773-6649

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
7 willing to extend services to the annexed area as
8 follows:

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

16 The City of Nome has given no consideration to what services
17 it will extend to which areas, and on what timetable. The
18 City Manager unveiled a three-tiered taxation proposal for
19 the first time before this Commission on November 21, 1980.
20 This proposal must be seen as a last minute, unofficial
21 reaction to criticisms leveled by this respondent and
22 others. Even if the City Manager's proposal were the
23 reasoned product of a properly convened City Council, it is
24 entirely insufficient to meet the requirements of law.
25 There has been no consideration given to what percentage of
26 the territory would fall into which category, what amount of
27 tax will be levied on each category, and what standards will
28 determine what territory fits in which category. And the
29 fact that a plot is deemed "developable", for instance,
30 promises no nexus between the level of services offered and
31 amount of tax levied. In short, the city has failed to
32 address another most significant regulatory standard.

33 Fourth, proceedings thus far are pervaded with the
34 aura, if not the reality, of ex parte contacts. Resolution
35 81-11-1, amending the ordinance authorizing annexation, was
36 passed, according to the minutes of the Nome Council's
37 special meeting of November 5, 1980, because "[t]he local

1 Secondary Commission has requested that the Council pass a
2 resolution on the two parcels and reaffirming annexation".
3 Just days before the 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 the 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.

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 K & L
28 Distributors v. Markowski, supra; United States Smelt., F. &
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 6. 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 attending the
27 city's petition would be ultra vires and void.

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U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
400 FORT MIAMI BLVD.
F.O.B. BOX 578, BEACHDALE, ALABAMA 36510
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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-1981 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 1980-81. 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 equal protection provisions of the Alaska Constitution.

LOCAL BOUNDARY COMMISSION MEETING
NOME ANNEXATION PUBLIC HEARING
November 21, 1980

C. Bettisworth:

I'd like to call the public meeting to order on the annexation petition by the City of Nome. The purpose of this hearing is to receive testimony from the public regarding the City of Nome's petition to annex approximately 150,816 acres to the City of Nome. In considering the petition proposing annexation the Local Boundary Commission may decide the issues in any one of the following 3 manners. They may accept the petition as submitted or they may amend the boundaries of the proposed - of the area proposed for annexation, accept the petition or reject the petition. Administrative and judicial appeals of a decision by the Local Boundary Commission may be initiated pursuant to Alaska Statutes. My name is Charles Bettisworth, I'm from Fairbanks and I will be an acting chairman. The chairman has been called away on personal business and will not be able to be here, and the vice chairman has declared a conflict of interest and he also is not here tonight. The other commission members are to my far left Bert Griss from Selawik and to my near right Jo Anderson from Wrangell. Because I am an acting chairman and actually at one other time at a very small hearing conducted a public hearing of the Local Boundary Commission I've asked Palmer McCarter who is the director of the Division of Local Government Assistance for the Department of Community and Regional Affairs to moderate this public hearing here this evening, and I'll let him go through the proceedings that we would like this hearing to be conducted under. So I'll turn it over to Palmer.

Palmer McCarter:

Okay, unless there is an objection at this time I will officially announce that the public hearing on the petition for annexation submitted by the City of Nome is called to order at 7:37 and let the records show that Commissioners Griss from Kotzebue, Anderson from Wrangell, Bettisworth from Fairbanks are present; absent are Chairman Sheila Gallagher and commission member Sig Strandberg. Also in attendance is Dan Bockhorst, staff assistant to the Local Boundary Commission. Before beginning the presentations that might be made from members of the audience and others on the Nome Annexation petition, I'd like to take care of a little bit of housekeeping items before we begin. I might ask the city representative, since we are using the city council chambers are there any special rules governing such items as smoking or the audience ought to be aware of.

Ivan Widom:

As far as the sitting there are no regulations. However I think if the room becomes too crowded that to would be obvious that we would ask - request that you ask people not to smoke.

Palmer McCarter:

With that statement in mind, and I don't know if everybody heard it, basically the City of Nome has no designation that this is not a smoking area so smoking will be allowed. If it gets to a point where it's too overwhelming we'll either try to get more ventilation or request that people not smoke in the room. Smoking at least for the moment until a decision is arrived at otherwise is allowed in the city council chambers. We hope that this--we are aware this is a controversial subject in the area and we are going to try to have a fairly orderly conduct of the hearing process. To that end we have outlined certain restrictions that we at least hope will be acceptable to all members of the audience in terms of going about making presentations to the members of the Local Boundary Commission. I'd like to first state that as moderator for the Local Boundary Commission for this hearing I have no involvement with the decision they will make and I think that needed to be said up front. The manner that we are proposing to and I have discussed this with the Commission members earlier this afternoon, kind of a time frame and a restriction as to how evidence or how testimony will be heard by the Commission members. In order of presentation the City of Nome, petitioner in this case will be allowed a thirty minute period in which to make its initial presentation to the Commission. Following that the Department of Community and Regional Affairs which serves as staff to the Boundary Commission will be allowed a period of ten minutes to indicate their review of the petition and the Department's recommendation. Immediately following that respondents or people who have officially written and asked to be heard at this hearing and to make presentations of their testimony will be allowed a twenty minute period to make that presentation. I think the staff has indicated that there are approximately three of those who have filed notices of wanting to make presentations before the Boundary Commission. Finally the City of Nome will be allowed a thirty minute period of time in which to either add additional testimony or to rebut or respond to presentations that might have been made either by the Department or other respondents who have filed notice of wishing to present testimony. At that point we should be approximately somewhere, excuse me, those are considered maximum time allowances, we are not suggesting that necessarily those times have to be used to their maximum if there is not more we can save a little time. Follow .g that period

which would be roughly in a couple of hours we will take a fifteen minute break, we will then come back and allow individuals of the audience who have signed up on the sheet that's at the back by the door and who have indicated that they would like to testify before the Boundary Commission, those people will be called upon in order of the way they signed the sheet. We will be limiting that testimony again initially to a three minute presentation by each person. Following that period of time then it's basically open and we will call on individuals whether respondents, city or whatever in any order for additional comments and in each instance requesting that only new information or corrections to previous testimony be offered to the Commission members for consideration. The Commission members have indicated that they would like to call this hearing to a close or call their business meeting to a close at 11:00 regardless of where we are in this process. If the work has not been concluded, or if the hearing has not been concluded by 11:00 the meeting will be reconvened tomorrow morning in the council chambers at 9:00 tomorrow morning. So there should be ample opportunity for everybody who wishes to speak to be heard. The general rules of order are hopefully, don't repeat yourself and if somebody else is basically expressed your position indicate for the record that you just wish to be on record as supporting a position that might have been expressed by somebody else. In terms of testifying, the City of Nome and the respondents who asked to be officially recognized for this hearing process may want to get up and move around the room. They are free to do so when we get down to the individual testimony we'll ask that the person wishing to testify sit at the end of the table there and speak so that the microphone can be -- will pick up your conversation. The public hearing is being recorded so members of the Commission who are not here will have an ample opportunity to review the record. Also I understand that -- I believe this is on the radio stations so those who may want to get carried away with language may keep in mind that this is being publically broadcast, so you should be aware of that factor. Are there any questions of the rules of the order for the evening before we actually commence? (pause) If not then I'll call upon the City of Nome and its petitioners representative to make the initial presentation.

Ivan Widom:

That's all right, I'll stand. My name is Ivan Widom, I'm the City Manager of the City of Nome. I'd like to read some remarks that I have prepared. The City of Nome would like to offer some comments regarding the proposed annexations. There are many issues involved in an annexation that can be addressed. One basic problem is to get down to the substantive issues and disregard the minor ones. Size -- A

distinct problem that we are dealing with is the amount of territory the City is looking to annex. If the Airport, High School and related housing were inside the City the way they are in other places the City would be 5 or 10 times as large as it is now with very little room for expansion. When you look at other cities in Alaska that have a population close to Nome's you come up with Valdez which has 274 square miles, Skagway which has 443.10 square miles and Wrangell which has 70 square miles. Other cities with less population are huge in comparison. Nightmute, population 135 people, is 102 square miles, Togiak-population 474, is 42 square miles, McGrath-population 382, is 48 square miles and Stebbins, a community close to here-population 309, is 35 square miles. Geography -- one of the more important ideas is what territory a city has an effect on and what territory affects the city. As far as Nome is concerned the area between Cape Nome and Sinuk River and the land to the north of the city in the proposed annexation meets that criteria. There are many reasons that this should be brought to your attention. However I will attempt to deal only with the major ones. Planning -- the City has planning powers and is beginning to utilize them in a positive manner. We're involved in a coastal management program with the state that covers the annexation area. Through proper use of planning the City would guide and control development. However to allow a private group to plan for an area is inappropriate compared to governmental planning. Ordinances, rules and regulations that look out for the public welfare are more permanent and are mainly more enforceable than private planning efforts. I know of nothing in the Alaska Native Claims Settlement Act that prohibits governmental planning as some have claimed. If that were true, then all of the native lands inside boroughs and cities would have to be de-annexed. This of course would be unacceptable and so is the concept that private land owners be allowed to plan solely for their own territory. I might mention that the city is involved in a coastal management program, I have just a one set of maps I won't go through them all. This kind of mapping is what we're looking at in the near future. This involves the hazardous areas, the animal habitat, the flora and the fauna, all the tundra, different things that are going on out there. What these are are different overlays. I won't take up time now to go into each one of them individually but through the coastal management program the city will be doing a great deal of planning efforts. Also it's been stated in some of the criteria or some of the petitions that have been received, the City of Nome has no coast -- has no comprehensive plan. I have a copy here on the floor, some of you might remember this document, it has been around for awhile. This is currently being updated by the

