

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 80/2

3830 SCRA LOCAL BOUNDARY COMMISSION (FILE 3) 706

The North Slope Borough's access to the full value of the real and personal property within its jurisdiction, for purposes of raising revenue for Borough operations, is limited by Alaska law (AS 39.53.050). As a result, the Borough currently may access approximately 20 percent of its \$12 billion tax base to raise revenue for its operating expenses. At present, the Borough is taxing well below this legal limit, presumably to keep its millage rate within bounds considered tolerable by residential property owners./1

For purposes of servicing general obligation debt, however, the North Slope Borough is not fettered in its access to the full value of the tax base within its jurisdiction. As a consequence, the North Slope Borough has incurred over \$1.2 billion in general obligation debt. This amounts to \$400 million more than the current outstanding general obligation debt of the State of Alaska./2 In 1984, North Slope Borough per capita general obligation debt was more than 17 times greater than the average per capita general obligation debt of all Alaska municipalities and the State of Alaska combined (including the North Slope Borough), and almost 67 times greater than the per capita general obligation debt of the Municipality of Anchorage (\$97,373 vs. \$1,455)./3

Altogether, North Slope Borough bond issues have fueled a capital improvement program so large that it has attracted

national media attention. Projects undertaken through this program have included education and service center facilities; public roads; watercourse and flood control facilities; airport and airport terminal facilities; urban development projects; light, power and heating systems; public safety facilities; sanitation facilities; advanced communications systems; health facilities; library facilities; construction equipment acquisition; and other miscellaneous capital improvement projects./4

Further, overall Borough expenditures for capital projects and operating programs (expenditures which are supported by property and sales tax revenues, bond proceeds, State and federal revenue sharing and grant receipts, plus interest income from the Borough's cash balances) have generated substantial employment and personal income for permanent residents of the North Slope Borough./5

By contrast, the neighboring NANA region knows nothing of such wealth. It has no regional government; no industrial or commercial tax base; no bonded indebtedness; and no capital improvement program except that which can be financed through uncertain competition in the State's annual budget process.

Petitioner thus argues persuasively that, without the taxable property of the Red Dog Mine development, formation of a local borough government in the NANA region is not feasible. The

meager tax base that currently exists in the region comprises little beyond the homes and personal equipment of many low-income families; and even much of this limited potential tax base would disappear if the new NANA-area borough government were to allow a personal exemption of the first ten thousand dollars of assessed value, as is currently allowed by the North Slope Borough.

As a matter of broad public policy, consequently, a redistribution of public wealth in the present circumstances is certainly justifiable.

The mal-distribution of public wealth from the North Slope is well known, and has been raised as a public issue in the past. It was first addressed by the Alaska Legislature early in the 1970's, when Governor Egan introduced a comprehensive legislative proposal for redistributing public wealth among the unorganized rural areas of the State. Writing about the overall problem at the time, Assistant Attorney General Richard W. Garnett, III, made these observations:

"Most of the valuable property that will appear in the unorganized borough will be located in accordance with the distribution of natural resources. Because this distribution bears little relation to the pattern of local jurisdictions and fiscal needs, there will be increasing variation in wealth and services among regions unless an equitable statewide distribution of revenue from Alaska resources can be achieved."/6

In arguing for a comprehensive scheme of public wealth redistribution among the rural areas of the State, Garnett remarked:

"The general welfare in Alaska will be advanced if local government organization precedes rather than follows economic development. New industrial development will create stresses manageable only by application of governmental powers. Planning and zoning will be particularly important in reconciling industrial development with subsistence living, and taxing power will be needed to insure local benefit from development activity. Municipalities which form after major economic interests have become established may be too late to influence significantly the activities of those interests. On the other hand, it may be futile to extol the desirability for self-determination to people who presently lack the economic resources necessary to the effective exercise of local government power."/7

Although a comprehensive redistribution plan along the lines of Governor Egan's proposal was not adopted, something of a redistribution mechanism in the form of the statewide oil and gas property tax was subsequently enacted (AS 43.56).

It is noteworthy that Congress, too, recognized the problem of the unequal distribution of natural resource wealth in Alaska. Section 7(i) of the Alaska Native Claims Settlement Act, for example, requires that each of the twelve regional corporations in Alaska must redistribute seventy percent of the revenues it derives from the development of natural resources on its lands. Congress was particularly mindful of Alaska's North Slope petroleum resources when it included this provision.

In addition to the glaring mal-distribution of public wealth in Alaska's Arctic regions, which is the distinguishing feature of this case, other unique and extraordinary circumstances exist which support the case for the proposed detachment.

First, residents of the NANA area are now seeking the means of local government control to help cope with a major industrial development that may profoundly affect the lifestyle of people in an entire region. In this respect, the rationale for borough government in the NANA region today is the same one used by proponents of borough government on the Arctic Slope in the early 1970's. Viewed in this context, the case made by Petitioner for coordinated management and governmental control over the entire Red Dog Mine project (port, road and mine site) is logical, reasonable, and convincing.

Second, the State of Alaska has today, as it did at the time of North Slope Borough incorporation, a strong interest in promoting local self-government in rural Alaska. Further, it has a compelling constitutional mandate to do so, as contained in Article X of the Alaska Constitution.

Third, is the fact that the territory proposed for detachment is located entirely within the boundaries of the NANA regional corporation. Regional corporation boundaries are widely recognized in Alaska as authoritative geographical delineations

of cohesive socio-cultural subregions of the State's rural areas./8 A boundary revision along the lines of the detachment proposal would therefore complement existing statutory standards for borough incorporation, not offend them./9

In contrast to the broad public benefits of borough formation in the NANA region, which are achievable through the acquisition of an industrial tax base, the harm to the North Slope Borough from detachment of the mineralized lands in question seems to be inconsequential. While the fiscal impact of detachment on the North Slope Borough is measurable, it would be relatively insignificant when viewed in the context of the per capita revenues the Borough now receives and may receive under existing law./10

Finally, it must be said that imposing a boundary change on a local government against its express wishes is an unusual act. The Local Boundary Commission must carefully consider the significance of any precedent, as well as the appearance of any precedent, that might be set by such an imposition. My careful reading of the material submitted in this case, however, leads me to the conclusion that the circumstances justifying the proposed detachment are so extraordinary and unique that they do not constitute an ominous precedent for either the North Slope Borough or other local governments in the State.

B. Procedural Aspects

Notwithstanding the substantive aspects of the detachment proposal, and the elaboration of them that is possible, the procedural aspects of the proposal must also be addressed. Here, a key question of legal interpretation and judgement is immediately confronted that is outside my professional competence.

The issue is this: How narrowly and literally should the regulatory standards for detachment at 19 AAC 10.230-250 (Attachment 3) be applied in this case?/11

I can offer only a layman's opinion on the matter, and so recommend that the Commission hear directly from the Office of the Attorney General for advice on the best interpretation of the law. It was my hope that written advice on this question from the Attorney General would be available at the time I prepared this report. Such advice has not been forthcoming, however, in response to the request I submitted on December 6, 1985 (Attachment 4).

My own view is that the existing regulatory standards for detachment (19 AAC 10.230-250) thwart the very constitutional purpose of the Local Boundary Commission. That purpose is to decide boundary disputes in situations precisely like the one

at hand; i.e., where local interests cannot agree on a mutually satisfactory resolution./12 It is therefore unreasonable that the Commission should be bound by regulations that effectively give any party to a dispute a veto power over a boundary decision by the Commission, thereby frustrating exercise of the Commission's constitutional responsibility. Nevertheless, that is the practical effect of the "best interest" criterion established at 19 AAC 10.230(a):

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

Furthermore, the considerations required under the Commission's established detachment regulations clearly contemplate circumstances very much unlike the ones encountered in the present proceeding. The detachment regulations envisage a permanent residential population (in a territory proposed for detachment) that would require the normal range of services and representation expected in a borough that is responsibly fulfilling its governmental obligations. Because an entirely different situation exists in the present proceeding (i.e., an industrial enclave rather than a permanent residential community), I regard these regulatory considerations as irrelevant and unsuitable to the task before the Commission. Application of them and close scrutiny of arguments pro and con are a

distraction for the Commission, and hinder its understanding and evaluation of the broad policy issues that are involved.