people who are doing the coastal management program. So that we do feel that the city is moving forward with our planning efforts. Taxation -- the city is proposing to tax only for services provided. In addition we will also institute a type of differential taxation that breaks the annexed area into zones. The zones will have three categories. Developed, developable and undeveloped lands. These items are listed in more detail on an attached sheet. Several of the resolutions against annexation speak against taxation of native lands. Other than the twenty-year deferral of taxation on undeveloped lands there are no provisions I am aware of that preclude taxation of those lands. In fact section 21(d) of the Act specifically allows taxation under certain circumstances. This is for leaseholds and developed native lands that revenue would be received. To refuse an annexation because of the taxation issue would certainly set a precedent throughout the state and would require many areas to be annexed, de-annexed to comply. In addition the city will assess land and improvements according to their location. Patented and unpatented mining claims will be taxed as law allows. This \$200 per 20 acres or fraction thereof according to the state statutes. Services -- the Nome Joint Utility System provides water, sewer, electricity and landfill services to the residents of the Nome area. Since these are enterprise operations, and no tax dollar or utility revenue change hands, these services are not something new to be provided. Rates for out of the city customers will be reduced to match those in the city. For electricity the rate will drop 4 cents per kilowatt. Water will drop \$5.00 per call for delivery charge. City services will be taxed as stated on the attached sheet. The differential taxation rate will be applied according to where the property is located in the city. Some sample mill rates and taxes are also shown on the sheet. These show that the city is attempting to be more than fair when taxation is actually applied. In closing I would say that the City has met with many individuals and groups in the last several months attempting to find out their concerns as well as what annexation is all about. These were my prepared comments. The City has met with a number of different groups. We have talked to people at the airport, the native organizations. I personally have gone before two informational meetings trying to explain the city's position and listening to all the reasons why people don't want to be annexed, why they are concerned about annexation, why they feel it might be good, might be bad, to find out what it's all about. The City

Council in several work sessions have discussed this annexation proposal, and through the information that we have received from different discussions, the resolutions that are received by the City, by the Boundary Commission regarding the proposed annexation, it's the city's position, and this was done through a concensus of City Council members in work session meetings. Nothing formal was ever done-- the City Council has not had a chance to meet on a formal basis for several weeks. Many of us were in Fairbanks at the municipal league last week. What the City Council has decided in work session regarding this annexation that it would be willing to accept the recommendation of the Department of Community and Regional Affairs in their last change. This means the area which essentially is the same as the annexation, or that the city received in 1970 but was thrown out. In fact it's slightly smaller. I don't know how you want to proceed from here, whether you would like to. . .for me to show the audience the map that we have accepted. (Which one -- oh, I'm sorry.) Okay. This is the area that the city has proposed to annex. This is the area that has been recommended by the Department of Community and Regional Affairs. And it is the concensus of the City Council that this is the area that the city would be willing to accept for annexation. So I guess I'll leave it at that and we can go from there. I want to make it specifically clear that the city is no longer interested in annexing the rest of this area. Only the area outlined on this map. I think it's important that you realize that, it will save some of us alot of time tonight if we get past that hurdle.

Palmer McCarter: Mr. Widom,

Mr. Widom: Yes.

Palmer McCarter: Before I turn it over to the Boundary Commission to ask questions of you, do you have documents that have not been submitted to the, either to the Commission or to the staff of the Commission that you would like additionally submit for the record or not?

Mr. Widom: No, I have given each one of you I think, you do not have a copy but I have extras.

Okay.

Bob Hicks: Could I make a comment in that regard.

Palmer McCarter: Identify yourself.

Bob Hicks: Yeah, I'm Bob Hicks, the City Attorney. I think as the Commission is aware we have received three briefs

here. One at 10 minutes to 5 last night, one at noon today and one at 5:10 this afternoon. We certainly haven't had an opportunity to prepare responses to those briefs and if the Commission is not going to be making a decision I would like to request an opportunity to give some written response if the Commission feels that that is necessary at sometime in the future. We don't have any more documents to submit now but we are overwhelmed by the briefs that we were hit with at the last minute. Certainly I think they may be deserving of some response and some legal research by us.

Thank you.

Palmer McCarter: Excuse me would you please stand and only I'll recognize you if you have a position of representing the city.

We can't hear back here.

You can't hear me.

No. Not hardly.

Palmer McCarter: Okay. Right now this is the time being allotted for the presentation is the City of Nome. If somebody in the back that raised concern wants to speak as part of the petitioner's presentation, then you're free to do so, otherwise I'll ask that you wait until later.

Ivan Widom: You didn't have any trouble hearing me did you?

Thank you. I think that's all that we have to say for now.

Palmer McCarter: I'll call now on the Department's representative to indicate then what the departmental recommendations was on the City of Nome's annexation.

Dan Bockhorst: I also will stand, if I can move over to the map.

Palmer McCarter: Identify yourself for the record.

Dan Bockhorst: My name is Dan Bockhorst. I'm the staff assistant to the Local Boundary Commission. Approximately four months ago the Department of Community and Regional Affairs received a petition from the City of Nome requesting the annexation of the area outlined in brown in the map. Basically it's approximately 236 square miles. The Department's responsibility

was to review that petition and determine whether it was sufficient and acceptable as far as form and contents and whether it required--contained the necessary information that's required by state law and regulation. The Department completed its review and notified the city that the petition was accepted, they notified them on July 25. Subsequent to that notice of acceptance the Department has conducted its own review for the information of the Local Boundary Commission we have prepared a report in terms of how we view the City of Nome's annexation proposal, how it met the standards that are -- are on the state regulations. Again I would like to point out that the recommendation and report that the Department of Community and Regional Affairs is no way binding upon the judgment and decision of this Local Boundary Commission. It's only --we are there for the purpose of technical support and for information and our recommendation is just that, it--it carries the same weight that other testimony here will be given. Again the territory requested by the City of Nome out to the west the Sinuk River approximately 14 miles to the north and then to the Cape Nome in the east. At this point I'd like to read for your information the nine standards that the Department of Community and Regional Affairs has reviewed in terms of judging how the territory meets these standards. Whether it is acceptable to be annexed. The first standard outlined in the state regulations is whether the land within the area is contiguous, is within the city's boundaries. There are instances where under certain circumstances land is contained within a municipal boundary but it is not -- it is excluded formally from being within the corporate boundaries. This does not apply since all the territory proposed for annexation is beyond the corporate boundaries of the City of Nome as they exist currently. The second standard is whether land in the territory is wholly owned by the city. There is in fact a very insignificant amount of land that is owned by the city out of the total 236 square miles I think there is an estimated 55 acres of land primarily at the Nome Beltz complex and at the Moonlight Springs - I think there's 47 acres at Nome Beltz and 12 acres or so at the Moonlight Springs. The third standard is whether or not the territory is urban in character. In viewing that the department determined that there is a portion of the territory for which the city petitioned to annex that is in fact urban in character, particularly recognizing that Icy View Subdivision is subdivided parcel of land with a fairly high concentration of population. The types of services that are available-whether or not city water and sewer,

electricity is available--took that into consideration and basically felt that the area immediately outside the corporate--the existing corporate boundaries of the City of Nome in many areas is urban in character. The fourth standard is that the territory is presently in need of a municipal service or services which the city can provide more efficiently than any other municipality. Of course there is no other municipality in this area other than the City of Nome and there is evidence the Department feels that services are being provided and are needed to those estimated 248 people that live in the area that the Department has recommended for annexation. Services including fire protection, police protection certainly utility services that are provided. Number five, question as to whether there is 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 and control that development. The Department didn't find any evidence in its review that would indicate that would indicate that any significant growth is imminent in the area, even though the City of Nome did argue that potential for development as a result of offshore oil exploration. The Department feels that if such exploration does result in the finding of feasible developable reserves and that those the development and production of those reserves will take place and if that action has a significant impact which has one fact on the City of Nome then the Department can give consideration to that issue but at this point it simply hypothetical, no one knows whether the growth will occur or not. Number six 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. Again the Department concurred in certain areas that the City of Nome identified as problems with jurisdictional dispute in providing and extending police protection, problems with animal control and possibly the concern about insuring the purity of Moonlight Springs. The Department felt and again it relates to the primarily the populated areas. Number seven the extension into the territory of city water, sewers, street or other facilities, or the police, fire or health or other services 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. This again relates to the extension of city police and fire protection services. The city currently in particular with respect to fire protection freely provides service to the area without compensation, and frankly without statutory authority to extend that service beyond the corporate boundary Number eight, many of these regulations which the Department's analysis are interrelated--eight again, the residents or owners of property in the territory proposed for annexation receive or maybe recently expected to receive the benefit of city services without commensurate tax contributions. Again that relates to the issue of city police and fire protection services that are available. I think it's reasonable to assume that the people living at Icy View, the Alaska Gold Company who was experienced here on November 5 when there was a fire at dredge No. 5, they did call the city and the city did respond. I think that it recognizes that the city does provide the service and the people expect that service, and those services cost money for the city provide. The Department feels its only appropriate that those areas that benefit from that service should be included in the territory. Number nine is the catch all provision that states the annexation is otherwise necessary to accomplish a valid public service. The petitioner argues in this vein that to include the residents of the territory would accomplish a public purpose in that it would give them the option to participate in the democratic process, decision making process and to hold elective office for the City of Nome. The Department has had no say on it one way or another.

Palmer McCarter:

Mr. Bockhorst you have a minute and a half to summarize.

Dan Bockhorst:

In summary the Department has pared down the recommendation or the request by the petitioner from the 236 square miles--pared it down to this area outlined here containing 14-1/2 square miles. Initially the Department's recommendation that came out on October 29 did not include the Roadhouse, but subsequent to that on the 18th of November the Department issued an addendum to its report that had discovered an oversight on the Department's part that the Roadhouse it has a substantial--it is a substantial commercial establishment and does serve a significant number of people we feel that too needs to be annexed for annexation and that should also be included.

Palmer McCarter: Would you give me the name of the three respondents.

Dan Bockhorst: The three respondents: Alaska Gold Company, Sitnasauk Native Corporation and Bering Strait Native Corporation.

Okay, I'll call on the three respondents, both the respondents and the audience at large have heard the presentation by the City of Nome, the City of Nome has now gone on record supporting the departmental recommendation although it should be kept in mind that the petition that is officially before the Local Boundary Commission is that which was originally submitted and contains the area described on the larger map. Again keeping in mind that the city has amended its position through testimony to indicate support of the departmental position. You heard briefly a presentation by the Department indicating how it came to the recommendation that it did which has been submitted to the Boundary Commission. Copies of the Department's recommendation is available for the public.

Dan Bockhorst: A limited amount.

Palmer McCarter: A limited number where

Dan Bockhorst: I have them here. If people beyond the number that we have available if people desire to have a copy of the report we can take your name and provide you with copies.

Okay, we will now move into the area of testimony by the three respondents who officially requested to have an appearance before the Boundary Commission. I'm going to simply call them by the alphabetical order in which they have been listed. The three Alaska Gold Company first would their representative like to approach the witness stand.

Robert F. Baldwin: My name is Robert F. Baldwin. I'm manager of the Alaska Gold Company in Nome. The mining company commenced operations in this area in 19--in the early 1920s. At the time it was Hammond Consolidated Gold Fields, a subsidiary of the United States Smelting, Refining and Mining Company. Later the name was changed to U V Industries and in 1974 we became Alaska Gold Company presently a subsidiary of Sharon Steel Corporation. Dredging of placer deposits continued from 1923 through 1962, when the operations were shut down due to rising costs and the set price of gold. With the increased price of

gold a decision was made in 1974 to reactivate the two dredges in the Nome area. The mining company owns approximately 16,000 acres of placer mining claims and our proven reserves of over 122 million cubic yards contain in excess of one million ounces of gold. If the value of gold continues to rise in the next few years, it is very possible that our reserves will increase by 20 per cent. To imagine the size of our reserves we can say that it would take a four dredge operation 25 years to exhaust our present reserves. Due to start up problems scarcity of certain supplies and lack of experienced man power, the company in all has not since it restarted in 1975 shown a profit. If we become a profitable concern in the near future our expanding into a three or even a four dredge operation is highly possible. Our present labor force from a low of 30 in the winter to 165 during the operating season could grow to 60 and 300. Our present payroll of 2-1/4 million could reach 5 million. As all our reserves are encompassed in the area the city proposes to annex, we must consider the added burden of municipal taxation--Pardon me--If our mining lands do become a part of the City of Nome. Even if the millage rate was graduated on the basis of services rendered, the lowest rate on only personal property valued in the tens of millions would amount to thousands of dollars a year. The total tax on real and personal property could make the difference between profit and loss, between operating and shutdown. The existence of the mining company is based on the values of gold and the gravels contained in our reserves which in a large degree are located on the ancient beaches. The Submarine, the Second Intermediate, Monroeville and the Third Beach. These pay zones extend from the foothills of the city lands and to the shoreline west of Nome. Due to the character of placer mining especially with large dredges, a considerable amount of ground on all sides of the mining operation are required for right of ways and for support activity. Therefore the annexation of this area would not infer that the mining company would be receptive to dispose of certain parcels of ground for residential or business purposes. The sale of one acre could eliminate the possibility of mining a pay zone covering an area of 100 acres. Mention has often been made of the Satellite Field - that it would be an ideal spot for a subdivision. The mining company has no plans of disposing of this area as the land is required for storage space and further if we a:

to mine the ground to the north of the field a dredge if it was built at the base of Anvil Mountain would later of necessity have to dig through the field to get to the virgin ground on the south side. Lastly services the city claims are presently needed in the area proposed for annexation does not apply to the Gold Company as we have our own generating and distributing system, we build and maintain our work roads and where required such as at No. 5 camp we have complete water systems and sewage system. Nome was founded on mining, and mining is still one of the largest private employers in the area. Large scale mining requires vast reserves and as more and more plots scattered throughout the area are utilized for subdivisions, mining is restricted. Under annexation municipal services will be requested by these subdivisions. If the services are granted, some will require rights of way across mining claims and again tightening the noose on mining operations. Sooner or later these restrictions will strangle gold mining in this vicinity. I will close by using the old cowboy's lament, Don't fence me in!

Palmer McCarter: Thank you Mr. Baldwin. Before you sit down.

(Applause)

Before you sit down do you have any additional written materials that you wish to present to the Commission that have not yet been presented.

Mr. Baldwin: No.

Palmer McCarter: Are there any questions from the Commission members of the first respondent?

C. B. Bettisworth: Of the current 125 summer personnel that you employ, how many of those people are local?

Mr. Baldwin: That's 165. There is--I'd say there's close to 75.

C. B. Bettisworth: And the rest of those come from outside of Nome.

Mr. Baldwin: Yes.

Palmer McCarter: Are there other questions? (Pause) Thank you Mr. Baldwin. Uh, Bering Straits Native Corporation.

Carl Winner: We have further respondents for the Gold Company.

Palmer McCarter: Oh I'm sorry.

Carl Winner:

My name is Carl Winner, I'm an attorney for the Gold Company. I'm not going to address the nine standards mentioned by Mr. Bockhorst since we covered them in great depth in our brief and I'm sure that all of you ladies and gentlemen of the Commission have read that brief. I would like to address two or three points which probably will not be brought out by any of these people who are here to speak tonight. First of all it is our belief that this proceeding cannot go forward because the Commission did not request the annexation--I'm sorry, the Council did not authorize the annexation of any contiguous lands. Section 11 South, Range 34 West contains all of the land contiguous to the City of Nome. That Range was not contained within the ordinance or the resolution passed by the City authorizing the annexation. Secondly, we do not believe that this Commission has the authority under the law to amend an ordinance or an annexation requested by a City Council. If you read the Constitution, the Statute, the regulations, the case law, it appears quite clear in this instance that the Commission has the option of approving or disproving the petition as presented by the Council. Third, I would like to address one part of the regulations which are not contained in the nine standards and we think that this regulation is a crucial regulation and a regulation which has not been addressed to any extent by the City. If I may quote it verbatim, 19 A.A.C. 05.020 states that "no annexation will be approved unless the annexing city demonstrates that it is capable of extending and willing to extend its services to the annexed area. Full municipal services shall be extended to the annexed area immediately except where impossible for want of necessary capital facilities. Where full municipal may not be provided immediately the annexing city shall satisfy the Commission that it will provide these services within a reasonable time." The Gold Company submits that the City has not paid any attention to what it will do with this property if and when it gets it. We have seen 70 proposals stating when police service will be extended, how many police officers will be added, when they will be added, when and if water and sewer will be extended, on what schedule. These are just examples of a point which should be on the front of everyone's mind at this point on the eve of annexation or non-annexation, and it is a point which we do not believe has been addressed or even considered in any degree by the City. Thank you.

Palmer McCarter: Before you sit down.

(Applause)

Do you have any additional written material.

Carl Winner: No we do not. No.

Palmer McCarter: Do the members of the Commission have any questions of Mr. Winner? Bert.

Bert Griss: I'd like a response to the--to his presentation or his statement saying that we can only approve or disapprove, can we also amend the boundaries proposed for annexation?

Palmer McCarter: Mr. Bockhorst."

Dan Bockhorst: The Department of Community and Regional Affairs position on this is that the Boundary Commission does have the authority to amend the petition. It has been done many times in the past and approved by the state legislature on that basis.

(Unknown) Speak up please.

Palmer McCarter: Would you repeat it.

Dan Bockhorst: Yes, I stated that the Department of Community and Regional Affairs position on this issue as to whether or not the Boundary Commission has the authority to amend the petition, the Department feels it does have that authority. That authority has been exercised in the past many times and on the basis of that the state legislature has approved recommended boundary changes which were modified from the original petition.

Carl Winner: Could I respond to that sir? Are you satisfied? We recognize that its been done before. We simply say that it has not been questioned before, and we suggest that if you look to the statute and to your own regulations, there is no indication that you have that authority and every indication is to the contrary.

Palmer McCarter: Any other questions for Mr. Winner?

Bill Ruddy: Thank you sir. My name is Bill Ruddy, I'm from Juneau and I'm an attorney for the Gold Company also. I might to say at the outset that we also

adopted the very fine brief that's been submitted by Bering Straits Native Corporation as our position along with the brief that we previously submitted. I feel as though I've been here before, and I have. I was here ten years ago. I didn't actually appear at the hearing that was held at time principally because we had been given so very little notice that it was very very difficult for even people to come over from Fairbanks and appear. We have since that time frankly been somewhat suspect of the Local Boundary Commission. I don't mean that as an intimidation or as a threat, but we do not feel that we were given a fair hearing at that time, and having listened to the City's presentation tonight I am beginning to be concerned as to whether or not we will have a fair hearing this time. The proposal that was put forth by the City of Nome was so outrageous at the outset that there was no way that the Local Boundary Commission would ever approve it. I think that's inescapably clear. What the City of Nome was looking for and what incredibly they have overlooked was the area that's contiguous to the present city. Now as Mr. Winner and I will elaborate a little bit on that, as Mr. Winner as indicated the city has never authorized through ordinance that there be an application of that part of the land around Nome. We do not see how at this point the Local Boundary Commission can come in and make a decision to give Nome something that they have never even asked for. As Mr. Winner again has suggested to you, this matter has never been cleared up in the courts but this time if it has to be, it will. The viability and the integrity of this corporation is on the line and we will do everything within our legal power to protect its interests in Nome. Nome in a sense is that company and that company is Nome while the government is not part of that company certainly and the company is not part of that government, nevertheless, they both developed together. They developed over a period of about 50 years in a very unique way. Nome is a mining community, and if Nome is to exist that mining company has to be a viable enterprise, and the only way it's going to be a viable enterprise is if it is left alone. Now this is the second time in ten years that the city has come in and attempted to take over that company. And I say take over that company because if you start extending utilities through that area, you are destroying the company. You will have control of that company. The mining company and a municipal government go together like oil and water. They don't. They have to be left alone, the line between them should be very

definite and very wide. I therefore very strongly urge this Commission to take no action on an application which we think is so defective that it will lead to incredible problems down the road to attempt to change it or remedy or to pull it out. I don't--I'm beginning to wonder you know, we were --I was up here about a week and a half ago and as of that time there was a resolution--a formal resolution on the books of the City of Nome reaffirming the application for the entire area. There has been no formal action taken since then. We just hear that in a work session they have now decided, Manager Widom, without the authorization of the full City Council at a formal meeting, they have now decided that they are going to take what the Department has suggested might be a reasonable annexation. It's not a reasonable annexation. It's an outrage. The only difference between that and the original application is that the original application is a greater outrage. It never would have passed, we all know that.