For these reasons, I believe the Commission is fully justified in taking a view of these regulatory provisions that allows it to step up to its constitutional duties and to weigh the interests of the parties concerned. If this is done, I believe the record shows that the combined interests of the State of Alaska and the residents of the NANA region far outweigh in significance and import the interest of the North Slope Borough.

If, however, the Commission interprets the law as requiring the Commission to apply the detachment regulations literally, then my assessment of the matter is that the DCRA petition fails, and should be rejected. The basis for this assessment is that, if the detachment regulations are applied literally, the arguments of the North Slope Borough (that the petition does not comport with the standards in 19 AAC 10.230-250) are not successfully rebutted by the Petitioner. This conclusion is elaborated below, in terms of the applicable regulatory standards for detachment.

Best Interest Determination While the regulations require the Commission to make its own determination of the best interest of the North Slope Borough (19 AAC 10.230[a]), common sense suggests that the voters and elected officials of the Borough

are a very good judge of their own interests. A very compelling and well-documented case would have to be presented to the Commission to support an administrative finding of fact that the DCRA petition is in the best interest of the North Slope Borough. While arguments to this effect have been advanced by the Petitioner, my own conclusion is that Petitioner's arguments do not suffice to overcome the North Slope Borough's assessment of its own best interests.

Social, Cultural and Economic Characteristics Petitioner writes that he "does not claim that the social, cultural and economic characteristics of the population of the territory proposed for detachment are substantially different from or in conflict with those of the remainder of the population located in the borough...Rather, the Petitioner claims that the area of the NANA region is distinctive and distinguished from the North Slope Region."/13 (Emphasis in original.) I fail to see how a plain reading of the regulatory language allows the distinctive nature of the area to be of any relevance. The regulatory test (19 AAC 10.230[a][1]) is simply whether a substantial difference or conflict exists, or not.

Geographic Location Here the question is whether the provision of services by the North Slope Borough to the area proposed for detachment is impossible or impractical (19 AAC 10.230[a][2]). The question is not, as Petitioner argues, whether the provision

of services by a different political subdivision of the State might be more practical. Petitioner does argue convincingly that it would be more efficient to provide services from Kotzebue than from Barrow, but fails, in my judgement, to establish that the geographic location or configuration of the territory proposed for detachment would make the provision of services by the North Slope Borough so substantially difficult as to be impossible or impractical.

Transportation Again, Petitioner argues the comparative efficiency of providing responsive government from Kotzebue, and again misses the point of the regulation (19 AAC 10.230[a][3]). The regulatory test here is whether the lack of transportation facilities precludes responsive government in the area proposed for detachment, not whether government from a different location would be more responsive. In short, Petitioner fails to provide evidence that a lack of transportation facilities in the area proposed for detachment would preclude effective and responsive governance by the North Slope Borough.

In sum, whether or not the Brief of the North Slope Borough contains, as the Petitioner urges, allegations and arguments that are irrelevant, specious, incomplete, out of context, unpersuasive, and misleading, the case it makes for the failure of the petition to pass the test of a literal reading of 19 AAC 10.230-250 survives.

IV. Recommendation

Because a decision by the Local Boundary Commission must withstand judicial scrutiny, I recommend that the Commission seek the advice of the Office of Attorney General on the latitude it has in interpreting and applying the standards for detachment at 19 AAC 10.230-250. My layman's view is that the constitutional mandate of the Commission is inhibited by a literal application of these standards; that the standards are unsuited to resolving the issues raised by the petition; and that the Commission is justified in broadly construing its legal decision-making authority. On this basis, I recommend that the Commission approve the detachment petition and forward it to the Legislature for review.

However, what seems right and reasonable under the present circumstances may not also be technically legal. If the Commission feels that its proper course of action is to render a decision on this petition that is based on a close reading and literal application of the existing detachment regulations, I do not see how the petition can be approved. The petition fails the "best interest" standard as applied to the North Slope Borough, and, significantly (but perhaps not fatally in the absence of the failure of the best interest standard), it does not satisfy any of the three explicit considerations found in the detachment regulations.

FOOTNOTES

- /1 If the North Slope Borough taxed at the full legal limit, it could raise approximately \$70 million in FY 1986 for its operating budget. However, the Borough expects to raise about \$23 million in FY 1986 with a mill rate equivalent of 1.78 mills. North Slope Borough Budget Document, FY 1985-86, p. 22.
- /2 Principal outstanding on June 30, 1985, on State of Alaska general obligation bonds was \$816.1 million. Alaska State Bond Committee, Alaska: Credit Trends in a Maturing Economy, p. 40.
- /3 Alaska Department of Community and Regional Affairs, Alaska Taxable 1984, pp. 9-10.
- /4 See North Slope Borough Planning Department, North Slope Borough Capital Improvement Program FY 1986-FY 1991.
- /5 See Alaska Consultants, Inc., Barrow Arch Socioeconomic and Sociocultural Description, Social and Economic Studies Program Technical Report No. 101 (Anchorage, Minerals Management Service, Alaska OCS Office), January 1984.
- /6 Richard W. Garnett, III, "Equalization of Local Government Revenues in Alaska," ISER Occasional Papers No. 9 (Fairbanks, University of Alaska), January 1973, p. 9.
- /7 Ibid., pp. 11-12.
- /8 See, for example, AS 14.08.031, and AS 46.40.120.
- /9 See AS 39.18.030.
- /10 In FY 1986 the North Slope Borough expects to receive approximately \$328,700,000 as general fund revenue, or about \$41,000 for each permanent resident of the Borough. In contrast, the State of Alaska expects to receive about \$6,000 per capita. Alaska has the highest per capita general fund receipts among all the fifty states (State Policy Research, Inc., Arlington, Virginia).

The North Slope Borough estimates that the annual loss of revenue to the Borough at the time the Red Dog Mine is fully developed (assuming an assessed value of \$250 million), on the basis of the present levy of 18.37 mills, would be \$4,592,500. Actually, under current law and State policy, the same millage rate would yield something slightly more than that amount, because the Borough's

population would increase by about 200 people (assuming 400 total employment at the Red Dog Mine, and a shift rotation of 1:1). In any case, the potential revenue loss does not constitute a significant fiscal impact for the North Slope Borough under the circumstances.

Testimony in the record makes it clear that, in itself, the proposed detachment would have no impact on the credit worthiness of the North Slope Borough. Rather, such an impact would result only if a future detachment reached the oil and gas property at Prudhoe Bay. It seems clear from the unique circumstances of this case, and from the clearly demonstrated aversion of the Commission in previous cases to threatening the fiscal integrity of an established borough (e.g., the Lake Louise detachment petition), that this detachment is not a forerunner of other detachments that could cause alarm among bond rating agencies and underwriters.

A potential fiscal impact of any major development is the cost of providing public services to new residential population attracted directly and indirectly by the activity. In this case, no socioeconomic impacts to Barrow or other North Slope Borough communities are expected to occur, so the Borough can not claim fiscal impact from this source.

- /11 This issue is addressed in the North Slope Borough's opposition Brief at pp. 2-4.
- /12 See, for example, Fairview Public Utility District No. 1 v. City of Anchorage (368 p. 2d. 540).
- /13 Reply to North Slope Borough Brief in Opposition to Petition for Detachment, pp. 9-10.

ATTACHMENTS

MEMORANDUM

State of Alaska

TO: The Honorable Hal Brown
Attorney General
Department of Law

DATE: December 6, 1985

FILE NO: 86F-391

TELEPHONE NO 465-3568

FROM: Gordon S. Harrison *gsh*
Associate Director
Office of Management and Budget
Division of Strategic Planning

SUBJECT: Role of 19AAC 10.230(a)
in North Slope Borough
Detachment Petition
Proceedings

I would like your views on a matter pertaining to the petition before the Local Boundary Commission for detachment of certain territory from the North Slope Borough. As you know, in this case the Commissioner of the Department of Community and Regional Affairs is the petitioner, and I am performing certain staff functions to the Local Boundary Commission. The question I am bringing to you in this memorandum is a legal one that will surely be asked by the Commission, and that I am unqualified to answer. In order to expedite the decision-making process, I would like the Commission to have, as early as possible, an understanding of all the options it has in this matter.

My question is whether 19AAC 10.230(a) should stand in the way of a decision to approve the detachment, if the Commission were to decide that as a matter of general public policy the detachment is desirable. This regulation reads, in part:

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

Therefore, in order for the Commission to approve the detachment, it would have to decide (1) that detachment is in the best interest of the North Slope Borough (despite Borough opposition), or (2) to ignore, nullify, or otherwise circumvent the regulation on the basis of a judgement that other interests have precedence over the interests of the Borough.

My own understanding is that the intent of the framers of the Constitution of the State of Alaska in creating the Local Boundary Commission was to empower a body to make boundary determinations, if not from Olympian heights, at least from the perspective of the broad public interest as well as local interests. Does the regulation at 19AAC 10.230(a) frustrate this constitutional purpose? Also, the existing regulation arguably does not contemplate the situation at hand, but was

Hal Brown

- 2 -

December 6, 1985

written with different circumstances and different problems in mind. It seems that the regulation may establish a deliberately difficult standard for detachment in order to preserve the integrity of boroughs from the efforts of fringe communities (or absentee landowners) to escape borough taxation and regulation, as in the recent case of Lake Louise.

I expect that the Local Boundary Commission will want to know your views on these matters in order to determine what options it has in the detachment petition, and I am therefore presenting this request to you at the present time.

GSH/dmc

discretion, approve an equitable agreement between the municipalities affected but will independently review the proposed agreement.

(c) Territory which is part of an organized borough may not be annexed to another borough unless the commission determines the annexation to be in the best interests of the annexing borough, the borough from which the annexed territory is taken, and the annexed territory.

(d) Separate or additional proceedings are not required for detachment of territory from an incorporated city or borough which becomes annexed to another borough. The detachment is affected by, and at the same time as, the annexation itself. (Eff. 2/21/82, Reg. 81)

Authority: Art. X, Sec. 12
Alaska Const.
AS 44.47.567

Editor's Note: 19 AAC 10.210 is based on former versions of 19 AAC 05.130 and 19 AAC 15.040.

19 AAC 10.220. STATUTORY STANDARDS.

(a) In addition to the requirements of 19 AAC 10.190 - 19 AAC 10.220, the commission will approve and recommend to the legislature the annexation of territory to an organized borough only if it finds that the resulting boundaries of the expanded borough conform substantially to the standards set forth in AS 29.18.030.

(b) In approving organized borough boundary changes, the commission, with the assistance of the department, will, if necessary, determine proposed assembly reapportionment plans applicable to the organized boroughs whose boundaries are to be affected by the change. (Eff. 2/21/82, Reg. 81)

Authority: Art. X, Sec. 12
Alaska Const.
AS 44.47.567

Editor's Note: 19 AAC 10.220 is based on a former version of 19 AAC 05.140.

**ARTICLE 8.
STANDARDS FOR DETACHMENT FROM
ORGANIZED BOROUGHS**

Section

- 225. Applicability
- 230. Detachable territory
- 240. Application of standards
- 250. Distribution of assets and liabilities

19 AAC 10.225. APPLICABILITY. The provisions of 19 AAC 10.230 - 19 AAC 10.250 apply to a proposal for detachment by local action (19 AAC 10.630 - 19 AAC 10.730) or by legislative review (19 AAC 10.455 - 19 AAC 10.620). (Eff. 2/21/82, Reg. 81)

Authority: Art. X, Sec. 12
Alaska Const.
AS 44.47.567

19 AAC 10.230. DETACHABLE TERRITORY.

(a) Territory which is a part of a borough may be detached from that borough if, in the determination of the commission, the detachment would be in the best interests of the state, the territory to be detached, and the borough affected by the detachment. In determining whether to approve a detachment, the commission will consider, but is not limited to, the following factors:

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

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

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

(b) The commission will, in its discretion, conduct public hearings or investigations after the effective date of an annexation to determine whether the extension of services is progressing in a reasonable manner. If the

commission determines that the extension of services is not progressing in a reasonable manner, it will, in its discretion, begin detachment proceedings. (Eff. 2/21/82, Reg. 81)

Authority: Art. X, Sec. 12
Alaska Const.
AS 44.47.567

19 AAC 10.240. APPLICATION OF STANDARDS. (a) The commission will not approve a detachment unless the petitioners demonstrate to the satisfaction of the commission that the service requirements of the territory will be met following the detachment.

(b) If, in fulfilling the requirement of (a) of this section, the petitioners have proposed the incorporation of a new municipality, the commission will, in its discretion, condition approval of the detachment upon voter approval of the incorporation proposal. (Eff. 2/21/82, Reg. 81)

Authority: Art. X, Sec. 12
Alaska Const.
AS 44.47.567

19 AAC 10.250. DISTRIBUTION OF ASSETS AND LIABILITIES. (a) If territory sought to be detached consists entirely of a city having authority and responsibility for the powers formerly provided by the borough from which detachment is sought, the commission shall determine the manner in which the assets and liabilities of the borough shall be distributed between it and the detaching city.

(b) If territory sought to be detached consists entirely of territory not within a city or consists of a city not having authority to provide services currently provided by the borough from which detachment is sought, the commission shall determine the manner in which the assets and liabilities of the municipality from which detachment is sought shall be distributed between it and the state. (Eff. 2/21/82, Reg. 81)

Authority: Art. X, Sec. 12
Alaska Const.
AS 44.47.567

**ARTICLE 9.
STANDARDS FOR DISSOLUTION
OF ORGANIZED BOROUGHS**

Section

- 260. Dissolution
- 270. Application of standards
- 280. Dissolution effected by annexation

19 AAC 10.260. DISSOLUTION. (a) A borough may dissolve if it has no indebtedness, bonded or otherwise, or has proposed a method of repayment which will protect the interest of its creditors and if the following standards are met:

(1) the borough has ceased to exercise all of the mandatory powers of a borough;

(2) the borough has failed to conduct two or more consecutive regular elections in the manner provided by law; and

(3) the borough no longer meets the standards for incorporation as provided by law and regulation.

(b) The commission will, in its discretion, conduct public hearings or investigations after the effective date of an incorporation to determine whether the provision of the municipal services is proceeding in a manner consistent with that outlined in the petition for incorporation. If the commission determines that the provision of services is not proceeding in a manner consistent with that outlined in the petition, the commission will, in its discretion, begin dissolution proceedings. (Eff. 2/21/82, Reg. 81)

Authority: Art. X, Sec. 12
Alaska Const.
AS 44.47.567

19 AAC 10.270. APPLICATION OF STANDARDS. (a) If the commission determines that it will recommend to the legislature that a borough be dissolved, the borough may not make an expenditure without first receiving the written approval of the commissioner.

(b) The assets of the borough being dissolved become the assets of the state.

(c) If the liabilities of a borough being dissolved

Attachment 1

MEMORANDUM

State of Alaska
Community and Regional Affairs

TO: Gordon Harrison
Office of Management
and Budget

DATE: November 20, 1985

FILE NO: EM/IR/sj/00430

TELEPHONE NO 465-4700

FROM: *Emil Notti*
Emil Notti
Commissioner

SUBJECT: Delegation

The Department of Community and Regional Affairs (DCRA) intends to file a petition with the Local Boundary Commission (LBC) on November 22, 1985, which proposes the detachment of certain land from the North Slope Borough (NSB). As proposed, the petition would only take effect upon the incorporation of a NANA Borough which includes all of the detached land.

As you know, DCRA typically provides staff support to the LBC. In particular, under 19 AAC 10.570, DCRA staff prepares a report which both summarizes the issues raised in the petition and which states a recommendation.

Because of DCRA's involvement in the presentation of the detachment petition, concerns have been raised regarding DCRA's ability to objectively perform our typical staff functions. While I believe DCRA could properly and fairly discharge the staff functions envisioned by the regulations, I nonetheless request that you perform these functions on behalf of DCRA. Accordingly, I delegate to you the full authority to review the petition for form and content and to subsequently prepare a report for submission to the LBC. Your exercise of this delegated authority is entirely committed to your discretion, and is not, in this regard, subject to my review.

I certainly appreciate your willingness to assist in this matter.

OFFICE OF
MANAGEMENT & BUDGET

NOV 21 1985.