(Applause)

Palmer McCarter: Mr. Ruddy do you have additional written

Mr. Ruddy: No. I don't

Palmer McCarter: Are there questions by Commission members of Mr. Ruddy? (Pause) The next respondent who has requested to be an appearance before the Commission at this public hearing and again by alphabetical order the Bering Straits Regional Native Corporation.

George Walters: My name is George Walters, President of Bering Straits Regional Corporation. Mr. Chairman, members of the Commission, residents of Nome, on December 18, 1971, Congress passed Alaska Native Lands Claims Act. But the Alaska natives have been living in this area since time immemorial. This is our land. What we are objecting to today is the acquisition of approximately 150,816 acres of land. The City has just now testified that they would reduce the annexation to this small area. But what's to stop them in a month or so after they get that, should they get that, to extend the boundaries again. We are opposed to the annexation of this 150,816 acres. I will just read the opening statement here of a brief that we've sent to the Commission. "This brief opposing the City of Nome's effort to annex an extraordinary 150,816 acres is submitted by the Bering Straits Native Corporation which with Sitnasauk Native

Corporation and King Island Native Corporation owns or could own more than 80 per cent of the territory proposed for annexation. Of the 150,816 acres sought for annexation, the surface rights to approximately 125,000 acres are owned or will be owned by Sitnasauk Native Corporation and King Island Native Corporation. Village corporations associated with the regional corporation BSNC owns or will own the subsurface rights of these lands. By this blatant attempt-- by this blatant attempt at land grab of territory approximately 290 times its present size, Nome is seeking to expand its taxing and regulatory powers from its present area of less than 1 square mile to more than 235 square miles, an area larger than Washington, D.C., San Francisco, California, and Baltimore, Maryland combined. Combined area, larger than those three big cities. The justification offered for this unprecedented expansion are that the residents of the land proposed for annexation are presently obtaining city benefits for which they are not charged and do not pay, and that these lands are in need of the City of Nome's expertise in planning and control new and anticipated growth in population and potential boom in economic developments. With all respect but considerable restraint, we urge that both of these rationals are ridiculous. The vast majority of these lands, including the coastal lands, are unpopulated and receive no city service whatsoever. The residents of a few isolated areas that utilize any of these services offered by the city, pay for them, or, when that is not the case, payment though less onerous annexation is available. As a result of the settlement of the Alaska Aboriginal Claims Act, native own and were intended to control most of the present territory sought to be annexed. Permitting Nome to annex these lands and require the city to provide basic service will not only be counter productive for Nome's fiscal stability the Act prohibits taxation for lands for 20 years. We do have a new D-2 law that was just passed when Congress signs that 20 years that extended from the date of conveyance. So we're not talking about the 20 years from 1971. But more importantly, it would violate the Act's basic purpose and intent which is to give Alaska natives control over their lands to develop as they chose and thus gain control of their own destiny. Furthermore, the City of Nome has a history of no planning or a lack of planning within its present boundaries and to enlarge a city's authority, power and control will merely convince management that its past performance is

acceptable. Encourage it, duplicate its full records and compound its present problems by adding another layer of responsibility to that city incapable of handling it. Even in the absence of the act to which the State of Alaska is centered, annexation on a monumental scale proposed by Nome into remote and totally undeveloped area which derives no benefit from the city would be unreasonable and arbitrary and violation of the landowners constitutional rights of equal protection and due process. The special circumstances presented herein include the pre-emptive effect of the act, control the decision of the Local Boundary Commission and require the denial of Nome's petition." That's part of the brief but I'll go into a little bit of detail from notes contained in the brief here. First of all I don't know if anybody can see this map from back there, we should maybe get the City of Nome to invest in a corkboard wall so we can put something up. Now one of the things that Nome wanted to annex was to get more land. Now in the green area here this land is all vacant land owned by the city. So there is land there that the city can expand to do schools or whatever public services are needed to be developed in the City of Nome. Now we also have others areas here, private areas that's not developed, the brown circles here, and I don't know if anybody can see it from back there, but underneath this map was a printed map so there is a chance for the growth for the City of Nome looking at this map. Another map here, I don't know how much time I've got left.

Palmer McCarter:

You have 10 minutes.

George Walters:

10 minutes. But I would like to go a little bit to the sewer and water. This is--many of us in the City of Nome here don't have sewer and water. But this is the area that sewer and water service by Nome, right now. That's it. Look at this big area in between here where people still have to get honey bucket service. Come into town, get your honey bucket service. Why doesn't the city try to do something about these areas. That's what's needed here. Let's get something done in the city. We also have a garbage. Many of us here these past years have garbage pickup. The city did have the garbage pickup in the city but now it's privately contracted out. What we have now if you don't pay your garbage bill your electricity gets cut off. Next one I'd like to show you is a road map. This is a kind of a hard one to see from way back there. We need to get on a city map.

I should get time out for getting these things up now this is your city streets. The red line indicates the state--the state maintained street. That the state maintains them. Now also in the brief that we're going to give better services to the City of Nome. Maintain your streets, keep them clean. Now let's look at all the green. Now this is the area that the Nome presently is suppose to keep your streets clean. How many of you in the winter time living in the east end here can drive out in those streets? Very few of these streets are maintained in the winter time. Now what we need now is services to service this area here that the city has now. We don't need to expand, get roads going. Why should we when we can't even take care of what we have. Now these are just a few of the things which we expand in here--now showing it on a map brings it out a little clearer to us. So this is one of the reasons why we are contesting the annexation of this large area. And I hope that if it's dwindled down to what it is now that we don't in a couple years from now or six months from now be coming back for future annexation. But I would like to maybe close, I have a few more things here I'd like say but we have limited time. But I'd like to just maybe close with a resolution that was passed as the Alaska Federation of Natives Convention this past October. Now what we have here what affects Nome right now this little dot here. That's the City of Nome. I'm just looking at a scale map. This is the area they want to annex. Even that dot is a little large. Now this is the resolution that was passed at the Alaska Federation of Natives on October 25, 1980, and was adopted unanimously. "Whereas the City of Nome has petitioned the Alaska Local Boundary Commission for annexation of 150,816 acres of land to add to their present land totalling 522.45 acres. And whereas Sitnasauk Native Corporation, King Island Native Corporation and the Bering Straits Native Corporation are surface and subsurface owners of most of these lands sought to be annexed. And whereas the City of Nome is seeking to annex native lands for tax purposes without considering its inability to serve the area sought to be annexed. And whereas the City of Nome is seeking to annex native lands without consideration of, or consultation with native land owners, and whereas the City of Nome's petition to annex these lands violates the spirit and letter of the Alaska Native Lands Claim Settlement Act. And whereas the City of Nome petition to annex these lands jeopardizes native management of its lands and interfores with

the subsistence rights and chosen life styles of Bering Straits natives and their villages and regional corporation. Now therefore be it resolved that the Alaska Federation of Natives vigorously oppose the effort of the City of Nome to annex native lands and again begin the process of interference with and challenge the native life styles that we natives have fought hard to retain and thought we were protected by the Alaska Native Lands Claim Settlement Act. Be it further resolved that allowing a municipal government to set the precedent would ultimately affect the decision of native lands on a state wide basis. I think Mr. Chairman I'd like to thank you for having me testify tonight and we hope that the native land will be left to the native people for their subsistence use and continue a life style. Thank you.

(Applause)

Palmer McCarter: Mr. Walters do you have additional written testimony to submit to the Commission that hasn't been submitted.

George Walters: No.

Palmer McCarter: Are there questions of the Commission members of Mr. Walters? . . . Are there other testimony from Bering Strait? Okay the third respondent and final that has asked for an official time to be heard at this hearing is the Sitnasauk Native Corporation. Would your representative please come forward.

John Van Winkle: Mr. Chairman my name is John Van Winkle. I'm a lawyer and I'm here on behalf of the Sitnasauk Native Corporation. I also intend to call Mr. John Garrison, an employee of the corporation. Before I do I have a point of order that I would like to have clarified. What is the method that the Commission would chose to adopt to incorporate some of these maps and charts as part of the record? A number of witnesses have referred to various documents and I'm afraid that there is no way that that's actually being recorded now. My client intends to offer several documents also. I'd like-- could we establish a

As your public hearing officer I would indicate that if you have something you want to present to the Commission it can be left with them, to give it to the staff person and he'll mark it.

John Van Winkle: Do you want to do that at this time as--

Palmer McCarter: At the conclusion of the hearing.

John Van Winkle: You mean immediately following the presentation or later when we take a recess?

Palmer McCarter: Immediately following your presentation. (Inaudible speech)

C. B. Bettisworth: Point of order. There appears to be a transcript never made of any of these documents. I would suggest that (inaudible)

In your presentation Mr. Winkle,

John Van Winkle: Van Winkle.

If you refer to a document that you propose to submit to the Commission indicate how you would propose to submit it to be marked and the staff member will make note of that.