STRATEGIC PLANNING

MEMORANDUM


State of Alaska

TO: Marty Rutherford, Director
Municipal & Regional Assistance Div.
Department of Community &
Regional Affairs

DATE: November 22, 1985

FILE NO:

TELEPHONE NO: 561-8586

FROM: Gordon Harrison 
Associate Director
Office of Management and Budget
Division of Strategic Planning
Office of the Governor

SUBJECT: Petition for
Detachment of
Territory from the
North Slope Borough

I have reviewed the petition to the Local Boundary Commission prepared by you and your staff pursuant to AS 29.69.010(a) for detaching approximately 3,298 square miles from the North Slope Borough. Further, I have reviewed your supporting brief for the proposed action and the notice of petition that you will have published to notify interested parties. It is my understanding that you will by the close of business today, serve by certified mail the petition and brief, together with accompanying exhibits, upon the North Slope Borough. I have evidence before me that you have caused to be published forthwith in the Anchorage Daily News and the Tundra Times the notice of petition. Further, I have evidence that you intend to mail this day copies of the petition, notice of petition, and supporting brief (without attachments) to a substantial list of individuals and organizations who have expressed an interest in the proposed detachment or who may be expected to have an interest in the matter.

In my opinion, the petition conforms substantially to the regulations governing submissions of this type to the Local Boundary Commission under AS 29.68.010(a), namely 19 AAC 10.450 - 10.530 (with the exceptions agreed to by the Local Boundary Commission at its meeting November 20, 1985). I perceive no significant procedural deficiencies that should prevent the petition from being presented to the Local Boundary Commission for its consideration.

RECEIVED

JAN 3 1986

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

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

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

I. Introduction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

* * *

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. HEDLAND: Is any of that land populated?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Id. at p.215.

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

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

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

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

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

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

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

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

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

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

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

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

VI. The Proposed Detachment Should be Approved Without Delay.

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

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

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

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

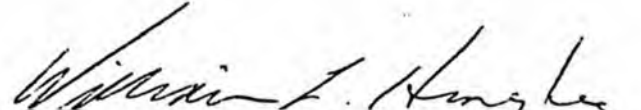
The North Slope Borough has raised no credible argument why the Commission should delay in considering the petition. The proposed detachment has been the subject of public debate for several years. The positions of the interested parties have been fully briefed and documented before the Commission. There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

VII. Conclusion.

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

DATED this 3rd day of January 1986.

NANA REGIONAL CORPORATION, INC.



William L. Hensley
President-Elect

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
2 THIRD JUDICIAL DISTRICT AT PALMER

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

7 Plaintiffs,)

8 v.)

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

14 Defendants,)

15 and)

16 NORTH SLOPE BOROUGH,)
17 Defendant-intervenor.)

18 Case No. 3PA-82-1131 Civ.

19 AFFIDAVIT

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

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

24 BOROUGH SERVICES AT PRUDHOE BAY - DEADHORSE

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

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

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

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- (g) Search and Rescue Services
- (h) Land Use Zoning and Regulation
- (i) Environmental Inspection and Protection
- (j) Administration, Finance, Legal and other general administrative support for above services

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

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

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

NEGATIVE IMPACT OF FISCAL YEAR 1982 - 1983 BUDGET REDUCTION

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

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

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

	Original 82-3	Substitute 82-3	Reduction	
17				
18	Police	\$4,892,500	\$3,392,500	\$ 1,500,000
19	Public Works -			
20	General Services	7,224,500	5,724,500	1,500,000
21	Public Utilities -			
22	Communities	8,910,000	7,410,000	1,500,000
23	Mayor's Office	4,662,100	3,662,100	1,000,000
24	Administration & Finance	6,180,700	5,680,600	500,100
25	Legal	538,700	438,300	100,400
26	Planning & Com- munity Services	3,100,100	2,800,100	300,000
27	Environmental Pro- tection & Conserv.	1,759,500	759,500	1,000,000
28	Health	7,102,300	5,602,300	1,500,000
29				
30	Housing Agency	5,367,600	4,092,600	1,275,000
31				
32	TOTAL REDUCTIONS			<u>\$10,175,500</u>
		49,738,000 ±		

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

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

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

23 9. The North Slope Borough cut in excess of 16
24 positions spread over various departments.

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

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

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

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

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

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

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

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

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

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

30 the maintenance efficiency. There have also been reductions
31 for personnel to collect rents which undermines the ability
32

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

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

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

13 BASIC SERVICES PROVIDED BY THE NORTH SLOPE BOROUGH

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

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

30 of Indian Affairs schools in the North Slope. These schools,
31 which did not meet State fire and health standards, have been
32

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

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

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

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

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

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

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

10 DATED: Jan 21 1983

11
12
13 Eugene Brower
14 EUGENE BROWER, Mayor of the
15 North Slope Borough

16 SUBSCRIBED AND SWORN to before me this 21
17 day of January, 1983.

18 Richard J. Lewis
19 Notary Public in and for the
20 State of Alaska. My Commission
21 Expires: 11/21/83
22
23
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27
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29

NORTH SLOPE BOROUGH

OFFICE OF THE MAYOR

P.O. Box 68
Barrow, Alaska 99723

Phone: 807-852-2611

Eugene Brower, Mayor



March 12, 1982

Assembly
North Slope Borough
Barrow, Alaska 99723

Gentlemen and Lady:

Enclosed you will find Ordinance 82-3 (Substitute) which now totals \$201,604,800 in comparison to the \$214,160,300 of the original submission.

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

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

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

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

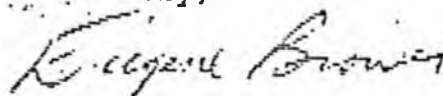
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Exhibit A, page 1

	<u>Original 82-3</u>	<u>Substitute 82-3</u>	<u>Reduction</u>
Administration & Finance	\$6,180,700	\$5,680,600	\$ 500,100
Legal	538,700	. 438,300	100,400
Planning & Community Services	3,100,100	2,800,100	300,000
Environmental Protection & Conservation	1,759,500	759,500	1,000,000
Health	7,102,300	5,602,300	1,500,000
Housing Agency	5,367,600	4,092,600	1,275,000
Debt Service	100,370,000	100,370,000	--
Down Payment Cap. Projects	15,383,400	15,383,400	--
TOTAL General Fund	\$197,925,700	\$185,350,200	\$12,575,500
Service Area 10 Fund	16,254,600	16,254,600	--
TOTAL.	\$214,180,300	\$201,604,800	12,575,500

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

Sincerely,



Eugene Brower, Mayor
North Slope Borough

*

Exhibit A, page 2

NORTH SLOPE BOROUGH

OFFICE OF THE MAYOR

P.O. Box 69
Barrow, Alaska 99723

Phone: 907-852-2611

George N. Ahmaogak, Sr., Mayor

November 7, 1985



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

Dear Commissioner Notti:

When you and Marty Rutherford met with my staff on October 28 to discuss the proposed detachment, you invited us to submit to you by November 7 any information that might assist you to reach your conclusion. On November 4, you published notice (Attachment 1) signaling your decision to initiate a boundary change petition and to request the Local Boundary Commission (a) to adopt an abbreviated schedule for hearing your petition and (b) to waive certain administrative regulations governing Local Boundary Commission action on detachment petitions.

For many reasons, I believe it is poor and premature policy for the Department to initiate a petition to detach territory from the North Slope Borough at this time. Your decision effectively negates your invitation to us to submit information. Still, I am submitting this letter and information in good faith in hope that your review of them will prompt second thoughts about pressing ahead with a detachment petition now and in the manner you are urging upon the Local Boundary Commission.

My letter of October 10, 1985 to you (Attachment 2) explained the reasons why the North Slope Borough has declined to initiate any change of its jurisdictional boundaries. This was the considered decision of the Borough Assembly and the electorate and it has my whole-hearted support.

Before going further, I want to reaffirm the North Slope Borough's constant position that it supports the efforts of NANA region residents to incorporate a new borough and to develop the Red Dog mine project. My letter of August 1, 1985 (Attachment 3) to Mr. John Schaeffer and Ms. Marie Greene reflects the positive attitude we have maintained throughout our dealings on this matter with NANA region representatives.