John Van Winkle: All right, thank you. I would like to begin-- Van Winkle is my last name, but that's all right. Sitnasauk Native Corporation or Sitnasauk Native Corporation has filed a brief and unfortunately it had to be filed today. I'm sorry you haven't had an opportunity to see it before. It does rather completely, at least I hope completely, outline Sitnasauk's position. In view of the change of--or the city's change in presentation I had a presentation prepared and since there's been somewhat a change in circumstances I hope we're trying to adjust things as we go along here. Basically what I intended to do for the sake of brevity I will do that now. I would like to incorporate the objections that have been made by the two previous respondents. There is a great deal of harmony between the previous respondent's position and Sitnasauk's so for the record I'd like to incorporate those legal arguments. Secondly, what I had hoped to do rather than make this simply a parade of opinions in a popularity contest about this annexation, whether or not annexation can take place as you know, is a function of there are nine standards. And it's a factual question as to whether those standards are satisfied or they are not satisfied. The first thing I would like to do is call Mr. Garrison who is the land planner for

Sitnasauk Native Corporation and have him describe the actual title, situation to land, so you understand what land Sitnasauk is talking about and then describe the character or the nature of that land. So with that and after Mr. Garrison describes this land for you then I would like to make a couple of summary comments about it. John would you come forward and identify yourself.

John Garrison:

My name is John Garrison. I am an employee of Sitnasauk Native Corporation. For the last almost three years. Before that I had the--I had been employed by Bering Straits Native Corporation in selections throughout the full region to meet all the deadlines underneath Alaska Native Claims Settlement Act, concerning land selections underneath that Act. So I am very quite knowledgeable about land status throughout the full region as well as here in Nome. Just briefly I handed out some maps to you and I'll-- these maps have been taken from information off various plats that the United States government utilizes. Rectangular survey system is one, and I have just primarily referred to as the status plats that Bureau of Land Management utilizes in their day to day operations in describing lands and so forth. On these small maps they are such a small scale I don't know how accurate these really are, but they were primarily done by Alaska Map Service taken off of some old status plats. Since then we have had new status plats revamped by the Bureau of Land Management and there has been a few changes of some of the lines and they even made gross errors already and they are still trying to get those resolved before -- before they give us actual interim conveyance because of the complexity of our withdrawal area I'd like to show you the different land ownership patterns at this time. My red pencil kind of gave out on me a little bit but I just fine ready outlined it, the outer boundaries of the mineral patents within the area. Nome being depicted on a white -- whitened area next to the blue there, the present city boundaries. Now this is alot bigger scale than what you have in front of you and it actually fits in here. This being all patented mining grounds and if you get up further to which puts this area up here this is a public land order which was drawn by the Department of Defense. I

just primarily just circled that. That is in consideration which is on top of Anvil Mountain. Anvil Mountain here, Moonlight Springs, Beltz Complex, Icy View, FAA the airport facility virtually is in this area here and then continue on in this area. City of Nome once again, state trailers and the FAA complex over here once again the housing and so forth. Then down here we have (indiscernible) and so forth. And then you finally get over to the Roadhouse which you were concerned in, changing the boundaries at one time, just quite recently. In this full area-- all the red we see here is patented lands. I can't tell you right off hand who owns what in what area and so forth. It would take a lot of time to do that. But primarily our concern is Sitnasauk lands. Now some of these green areas also shown on your map are isolated tracts of land that Sitnasauk Native Corporation has selected under their entitlement under § 12(a) of Alaska Native Claims Settlement Act. We get out here further, we see this large white area. That is all primarily at least within this township, Township 11 South, Range 34 West Kateel Rive Meridian, is primarily Sitnasauk's selected lands. There are no other forms of entry. There is no other applications, proceedings met and so forth. We get down here in the purple or the kind of a blue area is primary areas that have applications for mineral patents on file with the Bureau of Land Management. I have an estimated number of acres here but I won't discuss that at this time. Also depicted on your map you have the old 1970 boundary. I just labeled it as such--I tried to put everything else in there -- take up a lot of space. I think it's the yellow boundary the old 1970 boundary and if you take a look at your new recommendation at least by the staff it primarily follows almost the same boundary line with the exclusion of the Fort Davis Roadhouse which is NS 1300. You have since added that in like I did mention. Now Sitnasauk Native Corporation's feeling is that because of our native lands are in such--well are actually wilderness and so forth we do not feel that any of our lands are urban in character so we would through our brief that we have filed with you and we explain our reasons why and at this time I'd like to point out another boundary on this map. It's shown in orange, that we would feel if annexation is to go through and that you are recommending an annexed portion to

the City of Nome that you would follow these boundaries. Thus it would alleviate Sitnasauk's land but it still would cover those areas that were expressed in the City of Nome's petition to cover Beltz Complex, Moonlight Springs, Icy View, State of Alaska's airport and housing facilities and it does not--I'd like to mention the Fort Davis Roadhouse, I'd leave that up to your option how you wanted to cover that. I'll go along with that one up there I see on the board. Following the orange that's shown in front of you I feel that this would have the less adverse affect to annexation if it does have to go through and have the least adverse affect on Sitnasauk Native Corporation selected lands. Are there any questions?

Palmer McCarter: For purposes of the record, we ought to have you mark this exhibit.

Dan Bockhorst: And let's get John Garrison's name on the back.

Palmer McCarter: Let's mark this Sitnasauk Exhibit A.

John Van Winkle: For the record you're referring to approximately an 8-1/2 by 11 inch paper with map on one side-- basically it shows boundaries proposed by the Boundary Commission staff, it shows the 1970 boundaries, and in pink it shows some possible adjustments that could be made to the Boundary Commission's staff recommendation which would be acceptable to Sitnasauk.

John Garrison: It's in orange.

John Van Winkle: Oh excuse me, in orange. Thank you.

Palmer McCarter: Are there any questions of Mr. Garrison before going back to Mr. Van Winkle? Mr. Van Winkle.

John Van Winkle: Thank you John. Mr. Chairman and members of the Commission, I want to just briefly summarize something. Try to draw together what John was saying. In referring to a map that's been offered or referred to previously, this is a USGS map showing the entire area area that is proposed to be annexed. My purpose in offering some actual facts to you now is to show or is basically represented on the last document Mr. Garrison referred to, the document here entitled Village of Nome, Bering Straits Native Corporation

lands status map dated January 2, 1973. The area or this area that I'm covering with my hand now represents the beach or the ocean in front of Nome. The portion above my arm now represents the land mass. The City of Nome the boundary of the town site is located here in the center, it's a very small area. Nome-and I tried to develop this in my brief, but basically there are three zones or three types of land that we are dealing with here. There is the City of Nome, the town site being Zone 1, surrounding Nome is a second zone which is demonstrated here in red. This represents the patented land. The land--it's primarily been developed as mining ground. Beyond the second zone is the third zone and that is mostly represented in white on this map and that represents land that's been selected by the Native Corporation. Some of it--well most of it has been selected by the Sitnasauk Native Corporation, and the portion here to the extreme west has been selected by King Island Native Corporation. But Sitnasauk--well just to fully draw this-- to develop this for you, this land--the patented land immediately around Nome is represented on these other two maps and what's happened is the map here, the second one Mr. Garrison referred to, as you can see there are red patented lands here and red patented lands on this side, there is a big white area in the middle. Now that area is blown up and shown on this map. If I could, I'd combine the two here as you can see here is the town site of Nome and there is patented land to the north and this map shows patented land to the west, we felt that this map didn't blow it up enough for you to see and we're trying to develop it on--I don't know if it worked that well or not, but any way you get the idea that there's these three areas. This is an extremely unique ownership of land. Normally it may not be appropriate for one land owner to come in and say "Hey exclude me" but this is an extremely unique situation where Sitnasauk Native Corporation surrounds the area like this and Sitnasauk is asking that its land be excluded. Bases for exclusion are stated in the brief I go through the nine points, I submit to you that none of the nine grounds or standards for annexation apply in this case. Well now the City has in effect stipulated to that at this point by saying that they are not requesting the annexation of the remote parcels. Sitnasauk

certainly maintains that those areas are not urban, they don't require services, they are not benefiting, they are vacant land. I understand that you had an opportunity to drive around and see some of the area today and I think you can see it's basically rolling tundra, there is mountains. It's not to say that the land isn't valuable. It certainly has a value to the natives for substance purposes, for reindeer grazing,--I think it can be used. But it's not developing land now and there is just not a public purpose to be served by incorporating it. As we get closer to the city, and if I can go over and refer to the map again. As we get closer to the city, Sitnasauk does not own very much land in the immediate area. We've asked that all lands be excluded. Now it may develop that right around the town if some annexation occurs around the town it may be inescapable to include some parts. Looking at this large blown up map, there are a couple isolated tracts that Sitnasauk has. We have -- or I believe its the orange lines that Mr. Garrison's first document, he has indicated on his document that it is possible to draw some lines around the City of Nome which encompass the areas that most of the argument for annexation seems to be relevant. It is possible to draw some lines, include those areas and still meet the goal of excluding Sitnasauk's land. The document that you've been offered is not a proposal of Sitnasauk saying do it this way. In the summary of Sitnasauk's brief we've clearly-- the position of the corporation is that in considering this annexation request we want you to look at Sitnasauk's land independently and see if there is really a basis for including that or not, and if you agree with our representation that it's not appropriate then if you decide to annex something else we've given you a means for accomplishing both purposes. Sitnasauk is not saying annex these other areas. We are not saying, you know this is our proposal for the way to do it. Whether these other areas should annex or not is really a difficult question and we're not going to step forward and solve that one for you. We're strictly trying to get you to focus on the Native Corporation's property.. We're not claiming some special status by virtue of being native or something of that nature. We're saying that there is a very unique ownership of land that's involved here. --Furthermore, or pattern ownership, and that land does not meet any of the criteria that are stated in the standards. There is no one living there. It's vacant land. It's

not in the process of being developed. It does not require services. It is not getting free benefits from the city. It does have an in-house or built in planning system and that Sitnasauk has a master plan for potential development, they don't even have it yet so if some development should occur and the city sees that it's going to infringe or interfere the city can come back and ask for portions of it. But it is clearly wrong to just take the whole thing.