For your reference, we are compiling a complete chronicle of the dozen or more public workshops, hearings and meetings conducted by the North Slope Borough Planning Commission and Borough Assembly on NANA's detachment proposal. (Attachment 4 is a partial list of Planning Commission meetings.) All these

November 7, 1985

Page 2

meetings were properly noticed, open to the public and recorded. NANA region representatives attended and participated in almost all of these meetings. This chronicle will comprise the record upon which the Borough Assembly and the electorate reached their decision not to approve submittal of the detachment petition proposed by NANA Regional Corporation. We think it reflects an open and proper process for making important public decisions. After this extended public process, the Borough's electorate evidently judged that some features of NANA's detachment proposal were not in the best and legitimate interests of their government and rejected that approach.

The main reason why our own efforts to deal with the NANA detachment proposal were so lengthy is that some of the elements of their original proposal were poor public policy or patently illegal. Furthermore, some of the testimony, correspondence and public statements offered by advocates of the proposed detachment created a very muddled picture of the reasons for the proposed detachment. We became concerned by suggestions that the pursuit of detachment was prompted by hope of tax relief windfalls, tax base pre-emption and escape from legitimate local governmental regulation in addition to a genuine desire to create a new borough. For example, NANA's Regional Corporation's first formal proposal to us (Attachment 5) asked that the Borough suspend its planning, platting, zoning and other regulatory authority over the Red Dog mine development for three years, pending NANA region borough incorporation.

There is absolutely no need to hurry the detachment process. Even under favorable circumstances, NANA region borough incorporation, the Department's precondition for fulfilling the detachment, cannot be accomplished before the 1987 legislature convenes. At this time, there is no NANA region borough incorporation petition before the Local Boundary Commission and no information to substantiate a presumption that the proposed borough will satisfy statutory standards or that it will be fiscally infeasible without the proposed detachment or fiscally feasible with the detachment.

Furthermore, in the Memorandum of Agreement between the North Slope Borough and Maniilaq Association, both parties agreed that a boundary change would be initiated only after the 1986 legislative session, for approval at the 1987 legislative session. Apparently, what was an agreeable schedule to representatives of NANA Regional Corporation and Maniilaq Association before our October election is not now agreeable to the Department.

The State constitution specifies the deadline for Local Boundary Commission submittal of proposed boundary changes to the Legislature. From today, there are less than ten weeks for the Department and the Local Boundary Commission to complete all steps necessary to forward a boundary change proposal to the next legislative session. Last February 25, 1985, the Local Boundary Commission adopted a policy (Attachment 6) that annexation petitions requiring legislative review be accepted by the Department no later than June 30, 1985. The regulatory procedures for all boundary changes requiring legislative review, including detachments, are, of course, identical.

On March 12, 1985, the Department notified all Alaskan mayors (Attachment 7) that,

"...the Local Boundary Commission has identified June 30, 1985 as the final date that the Division of Municipal and Regional Assistance is to accept

legislative review annexation petitions for consideration by the Second Session of the Fourteenth Legislature...

At a minimum, twelve (12) weeks are required to complete the Department's report to the Commission. The Local Boundary Commission will not schedule hearings until the Department's reports for legislative review annexations are completed...

...The Local Boundary Commission has determined that the Commission will not be able to act on legislative review annexation petitions received after June 30, 1985 for submittal to the Second Session of the Fourteenth Legislature."

As of today, the Department has not accepted or even received a boundary change petition for any North Slope Borough detachment. In view of the policy established by the Local Boundary Commission and transmitted to all mayors, we are disturbed at the Department's double standard to excuse itself from the policy imposed on all other potential petitioners. Presumably the Department would not have accepted a detachment petition submitted by the North Slope Borough or another local government this soon before the legislative session.

We are doubly disturbed by the Department's recommendation that the Local Boundary Commission commit itself to a condensed schedule for this unprecedented proposed detachment. The Department has freely admitted that problems have arisen due to the inadequate public notice and petition review and reply provisions in the present regulations. Indeed, the Department is now considering draft revised administrative regulations that set specific deadlines for boundary change procedures. The draft revised regulations require a minimum of 135 days between departmental acceptance of a boundary change petition and the Local Boundary Commission's hearing date. This is nearly triple the time you recommend to process the Department's pending detachment petition. What is the Department's position on the adequacy of the notice and review provisions of the Local Boundary Commission's administrative regulations?

Let me recount briefly from the Department's own analyses and earlier Local Boundary Commission decisions, the social, geographic and economic reasons why the Local Boundary Commission and the courts legitimized the North Slope Borough's original boundaries.

In its Statement of Findings of Fact and Statement of Conclusions (Attachment 8) regarding the North Slope Borough incorporation petition, the Local Boundary Commission applied the statutory standards to reach the following conclusions about the Borough's proposed boundaries:

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

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

The Commission finds that the proposed borough meets this (economic) standard in that commercial activity takes place among the various communities, with Barrow as the regional hub...The trading area described by the

proposed borough boundaries is almost precisely that which is defined in Alaska Natives and the Land for the North Slope region."

The specific boundary change addressed in the pending petition is, in fact, old business to the Local Boundary Commission. The official record and Local Boundary Commission meeting minutes for the North Slope Borough incorporation petition clearly show that in 1972 the Local Boundary Commission explicitly considered and rejected the Northwest Alaska Native Association's protest against the validity of the North Slope Borough's proposed southwest boundary (Attachment 9). The minutes also show that the Local Boundary Commission, even then, anticipated the implications of its boundary decisions upon the formation of future rural boroughs. In sum, your detachment petition essentially asks the Local Boundary Commission to resurrect for reconsideration a policy choice that the Local Boundary Commission thoroughly considered and settled over thirteen years ago, consistent with the Local Affairs Agency's (the Department's predecessor) own recommendation.

We are aware that some advocates of detachment have stated the principle that borough jurisdictions should conform to ANCSA native regional corporate boundaries. To the contrary, we note that every existing borough was incorporated or initiated before Congress passed the Alaska Native Claims Settlement Act. The criteria by which the Secretary of the Interior later set boundaries between ANCSA regional corporations does not take precedence over the standards for municipal boundary determination enacted by the Alaska Legislature. And, as the Department of Community and Regional Affairs' map (Attachment 10) of the jurisdictions of the eleven existing boroughs and the boundaries of ANCSA regional corporations clearly shows, there is not a single instance where the boundaries of an established borough match native corporate boundaries. Does the present boundary change petition mean that DCRA will advocate petitions to the Local Boundary Commission for wholesale revisions in other established borough jurisdictional boundaries?

The Local Boundary Commission standards for review of petitions for detachment from organized boroughs stress that the service requirements of the detached territory must be met. The North Slope Borough has already adopted a comprehensive borough plan that is now being implemented by the issuance of permits and other appropriate regulatory activity at the Red Dog minesite. The Borough and Cominco will be meeting on November 12 to review a draft master plan for the Red Dog mine. The Borough has standing capability to provide such critical public services as public safety, medical evacuations, search and rescue and other public services to the Red Dog mine area, as it already does its jurisdiction. Overall, the North Slope Borough, as an established home-rule borough, is plainly better prepared to attend to the public service needs of the proposed detachment area than an inexperienced and newly organized second class borough.

The Borough has all along supported and will continue to support development of the Red Dog mine project. The detachment issue is not a factor in the Red Dog mine development schedule. Mr. John Schaeffer, then president of NANA Regional Corporation, testified at a public meeting that the mine project can proceed regardless of detachment. Likewise, Cominco and Alaska Industrial Development Authority staff have told us that detachment is not a consideration in their current negotiations to conclude their agreement for State financing of Red Dog mine access road and port facility construction.

November 7, 1985

Page 5

With regard to the mining project's economic feasibility, we call to your attention the findings of the Economic Evaluation and Finance Plan for the Proposed Delong Mountain Transportation System recently (July 31, 1985) prepared by SRI International for the Alaska Industrial Development Authority. This independent study's basic financial analysis (Attachment 11) concluded that, during its first eleven years of operation, the Red Dog mine would pay \$215,150,000 in royalties to NANA Regional Corporation and net after-tax profits of \$168,740,000 to Cominco. The figures for the first thirty years of operation were over two billion dollars (\$2,052,750,000) in NANA royalties and \$849,620,000 in net after-tax profits for Cominco. Clearly, local taxation is not an economic hardship that warrants tax relief for this project or shifting its tax burden to other North Slope Borough local taxpayers.

I am also enclosing a preliminary analysis prepared by E.F. Hutton (Attachment 12) of the damaging effect of the proposed detachment of the Red Dog minesite upon the North Slope Borough's future assessed valuation, revenues and creditworthiness. This preliminary analysis does not address the value of the Lik, Su or other mineral resources in the detachment area.

To put this fiscal issue in perspective, please recall your Department's recommendation (Attachment 13) and the Local Boundary Commission's recent decision (Attachment 14) to reject the proposed Lake Louise detachment petition from the Matanuska-Susitna Borough. Rejection was justified in part because, to quote both your Department's recommendations and the Local Boundary Commission's decision,

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

The Department's Report to the Local Boundary Commission went on to note that,

"As the bonding ability of the Borough is based upon the level of taxable property, the uncertain future of current boundaries could have a debilitating effect upon the Borough's bond rating and capacity to issue bonds. In addition, there are other regions within the Matanuska-Susitna Borough that are in a similar situation to the Lake Louise area and this detachment could, again, set a precedent for future detachment proceedings from the Matanuska-Susitna Borough. Therefore, it would not be possible for the Borough to assure the bonding market of a consistent future valuation".

Obviously, compulsory detachment of nearly a quarter billion dollars in assessed valuation will have far more serious implications for our local government finances.

In light of all these facts, I strongly urge you to reverse your unprecedented decision to launch this detachment petition and not to ask the Local Boundary Commission to waive administrative standards and abbreviate its proceedings. I am advised that your proposed course of action is flawed by procedural defects. The Borough will protest any procedural waivers that infringe upon due process before the Local Boundary Commission and, if necessary, litigate any denials of due process.

November 7, 1985
Page 6

In conclusion, each and every local government in Alaska has a vital interest in these proceedings. We all deserve fair, equal and reasoned treatment, as opposed to the hurried improvisation which now threatens the jurisdictional and fiscal integrity of the North Slope Borough.

Instead, I strongly urge the Department to take a leadership role in this critical matter and to develop sound and innovative fiscal alternatives as a foundation for the NANA region borough.

Thank you.

Sincerely,

Earl Finkler
for George N. Ahmaogak, Sr.,
Mayer
North Slope Borough

Attachments

cc: Marty Rutherford, DCRA
Harold Curran, Attorney, NSB
Earl Finkler, Director, Planning Dept.
File

LOCAL BOUNDARY COMMISSION

STATE OF ALASKA

STATEMENT OF FINDINGS AND CONCLUSIONS ON THE PETITION PROPOSING
INCORPORATION OF A FIRST CLASS NORTH SLOPE BOROUGH

A petition proposing the incorporation of a first class North Slope Borough was received by the Local Affairs Agency on April 4, 1971. In accordance with the provisions of AS 07.01.060, the agency reviewed the petition and on May 7, 1971, notified the representative of the petitioners, the Arctic Slope Native Association, that the petition was in the proper form, containing the required number of signatures of qualified voters and other information in compliance with the provisions of AS 07.10.020.

In accordance with AS 07.10.080, the agency immediately initiated an investigation to determine if (1) the proposed incorporation of the borough, (2) the proposed composition and apportionment of the borough assembly, and (3) the proposed assignment of areawide powers met the standards for borough incorporation set out in Alaska Statutes Title 7. The agency completed this investigation and transmitted its findings in the form of a report to the Local Boundary Commission date December 2, 1971.

With the consent and upon the direction of the Local Boundary Commission the agency published notice of a public hearing on the North Slope Borough petition for December 2, 1971 in the City of Barrow, in compliance with AS 07.10.100. Notice of the hearing was published in newspapers of general circulation in northwestern, interior and northern areas of the state and, additionally, was posted in the Cities of Barrow, Wainwright, Point Hope, Anaktuvuk Pass and Kaktovik, all within the boundaries of the proposed borough, pursuant to notice requirements set forth at AS 44.19.290. The public hearing was held before the Commission at the specified time and place.

The Local Boundary Commission held a public decisional meeting in Anchorage on February 23-25, 1972, at which time it rendered final disposition to the North Slope Borough petition.

Having considered the entire written record established and maintained for the Commission by the Local Affairs Agency, the oral and written testimony advanced at the public hearing by the petitioners' representative, the Arctic Slope Native Association, municipal officials and residents of North Slope communities, representatives of corporate interests affected by the borough proposal, and other parties, as well as information bearing on the incorporation proposal derived independent of the December 2, 1971 Barrow public hearing, the Commission, by unanimous vote of the members present, accepted, with

especially education. Considering normal apprehension of citizens toward additional governmental control, the petitioners and other interested persons individually and through the Arctic Slope Native Association at the public hearing persuasively demonstrated general accord with respect to borough incorporation. The Commission also finds that the incorporated status of all North Slope communities (all are fourth class cities) evidences a measure of sophistication indicative of the population's general understanding of local government and its fundamental purposes. The Commission further observes that it is almost unprecedented that of a given five villages of the size of those on the North Slope, all are fourth class cities.

C. "... (the population) shall have a clear understanding of the undertaking for which they ask, and shall be large enough and stable enough to warrant and support the operation of organized borough government."

The oral and written testimony entered on record by the petitioners and other interested and affected parties has demonstrated to the Commission that this standard has been met. The level of interest in the borough proposal was shown by the large number of Barrow residents in attendance at the public hearing. The Commission, although recognizing the difficulty in assessing the population's understanding of a borough incorporation proposal, finds that the representations made by the petitioners' representative, the Arctic Slope Native Association and the officials from four out of five of the communities in attendance at the public hearing revealed a working knowledge of organized borough functions.

The Commission further notes that the visits to the communities conducted by staff members of the Local Affairs Agency and officials of the Arctic Slope Native Association during the investigative period preceding the Barrow public hearing contributed substantially to public awareness and understanding of the North Slope Borough proposal.

GEOGRAPHY

A. "... the boundaries of the proposed organized borough shall conform generally to the natural geography of the area proposed for incorporation."

The Commission finds that the proposed borough meets this standard in every respect in that the area is generally bounded by the crest of the Brooks Range and the Arctic Ocean, and insofar as geography and ethnic relations are concerned, the proposed borough encompasses a cohesive group of people.

B. "... (the boundaries) shall include all areas necessary and proper for the full development of integrated local government services,

but shall exclude all areas such as military reservations, glaciers, icecaps and uninhabited and unused lands unless such areas are necessary or desirable for integrated local government."

The Commission finds that the boundaries of the proposed borough encompass all areas which would be necessary for full development of integrated local government services. While recognizing that the proposed borough area includes uninhabited land, the Commission also observes that these same lands are not unused in that public hearing testimony and other authoritative documentation (Alaska Natives and the Land) in the record substantiates historic and present seasonal occupation of the North Slope lands by residents engaged in subsistence hunting and fishing activities. The Commission specifically notes that the Distant Early Warning Line (DEW Line) sites located at intervals along the Arctic Ocean Shores and the Navy Petroleum Reserve Number 4 (PET 4) are not military reservations in the sense contemplated in the standard and are therefore includable within the borough boundaries. The Commission also notes that the area proposed for incorporation is devoid of extensive glaciation and icecaps.

ECONOMY

"...the economy of the proposed organized borough shall encompass a trading area with the human and financial resources capable of providing an adequate level of governmental services. In determining the sufficiency and stability of an area's economy, land use, property valuations, total economic base, total personal income, present and potential resource or commercial development, anticipated functions, expenses, and income of the proposed organized borough, shall be considered."

The Commission finds that the proposed borough meets this standard in that commercial activity takes place among the various communities, with Barrow as a regional hub. The boundaries proposed in the petition approximate the outer limits of this trading area, the Brooks Range to the south forming a natural barrier separating interior communities in the Yukon, Koyukuk, Kobuk and Noatak river drainages from those on the Arctic North Slope. The trading area described by the proposed borough boundaries is almost precisely that which is defined in Alaska Natives and the Land for the North Slope region.