Palmer McCarter: Ten more minutes to summarize.

John Van Winkle Okay, thank you. In summary I ask you in making your decision simply to focus on the fact of Sitnasauk's unique position in this and furthermore there is a public policy that the natives under the Claims Act were given land so they could to an extent control their destiny. Now clearly if they're controlling their destiny conflicts with something the city has going on, perhaps some land should be annexed. But right now there is nothing detrimental that's happening to the city by virtue of this land. Sitnasauk asked for the opportunity to use it for a variety of purposes, some for example the subsistence use, grazing use, summer camps and asked to plan for its own future in that sense, or for those purposes. Now I would ask or just reiterate, Sitnasauk does ask the Commission not to include any of its lands should an annexation take place.

Palmer McCarter. Do you have any additional exhibits that you wish to offer?

John Van Winkle: I would prefer not to offer those because they are the only ones we have and we don't have any means to reproduce them. If the Commission would specifically ask me for them, I'll do my best to do what I can but I do want to offer the one that--the number--I believe it's Sitnasauk A.

Palmer McCarter: Okay. Is there additional written testimony

John Van Winkle: There is no additional written testimony and if there are any question I will try to answer those.

Palmer McCarter: Is there any question by members of the Commission of Mr. Van Winkle? Mr. Bettisworth.

C. B. Bettisworth: Um. I have a couple here. On the map that you handed out there is several green areas that shown within a relatively close proximity to the existing city of Nome. And one of the things that you say about the reasons why you don't want the Village Corporation lands to be annexed is because they are primarily not urban lands, they are going to be used for subsistence purposes. These close in lands are not used for subsistence purposes?

John Van Winkle: To discuss some specifics on it, if I could just look over your shoulder. Here on right to the immediate west of Nome approximately where the orange line crosses the beach line there is a 28 there, it's not really clear on that but there is a very thin stretch of Sitnasauk land there. That's roughly in the area where the fort would be and I'm not stating that shouldn't be included. I mean that's an isolated situation. The--there is some green areas which are just to the northwest of airport. I don't know if you can tell where the runways are on this I don't believe you could.

John Garrison: I drew the runway on my own.

John Van Winkle: The airport would roughly be in this area and then there is a runway going like this. Now what Mr. Bockhorst has done is bring his line up, his proposal isn't on here. Mr. Bockhorst basically brings his proposed boundary roughly in the same area where Sitnasauk's proposed westerly line is. He simply went a little farther north and then went across to the east. Well if you stay down a little bit, you entirely miss that, this land the area that I'm referring to now which is the northwest of the airport is vacant land now, is not being developed, there is no access to it. On the one hand, I agree with you that if land is urban in character it should be included. I mean this is one of these gray areas where it's an arbitrary situation where do you draw the line and I'm not convinced that the line should be drawn necessary where with all respect to Mr. Bockhorst, I'm not convinced that he was exactly right cause he had to use some arbitrary standards. I'm trying to apply a standard that this native land shouldn't be included unless there is a specific purpose for it and unless a statutory criteria is satisfied. I just don't see that that happens, so I propose that the line be drawn to exclude it.

Palmer McCarter: Are there other questions of Mr. Van Winkle?

C. B. Bettisworth: Yeah. I have actually two more. One is that in your brief it stated that Sitnasauk has been doing some of their own land planning. Can you tell us what and as nearly as what Sitnasauk has in mind.

John Van Winkle: If I may interrupt. Dan, were you given a copy of the plan?

Dan Bockhorst: Of the draft plan, yes.

John Van Winkle: Okay. Basically Sitnasauk we, Sitnasauk has not formalized a draft plan yet. I'm sorry to say I can't actually you a plan. They have a draft which specifies that there will be certain areas and I can't from memory recall them all but for example there are agriculture areas which will be possibly for actual farming agriculture, you might think of it being near the Delta area. And then there would be reindeer grazing areas for example. Then there are subsistence areas and there are potential commercial areas. Conceivably this area here near the airport may some day be designated a commercial area, or maybe that will be indicated as a likely mining area. Sitnasauk has not received all this land as yet. It's pretty certain they will receive this, or the part we're referring to now. But until we get it and get a master zone--zoning set up we can't really say. So I think I can safely say to you now that that land will probably remain vacant or fallow for some period of time.

C. B. Bettisworth: These green areas that are shown again in the near in area that are sort of left out of the patented mining claims, I expect the reason why those were not patented was because there was no gold in that area? You may be happy--

John Van Winkle: Talk to Mr. Baldwin about that.

John Van Winkle: I can't answer that.

Robert Baldwin: No those are state, you might say just shortly before the Native Land Claims Act, and we haven't had time to patent them yet.

C. B. Bettisworth: Okay. so actually there is an argument over those?

Robert Baldwin: Well, no. We filed it. We started patent applications in time.

John Van Winkle:

I think there is a misunderstanding on the question. There are some areas, I think what Mr. Baldwin is referring to is there is actually three statuses of land around there. The larger map I'm point at across the room now, has purple or has the red areas which are patented. It has purple areas which are claimed now but haven't proceeded to patent. The mining company has some lands in that status. There are some other people that are doing the same thing. And then the green areas are--have not--are not in any mining status, either as patented land or as proceeding to patent. They are simply open ground which Sitnasauk has selected.

I guess the gist of my question is--is that you don't expect that Sitnasauk will be mining those green areas.

John Van Winkle:

Not for quite some time.
I mean there is no definite plan to do that now.

Palmer McCarter:

Are there other questions for Mr. Van Winkle from Commission members?

John Van Winkle:

Thank you for the opportunity.

Palmer McCarter:

As indicated at the beginning of the meeting following the testimony by the respondents who had filed notices of appearance we were going to allow a thirty minute period for the City of Nome to respond to both the departmental brief and to the respondents.

Gentlemen. I'd like to be heard on behalf of the King Island Native Corporation. I'm from King Island Native Corporation, I'd like to have a chance to say a few words for the Native Corporation.

Palmer McCarter:

Okay. What I will propose to do is to include your testimony as the first of the public hearing since you did not give official notice of filing or official notice that you wished to be heard we will consider your testimony first when we get to the public participation. Does the City of Nome wish to offer rebuttal or response?

Bob Hicks:

We certainly have no objection to hearing King Island first if you want to proceed that way. It is one of the major corporations here.

Palmer McCarter: What's the wish of the Commission members? . . . It's been offered by the City of Nome and accepted by the members of the Boundary Commission to amend the stated agenda to permit the King Island Association an opportunity to make a presentation.

John K. My name is. . . My name is John K. and I'm president of King Island Native Corporation and we do have land that's proposed part of the city it's 5,600 acres and I feel very much like Bering Straits. Bering Straits say much what I have to say. Anyway what I'd like to add that if City annex such lands for the services. This I can't see too much because where I live past several years, Nome, Alaska, down eastern of town where we used to get water service the city can give us. We don't even have a honey bucket pick up. We have to shut everything off in (indiscernible) And that can change a little bit when disaster of 1974 flood washed out the village and we move up closer to town. That's right over there. And still 1974-75 we move over there and still we got the worst service I mean if they want to plow the street, say if you only can plow to keep the fire lanes open, that kind of service you get. Now the city after a few years comes around and want to annex the whole area, for services of the people. And still I live in--I'm in middle of Nome where there is no sewer water. Now . . . that Icy View, so that they can give them services. They get the service. They get the service anyway. And one thing that really got me is we'd like to move to our land selection area over there in this area. I have to say that if my village moves some more people will move to this area and then still be in the city limits if that thing passes.

(Laughter)

Palmer McCarter: Do you have any additional written testimony or exhibits to present.

John K. No. I don't.

Palmer McCarter: Are there question of Boundary Commission members?

(Applause)

Palmer McCarter:

We are now ready to have rebuttal or additional testimony by the City of Nome. I'll again indicate for the audience that there is a sign up sheet at the back of the room if you wish to formally testify before this body tonight, please sign that sheet and we will take you in the order that you are signed up, presentations. I will now call on the City of Nome.

Bob Hicks:

I'm Bob Hicks the City Attorney. Before I get into the substance of my testimony, there is something that I'd like to comment on about the stipulation that the City of Nome has agreed to tonight. I think it's pretty important to realize that the stipulation is the result of precisely the kind of process that hopefully your regulations were attempting to create by requiring public hearings and in some cases you even required that the petitioner should hold meetings with various interest groups in this case you didn't require us to do that but we did it willingly and we have come up with a modification of the original petition. The process began back in 1977 when hearings were held when a citizen committee was appointed by the mayor. It then went to the Planning Commission, it then went to the City Council, it materialized as a petition to the Local Boundary Commission, and most recently the city manager has had about six meetings with various interest groups around town here, getting their opinions again because it was pretty clear that some opinions had changed over the past year or two or certainly were crystalized and people understood more clearly, more articulately, more precisely what they were opposed to and they let us know in no uncertain terms what they were opposed to. We also had the benefit during these past few months of a number of maps and the research--research like this which really hadn't been available before that for analysis. The City Council met this afternoon, the mayor and five of the six council members met, one council member was out of town unable to attend. Those council members informally all agreed that the process had pretty clearly indicated that the City of Nome was probably asking for too much in that petition, that there was some very strong policy arguments that the city wanted to adopt for not annexing the areas of the village and regional corporations in the outlying areas, but