The area proposed for incorporation possesses financial resources capable of providing an adequate level of governmental services. The Peat, Marwick, Mitchell and Company report on projected revenues and expenditures of an operative North Slope confirms the viability of an organized first class borough on the Arctic Slope. The petroleum exploration and development activities in the Prudhoe Bay area comprise the greatest part of the taxable real and personal

property tax base at the present time. The extensive mineralization of the North Slope region portends significant development activity for many years to come. The emergence of new communities is likely with the expected expansion of mineral exploration and development. The new developments will broaden the economic base and at the same time increase the need for governmental services which a first class organized borough is capable of providing.

The traditional subsistence economy is evolving rapidly into a cash economy. Per capita personal incomes, while presently low in comparison to those of the state as a whole (\$1,345 in 1969 on the North Slope versus \$4,000 in 1969 for the state), are increasing. Expanding oil, mineral and tourism industries as well as projected continuation of national defense and research programs provide further breadth to the economic base of the North Slope community of interests.

The anticipated local governmental functions to be undertaken by an incorporated first class North Slope Borough are within the capabilities of the human and financial resources of the proposed area. An integrated system of regional education for primary and secondary students is critically needed and would be within the financial reach of the proposed regional borough government considering the present economic base and conservative estimates of the expanded base attendant with further industrial development.

The Native Land Claims Settlement Act of 1971 will result in Native regional and village corporations being established and acquisition of substantial acreage which will enable North Slope residents to plan for self-sustaining economic enterprises. The Land Claims Settlement alone will bring substantial financial resources to the Arctic Slope region. Regional borough government will enhance this development through coordinated land use and zoning controls.

For the first year's operation, an organized first class North Slope Borough is estimated to require \$575,000 from local sources for general municipal services. Based on an estimated \$260 million tax base, the borough would have a levy of 2.21 mills. The second year, 89.5% of the expenditures for municipal services, or a 3.21 mill levy, will be necessary to produce the required \$810,000. The third year, 90% or a 2.65 mill levy applied to an increased tax base of \$325 million will be necessary to produce the required \$860,000. During the initial operation, the Commission expects that the borough would exercise only its mandatory powers of education, planning, platting and zoning and property tax assessment and collection.

TRANSPORTATION

A. "...the transportation facilities in the area proposed for incorporation shall be of such a unified nature as to facilitate the communication and exchange necessary for the development of integrated local government and a community of interests."

The Commission finds that this standard has been met in all respects. In the view of the Commission, the essence of this standard is that the people residing within an area proposed for borough incorporation must be close enough together or accessible enough to get back and forth among communities. In this regard, it is observed that all communities within the proposed North Slope Borough are served by either regularly scheduled certificated commercial air carriers or properly equipped and licensed air charter companies or both. The frequency and quality of service is more than sufficient to provide the communication and exchange contemplated for establishment of a community of interests in turn defining the need for integrated local government.

B. "...means of transportation may include surface (both water and land) and air."

The primary mode of travel in the Arctic Slope region is by air. Nearly all communities are served by modern turbine-powered commercial aircraft utilizing well-developed and maintained airport facilities. Surface transportation is still in the developmental stages with a highway presently contemplated between Fairbanks and the North Slope in conjunction with the Trans-Alaska pipeline. Water transportation, although seasonal, provides means by which North Slope communities may be supplied by bulk cargo, supplementing regular freight arrivals by commercial carriers. Weir Consolidated Airlines, an Alaskan based carrier, has established an integrated schedule serving all communities within the proposed borough. Barrow and Prudhoe Bay are served by Boeing 737 aircraft providing fast, conveniently scheduled services.

C. "...areas which are accessible to other parts of a proposed organized borough by water or air only may not be included within the organized borough unless access to them is reasonably inexpensive, readily available, and reasonably safe."

The Commission finds that this particular aspect of the transportation standard has been met and is substantiated by the record which has been established. In adopting this view, the Commission has compared the costs for citizen participation under the present arrangement in which the Legislature has the authority to sit as the assembly for the unorganized borough

government on the North Slope. The Commission further recognizes that representatives of four of the five communities on the North Slope attended the December 2, 1971 public hearing in Barrow, and this fact alone is indicative of readily available, reasonably safe and relatively inexpensive air travel. The Commission finds that transportation access to the areas proposed for borough incorporation is readily available, reasonably priced and reasonably safe. No substantial information was submitted to or brought to the attention of the Commission to prove otherwise.

D. "...in considering the sufficiency of means of transportation within a proposed organized borough, existing and planned roads and highways, air transport and landing facilities, boats and ferry systems, and railroads, shall be included."

The Commission finds that the transportation systems have been adequate for handling considerable traffic between the communities in the proposed borough area for the past several years. Residents of the North Slope have undertaken this transportation for the purpose of choir exchange programs, employment in one city of residents from another city, visitation church teams sharing education programs among the cities, Arctic Slope Native Association educational programs in the villages and friendship visits. There is a significant amount of inter-relationship of families among all North Slope communities, which results in travel to and from communities at all times of the year.

CONCLUSIONS

The Commission hereafter sets forth the conclusions of applicable law implicit in the Commission's acceptance of the petition for a first class North Slope Borough.

I.

The petition filed herein requesting incorporation of a first class organized borough under the name North Slope Borough is in the form prescribed by the Local Affairs Agency and is in compliance with the requirements of AS 07.10.020.

II.

The petition herein has been reviewed by the Local Affairs Agency in compliance with AS 07.10.060 and the agency had conducted an investigation and prepared a report to the Commission in compliance with AS 07.10.080 and AS 07.10.090.

III.

The findings of the Local Affairs Agency investigation were transmitted in the form of a written report to the Commission prior to the December 2, 1971 Barrow public hearing. The agency report concluded that the petition herein met the standards for incorporation.

IV.

The proposed borough meets each of the standards for incorporation set forth at AS 07.10.030.

V.

The North Slope Borough petitioners have satisfied all requirements of Title 7 of the Alaska Statutes and all of the necessary procedures have been followed by the Local Affairs Agency and Local Boundary Commission for a determination pursuant to AS 07.10.110 that the proposed North Slope Borough meets the standards for incorporation and the composition and apportionment prescribed by law, and for the Commission to accept the petition.

VI.

The petition meets all standards provided by law and required for acceptance of a petition by the Local Boundary Commission.

VII.

The Commission specifically concludes that the assembly composition and apportionment plan proposed in the petition is in compliance with the equal population representation (one-man, one-vote) rulings of the United States Supreme Court and applicable provisions of Title 7 of the Alaska Statutes. As proposed in the borough incorporation petition, the five-member assembly is to be elected by and from the qualified voters resident within the boundaries of the borough without regard to distinction between city and non-city areas and without regard to sections for representation.

VIII.

Pursuant to AS 07.10.050, the areawide powers which the proposed North Slope Borough can effectively and efficiently exercise are all those powers mandatorily or optionally prescribed for first class boroughs at Title 7 of the Alaska Statutes, and no others, except as may be assumed pursuant to law.

IX.

The boundaries of the proposed North Slope Borough shall generally

be as requested in the petition and as hereunder corrected for technical clarity:

Beginning at a point in the Chukchi Sea where 68° North Latitude intersects the westerly boundary of the State of Alaska; thence in an easterly direction along the 68° North Latitude line to its intersection with 146° West Longitude; thence northerly along the 146° West Longitude line to its intersection with 68°30' North Latitude; thence easterly along the 68°30' North Latitude line to the easterly boundary of the State of Alaska; thence northerly along the boundary common to the State of Alaska and Canada to the northernmost boundary of the state of Alaska; thence meandering westerly, north-westerly, westerly, southwesterly, southerly, and southeasterly along the boundary of the State of Alaska in the Beaufort Sea, Arctic Ocean and Chukchi Sea to the point of beginning, containing 56,500 acres, more or less.

56,500,000 ^{GB}

X.

The basic thrust of the Article X of the Alaska Constitution is to encourage "maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions." In the implementation of this purpose, the Legislature is directed to vest all local government powers in boroughs and cities only and to arrange for the division of the state into boroughs, organized or unorganized, in accordance with standards adopted by law. Article X, Sections 2 and 3, Alaska Constitution. Cities are to be a part of the organized or unorganized borough in which they are located. Article X, Section 7, Alaska Constitution. The Legislature is further directed to "classify boroughs and prescribe their powers and functions," and to prescribe "...methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved..." Article X, Section 3, Alaska Constitution.