that our original arguments for that core area with Community and Regional Affairs accepted was a position that seemed to be a decent compromise for everyone involved. That to me is democracy at work and that's precisely what I think the Boundary Commission wanted to affect by having regulations that would provide these kinds of proceedings. That's why the City of Nome is back in here now with this kind of a stipulation. The second thing I'd to comment on is the opposite side of that coin, a very serious problem that we've had and that serious problem is created by the fact that the Gold Company gave us their nice big brief at about 10 minutes to 5 yesterday afternoon in Anchorage. Sitnasauk gave us a brief today at about 12:20 p.m. just right after noon. And Bering Straits Regional Corporation didn't give us a brief until about 10 minutes after 5 this afternoon and that's about 52 pages. I think I've gotten about nine pages through it and that's it. There is absolutely no way that the City of Nome can respond to that even though your regulations contemplate that these respondents memos should come in and we should have an opportunity to reply. Although your regulations say that, there isn't any timeirame set out and I think on behalf of this petitioner we would ask that the Boundary Commission give some consideration in the future to amending your reculations to not only provide for those briefs, but also some kind of time schedule, a deadline when they have to be in so that we would have a chance to review them and respond to them. For example in Bering Straits Regional Corporation's brief there are alot of legal cases cited and I do..'t really know what those cases say. Um, we lawyers have a tendency to read cases the way we want to read them and I don't think that Bering Strait's attorneys is any different than the city of Nome's attorney so I'd like to have a chance to read those cases and maybe respond to them if the Local Boundary Commission considers those briefs to be significant testimony or significant evidence that it's going to base its decision on. I can respond a little more generally to some of the things that have been commented on--some of the legal matters. The first one is the technicality which was raised by the Gold Company that the original ordinance of the City of Nome didn't

include a number of sections right outside the boundaries of the city, a number of the sections for the entire annexed area. I really consider that kind of--I really consider that argument something of a what the judges have called a mousetrap theory of the way decisions are made. Way back when you made a minor technical error therefore you are cut off completely. Now the courts used to function that way until about 150 years ago, and then they finally decided that it was better to live by the spirit of the law, it was better to have some kind of liberal construction to the procedures that would be followed and they pretty much got away from that. And your regulations also provide that there be substantial compliance. It doesn't even say substantial compliance in an ordinance. It says substantial compliance in the petition. And if you'll remember the Gold Company's argument was that they didn't like the ordinance. They didn't say that the petition was incorrect, the petition was correct. They also stated at one point in their presentation that the city of Nome recently in a resolution completely endorsed their petition. Then out of-- just a little while before that they said the City of Nome has never endorsed the 30 sections or whatever the amount of land is that wasn't in the ordinance. Simply isn't correct. The recent resolution of the City did endorse the petition, the petition is more than substantially accurate. The petition is precisely accurate. The boundary, or the Community of Regional Affairs has reviewed it, pointed out two small corner sections down in the southeast corner that had not been included or excuse me had not been included in the ordinance, were included in the petition, and the later resolution of the City of Nome made a correction for that also. So we are asking the Local Boundary Commission to look at the petition and realize that it's the petition that's a significant document from the petitioner. It isn't what went before that. Now another thing about your regulations, it says that a petition can be initiated by a municipality. It doesn't say that it has to be initiated by an ordinance. It doesn't say precisely what you have to initiate it, and this case the City of Nome held a number of hearings, had a citizen group, had the Planning Commission,

passed an ordinance followed by a resolution, followed by a second resolution, put a petition together and I think the City of Nome has repeatedly endorsed or the council has endorsed time and again what has been submitted to you as a petition. It was initiated by the council and it has been modified according to our stipulation by the council. We are agreeable to go with Community of Regional Affairs recommendatior.

Bob Hicks:

Along those same lines, the Local Boundary Commission very clearly has the power to amend that petition. Neither the constitutional provision nor the constitutional history in Alaska or the statutory provision speaks in terms of this kind of rigidity or inflexibility-- again, almost a mousetrap theory. If you don't propose exactly the kind of boundaries that this state agency or this state commission representative of the whole state, if you don't propose boundaries precisely the way they can accept them, you lose everything. It's an all or nothing proposition. This Commission has never adopted that policy in the past, I'm hopeful they won't adopt it now, I don't consider the threat of the Gold Company in litigation to be any serious threat. We have fully anticipated litigation from the Gold Company. We got it before and we're going to get again, and I feel very very confident that we can defend that position. With regard to the provision of services, the Gold Company has mentioned that we are incapable and implied that we were unwilling to extend services. The fact of the matter is that we are already providing almost all of the services. Now in their brief they mentioned things that, I should say this, I have had a chance to read the Gold Company's brief and I've had a chance to read Sitnasauk's brief. I haven't had a chance to do the legal research and check the cases or anything like that but I have read the brief. In the brief they seem to imply that the City of Nome is under a requirement or a mandate to provide piped water to the whole annexed area. I don't think that's the spirit of the regulation--the regulation that says we have to be capable of extending and willing to extend the services. I think what it means is

for those areas that we can't provide piped water, we ought to be providing trucked water, and that's precisely what we are doing. There is also a provision which when counsel was reading the regulation he brushed over very quickly, it says except where it's impossible for want of necessary capital facilities. Well I think that we have most of the capital facilities, but there is again that flexibility. It isn't that it's an all or nothing proposition, it isn't a rigid thing, and I'm going to let the City Manager speak more specifically to these kinds of facts. But your regulations and the law provides that there has to be when you're anticipating some kind of annexation, there has to be some start up time for capital improvements. You can't expect the City of Nome or any municipality to go ahead and build capital facilities before it ever gets the annexed area on the gamble that it's going to get precisely the boundaries it got. In this case if we had tried that we'd have some pretty big facilities for Nome right now. And obviously there probably are some cases where we're going to need some necessary capital facilities. That simply a matter of start up time, it isn't a question of whether we can provide the service. Similarly where there are no sewer systems there is honey bucket service being provided. I'd like to go into some of the what I consider factual errors in the Gold Company's brief, and here again. . .

Bill Ruddy:

I'm going to object to that. He had his opportunity to put on his case in chief early on. He is now going into new material he should have put on before so that we would have had an opportunity to reply to him.

Bob Hicks:

The only reason it's new material is because I didn't get their brief until yesterday afternoon at 10 to 5.

Bill Ruddy:

No, you had it--you were as well prepared half an hour ago as you are now, and I'm saying that this is new material wouldn't be put in in a court of law and it should not be put in here now. Sorry.

Bob Hicks:

I don't think your bound by the rules of evidence in this proceeding.

Bill Ruddy:

Well you should be. I mean if we're going to have a fair hearing it should apply equally to everyone.

Palmer McCarter: I'd like to take the position that the city has stated in the beginning has an opportunity to rebut testimony. So that will be limited to the ten point list. (indiscernible)

Bob Hicks: First of all let me point out that the map which was included to the Local Boundary Commission by the Gold Company was never supplied by the City Nome.

Bill Ruddy: Well he's going right on. He's going right on.

Bob Hicks: That's a legal argument, besides that's been introduced by you.

Bill Ruddy: You had your opportunity before. Let's not put any new material in there.

Bob Hicks: Do we have a ruling from the Commission here on. .

Palmer McCarter: We'll take a 30 second recess.

(Laughter)

Palmer McCarter: I've just had a brief discussion with the three members of the Commission present, the three members that are present have indicated that due to the lateness of some of the briefs that were filed, there will not be a decision, a decisional meeting held on this matter tonight or tomorrow, that it will be scheduled at a later date. There will be adequate notice given of that public hearing or of that decisional meeting. I believe our regulations require minimum of 15 days notice. With that having been said, we will allow the City to proceed with its new information during the time or after the time that we've allowed other residents of the community to make testimony we will allow the respondents a brief time, probably not to exceed five minutes to offer additional verbal comments in response to the City. Both the City and respondents will have until a date specific before the decisional meeting has been held by which to offer written rebuttals to each other in this matter. Is there--is there clear understanding of that decision, is there objection to this.

Bill Ruddy: I object to the departure, yes. I think that the--I think that the original grounds rules that were laid out Palmer were fine and we should stick with them. I object.

Bob Hicks: I think it's pretty clear that the Gold Company will be objecting to everything tonight.

W. Bunyan: Bering Straits concurs with the objection of the Gold Company on that.

Bob Hicks: That one surprises me.

Palmer McCarter: Another 30 seconds. (Pause) Bring back to order. I've consulted with the members of the Commission. Mr. Hicks you are requested simply to offer rebuttal. You have the opportunity as others do to submit a written answering brief to the briefs that were submitted the three res--or four respondents having added in King Island as a fourth respondent.

Bob Hicks: Thank you very much. The important thing is we get an opportunity to respond. . . Mr. Ruddy pointed out that the attorneys for the Gold Company were here ten years ago and the interesting thing is that as he points out this is the same old story to use his language. It's the same old story primarily because the Gold Company was able to defeat an annexation petition ten years ago on a mere technicality and the City of Nome didn't get the area that the Local Boundary Commission had approved for annexation, and it is exactly the same situation now except that a few of the laws have changed. But the Gold Company's property has not changed as they have shown in the map which they've submitted to you here. There are a total of 402 lots in the City of Nome that are undeveloped that are owned by the Gold Company. And that's on their own map that you can see that and they have absolutely no intention of ever developing those lots. So in terms of their discussion of developable lots in the City of Nome we haven't got very many levelopable lots. There was some testimony about land down here being owned by City of Nome. Most of that land was all wetlands until we put in this summer or just this fall a road running along 6th Avenue which hopefully is going to run going to act as some diking and open up a few of those lots. We don't know how many yet. Now I'm--there is one other subdivision down there, however the subdivision plans were rejected by the Planning Commission and this subdivider went to court and has not been able to get a successful decision from the court on it. He simply can't afford the cost of

developing it. Other than that, there is no land left in the present boundaries of the City of Nome that can be developed. Mr. Baldwin pointed out that they don't have any need for the utilities of the City of Nome. He says that they have their own generator. In fact their own generator is located about seven feet outside the boundaries of the City of Nome. Seven feet. We get all the vibration of it here, we get all the noise of it, but it certainly isn't something that the City of Nome can tax and if they can have their way it's not going to be either. He's also, I think a little bit inaccurate in stating that he doesn't need the utilities of the City of Nome, the services of the City of Nome. They used it and were very appreciative of those services on November 5. There is a little caption in the Bering Straits newspaper where the Gold Company is thanking the volunteer fire department for responding to a fire at Dredge 5 and putting that fire out. And they received the services, they received the benefit of it and we think they ought to be able to be contributing something to the economic basis that provides those services for the City of Nome. I'm trying to edit here so I don't commit any offense here. I think, I think that's, I think the rest of it will be the rest of it I'll be reducing to my brief to the Commission. I couldn't help but think when Mr. Baldwin said that his thought about this whole thing was don't fence me in. All I could think of was well in the past few years certainly nobody has fenced in the Gold Company and if there really was a song that ought to be sung here by the City of Nome maybe it ought to be I Owe My Soul to the Company Store isn't that the one that they were singing for many years.

(Laughter)

Palmer McCarter: Are there any questions of Mr. Hicks from our Commissioners? Mr. Widom.

Ivan Widom: How much time do I have, can you tell me?

Bob Hicks: Don't forget your 30 seconds.

Palmer McCarter: You have 10 minutes.

Ivan Widom: My comments probably won't last 10 minutes. I can't talk, I don't get paid like a lawyer and I certainly can't talk like one. One thing

Good about about the suit that's forthcoming from Alaska Gold, they are going to be suing these guys, the State of Alaska instead of the poor little City of Nome and with all those millions of ounces of gold that they are going to get out of the ground adjacent to the City it's obvious that they've got plenty of bucks maybe the State of Alaska has got a few dollars to compensate at least with all the oil wells. I think that's very important, that the threat or whatever it was that was made by the Gold Company is certainly something that we can't make light of because it's happened before and I think it was very obvious that that's what's going to happen again under any circumstances whatever we present, whatever we do, whatever the Boundary Commission does, whatever, the Gold Company is obviously against annexation of the area. I think that's important, especially in the light of the criticism that the City of Nome gets regarding the amount of land that we have, or that's inside this .85 square miles, .85 square miles is what the City of Nome is, and if you can see 402 undeveloped lots that the Alaska Gold Company has, this land here I almost guarantee you, I can't say for sure because I'm not into gold mining, but I can almost guarantee you they're not going to get a dredge down there. To mine that. But they won't let go of it, and we know that. The problem is that it's easy for the City to understand and accept the problems that the natives have presented to us, the organizations that have resolutions, and we have enough of them to fill a book, and to decide, to accept the boundaries that the Boundary Commission suggested. And it's easy I guess for us to pick on the Gold Company. I guess it's too easy. And what was said earlier about being a part and parcel of the City is important. We wouldn't be here today if gold wasn't discovered many years ago, we all realize that. And I think it's important that we accept the the economic benefits and the importance of Alaska Gold Company to us. It's been my thought for several months that we go visit Sharon Steel or U. V. Industries or whoever it is because I can never really find out and talk to those people away from the City of Nome. Maybe I want a trip down south or something but the idea is that we seem to be fighting each other all the time, and that's at this level.

I know this - Jim Connelly and some other people that work for the City can go to talk to Mr. Baldwin and they can work back and forth, and it's really strange how this happens because at the lower levels of what's going on at least with the City and with Mr. Baldwin there is an aura of cooperation and sometimes we have our little tiffs and sometimes we don't, but the idea is that that there is something here that we shouldn't let happen. And I think the idea of Alaska Gold being part of the City of Nome and vice versa is something that we ought to accept. How we get there with all, pardon me Bob, with all these lawyers in the way I don't know because that seems to be the thing the level at which we actually want to knock heads and I can't answer that. I don't have an answer. I was thinking about going to law school about a year and a half or two years ago and I decided I just couldn't do it. I just don't have whatever it takes. But anyway, if I can sum up the City's position, or try to. We have seen and heard and read and heard and read many many times what opposition there is to the annexation of the City. This thing here, and this was decided a long time before I ever got here. I was in Kodiak as the City Manager when this ordinance was passed so I can't claim any of those boundaries. I can't claim the other boundaries we can thank Mr. Bockhorst for that. But what I'm trying to say is the City has listened, the City has tried to accept the wishes of the people, there's somewhere between 60 and 75 percent native population in Nome, those are the same stockholders that lease to the Bering Straits Native Corporation and of course Sitnasauk and King Island. And I think that we have shown, the City has shown an attempt to compromise, to work with the public, and try and come up with something that's easiest left to say instead of trying to get out a pencil and give a legal description to something different like Mr. Van Winkle did and we all heard the explanation of how he wanted to do this and that and the City is not capable of doing that unless we get into a very expensive thing and a long drawn out procedure. But what we've done is accepted what the Boundary Commission recommended because that is something that is finite, its down

metes and bounds, you can follow the lines and you can come up with something, and the City is trying to work with the Boundary Commission the people, most of the people that are objecting. And I think that we ought to accept that. I was going to offer as evidence a service request to the Nome Police Department where we received calls for fires. This was on 11/4 of this year, 9:31 a.m. this was a request the Nome Volunteer Fire Department reported a fire at Dredge 5. It was a request for the Nome Volunteer Fire Department to go to Dredge 5. They were out about a minute later and the fire controlled and the operator winchroom and it was quickly extinguished. And this newspaper, the Bering Straits dated February 7 is a thank you from the Alaska Gold Company. Also there is a picture of one of the City of Nome's fire trucks which we pay for which is not a volunteer effort, the volunteer effort got it there but it didn't pay for the fire engine, by Dredge No. 5 I really figure that we got to realize that we are all one and we got to work together and this City is going to annex some territory as long as I'm the City Manager we're going to try. Whether it's a half a square mile someplace just so we can get our port. But we we gotta do something and I think that the City has shown good faith and we want to also if we possibly can work with the Gold Company at some future date so that we can come to some agreement, some compromise where the City and Gold Company aren't knocking heads all the time at least at the attorney level or in front of the Boundary Commission. Do you have any questions?

C. B. Bettisworth: In the um

Palmer McCarter: Excuse me Mr. Bettisworth. Before you begin I'd like for the record to make two corrections to testimony that was just given by Mr. Widom. On two occasions he referred to the smaller area indicated in black on the map as being the recommendation of the Boundary Commission. That recommendation is the Department's recommendation to the Boundary Commission.

Ivan Widom: Thank you. Yes sir.

C. B. Bettisworth: It's been mentioned a couple times that there is a need for a time scheduled out when the City might provide services to the areas that might be annexed. Do you have any comments in respect to that. I know that Mr. Hicks talked a little about the ability to do some of it immediately.

Ivan Widom: I don't think it's fair for the City to provide taxes without--provide services without taxing the property. It works both ways. We're going to provide the services, we should get the taxes and vice versa. I think what we're talking about for the area included there, the City of Nome could certainly, well let me phrase it another way. If the annexation goes through the Boundary Commission and Alaska Gold does not go through with their promise and we're able to annex by in the year 1981, then I think the City by 1982 could start providing services to the area. And that's when we'd be taxing the area. That's when we would provide the service for the area. If something--if it seems like we should go before that, then I'm sure we could work that out. The reason that I say this is because the City could employ more police officers it could hire more people for the street crews and it could purchase additional equipment for street maintenance and snow removal. Does that answer your question?

Palmer McCarter: Are there other questions by Commission members.

Ivan Widom: Could I just say one more thing please? I'd like to take this opportunity to thank the Boundary Commission those of you that showed up we appreciate it. The idea of what you do, I was before this same group in Kodiak, essentially the same group in Kodiak about 2-1/2 years ago and I can't believe what they have to do sitting here doing their thing and I want them to know that I appreciate it very much. The City of Nome thanks you.

Palmer McCarter: As indicated at the beginning of the meeting again there is a sign up sheet in the back. We'd like for everybody to sign up regardless of whether you wish to testify or not. I assume on the charts or on the sign up sheets there is a place to indicate that you want to testify.

Dan Bockhorst: The register that is back there is for individuals that wish to testify only.

Palmer McCarter: Okay wish to testify only. Okay. If you wish to testify, do please be sure over the break sign that sheet. We will take a ten minute break. We will convene promptly at 9:52 and at that time we will begin hearing testimony.

Palmer McCarter: We will begin the remaining portion of the public hearing. It appears that there are approximately twenty some odd people that have indicated that they wish to formally testify. The procedure that we will follow in doing this is ask that those people as you're called name the person will come up, sit at the chair in front of this microphone. Indicate your name and address if you would indicate whether your within the current city boundaries or if your outside the current city boundaries. Give your testimony, you will be limited to three meetings, a three minutes. (Laughter) I will also call the second that will be called to the stand in order that that person might find a place up here closer by in order that we can expedite this hearing. It appears based on the earlier time limits that we ought to be able to conclude public testimony by the 11 o'clock hour so I will stay fairly rigid with the notion of the three minute time limit. I'd like to then call on Dennis Maloney, to be followed by George Walters.

Dennis Maloney: My name is Dennis Maloney. I'm with Wien Air Alaska. Wien for the record wishes to express it's opposition to the expansion of the city. The position of the company is premised on the fact that we currently have state services, we are on state land, we do not feel that there will be expansion of the services that we currently have. That we will be taxed and that we will receive no benefit for the taxation that the additional taxation that we will bear. I will also point out that the tax ultimately of course will be borne by the residents of Nome and the residents of the outlying areas that utilize air services. I have a question in my own mind as to the whether that redistribution of wealth which is what we are talking about is proper. Where we're talking about a regional airport at least half of which is a service which is provided for people living in small rural communities that are not going