Although reserving the authority to mandate incorporation of organized boroughs (specific example, Chapter 52, SLA 1963) and to provide for performance of services deemed necessary or advisable in unorganized boroughs (Article X, Section 6, Alaska Constitution and AS 07.05.010), the Legislature has established at Title 7, Alaska Statutes, the means by which organized boroughs may be incorporated by local action. The Legislature has defined the single unorganized borough as all areas of the state which are not within the boundaries of an

organized borough. AS 07.05.010.

The Legislature has delegated broad authority to the Local Boundary Commission to determine which areas of unorganized borough shall be given the opportunity to incorporate as an organized borough. AS 07.10.010-07.10.140. The absence of statutory expression as to subdivision of the single unorganized borough for limited local government purposes into multiple units conforming to population, geography, economy and transportation standards and other factors lead to Commission decisions founded on the theory that eventually the entire state will be divided into organized boroughs, on the basis of application of constitutional and legislative standards.

These findings of Fact and Conclusions of law, published as a matter of ministerial procedure for the purpose of elucidating in summary fashion the officially recorded administrative and statutory actions, are adopted this 10th day of May, 1972, at Ketchikan, Alaska.

LOCAL BOUNDARY COMMISSION

STATE OF ALASKA

John S. Hedland, Chairman

Christopher C. Bernsdorff

Christopher Bernsdorff

Allen Shontz

Gary Ackerman

LOCAL AFFAIRS AGENCY

STATE OF ALASKA

Byron I. Mallott, Director

Sigvald J. Strandberg, Secretary

To: Kevin Waring; Consultant for the North Slope Borough
From: Edwin S. Hall, Jr., Edwin Hall and Associates
Date: 13 December 1985
Re: Available evidence on historic and recent utilization of the proposed detachment area by peoples from NANA and the North Slope Borough

Introduction

The purpose of this memorandum is to summarize and evaluate the available evidence on the utilization of the proposed detachment area for subsistence purposes by the people of NANA and the North Slope Borough.

Before discussing the archæological, documentary and oral testimony evidence dealing with use of the area in question, a general comment seems appropriate. In the Brief prepared by the Commissioner of the Alaska Department of Community and Regional Affairs (pages 21 ff.) the general summary *Alaska Natives and the Land* is utilized as the basic source for data on the social and cultural characteristics of the NANA and North Slope Borough peoples. This source is not particularly well-written, is out of date (1968) and limited as a data base (for example, the seasonal use maps are only for the period 1950-60), and is exceedingly generalized. It does not seem appropriate to rest such an important issue on a questionable data base. A great considerable amount of primary data is available dealing with the peoples of NANA and the North Slope Borough (see some of the references in this memo), much of which has been collected and analyzed in the past 20 years. Furthermore, it may well be that further data must be collected before an informed decision can be made on some of the issues raised by the proposed detachment.

Archæological evidence

As part of his petition, the Commissioner of the Alaska Department of Community and Regional Affairs submitted a map (Exhibit D-6) which supposedly shows locations of archæological and historic sites in the proposed detachment area. The map is hopelessly out of date. More to the point, it does not illustrate, as is implied, that NANA peoples or their ancestors utilized the disputed area and (by implication) people from the North Slope Borough did not. The present state of the art rarely permits confident assignment of archæological remains to specific societal groups (the lineal ancestors of the Point Hope Iñupiat for example) and this reality is particularly apparent when dealing with archæological sites—even early historic ones—within the territory in question. Unless oral history accounts or documentary evidence directly demonstrate that the ancestors of a living NANA individual occupied or utilized a specific site, it is impossible to deny the possibility that members of some other societal group were responsible for the archæological site. In the case of sites within the proposed detachment area, I would estimate that more than 90 percent are not assignable to a specific societal group. Therefore, the simple presence of archæological sites in the disputed area is meaningless in the context of the present controversy.

Another problem with more recent archæological sites is that the earlier historic period (ca. 1800-1910) was one of such great population flux, cultural disintegration, and cultural reorganization in northern Alaska (see Burch 1981: *The Traditional Eskimo Hunters of Point Hope, Alaska: 1800-1875* for an example of the processes involved and the results) that it is difficult to definitely equate readily delimited societal groupings with long-term utilization of the resources in a particular specific territory. For example, Burch (1980: "Traditional Eskimo Societies in Northwest Alaska," in *Alaska Native Culture and History*, edited by Kotani and Workman, pp.253-304) writes of the Kivalina society: "The population was nearly exterminated by the famine of 1882-84; the survivors fled to other regions, and only a few returned." He further notes (page 293) that many people from the Shishmaref region moved into the Kivalina area around the turn of the century. Other regions in Northwest and North Alaska were affected by similar population declines and mass population movements in the late 1800s. Therefore, any specific association of a particular cohesive societal group and a particular geographically demarcated resource base at a specific point in time is very difficult. Only during the past 75 years, with the appearance of permanent year-around villages, can such an association be confidently made.

Use of the disputed territory by North Slope Borough residents

A review of the pertinent literature on land utilization in the western portion of the disputed territory, the section from approximately the Red Dog mine west, reveals no mention of the presence of Point Hope people, or other North Slope Borough groups, during the time period being considered. Recent interviews in Point Hope confirm this assessment. Point Hope people do secure Arctic char (in its frozen form a favorite food at whaling camps) and ugruk skins in trade from the Kivalina people (Braund, personal communication).

Any concerted use of the middle portion of the disputed territory—the section within the Noatak River valley—during the past 75 years by individuals from the North Slope Borough seems doubtful. During the early part of the century some inland Iñupiat, whose normal activities were centered in the central Brooks Range, travelled west into the disputed territory from the upper Noatak where they often hunted (Hall 1984 fieldnotes). During the fur trapping era, individuals from the north coast *might* have travelled across the divide into the disputed area, but there is no documentary evidence available for this possibility. Burch (1976: "Overland Travel Routes in Northwestern Alaska," in *Anthropological Papers of the University of Alaska*) has detailed at least eight travel routes between the Noatak River drainage and the Arctic Slope which pass through the disputed area. These were established travel routes as of the middle 1800s, when people moved across the mountains in both directions. Undoubtedly the same routes were utilized, at least occasionally, up until the turn of the century and then again during the fur trapping era, but no specific documentary information is available on who travelled where and when.

The far eastern part of the proposed detachment area, primarily the portion in the Nigu River drainage south and west of Etivluk Lake, was fairly intensively utilized by inland Iñupait during the first two decades of the current century and then again in the late 1930s and through the 1940s (Irving, L. n.d.: "Biological Reconnaissance in the region of Howard Pass in the Brooks Range of Alaska;" Hall, Gerlach and

Blackman 1985: *In the National Interest: A Geographically Based Study of Anaktuvuk Pass Iñupiat Subsistence Through Time* [see especially the land use maps—both individual and collective—in Volume 2]). In the 1950s and early 1960s the area was visited almost every spring by Anaktuvuk Pass hunters during wolf-pupping trips. In the late 1970s, when the winter travel efficiency of the snowmobile overcame the disadvantages (from the point of view of a hunting people) of permanent settlement at a specific location, the Anaktuvuk Pass people re-established utilization of the upper Nigu area. Today it remains an important travel route, camping area and subsistence locus.

Use of the disputed territory by NANA residents

The nature and extent of NANA residents' historic and recent utilization of the proposed detachment area are difficult to ascertain because relatively few land use studies have been conducted in the area and because the brief submitted by the Commissioner lacks the necessary baseline data to allow such a determination. Exhibit D-5 and the Brief, pages 21-3, assert that a goodly portion of the disputed territory is characterized by intensive subsistence use on the part of NANA residents. These data are suspect for several reasons: (A) No definition of the crucial term *intensive* is provided so that the reader is aware of exactly what "intensive subsistence use" entails. For the purposes of my comments here, "intensive subsistence use" means that the majority of the subsistence needs of several families, or a substantial portion (but not necessarily a majority) of a larger group's requirements are met by harvest of subsistence resources in the area. (B) The map is much too generalized and the data upon which it is based has not been made available. For example, information I have gleaned in casual conversations with Noatak residents (supported by Braund, personal communication) suggests that subsistence activities in the middle Noatak River region are almost exclusively confined to a narrow corridor along the river, contrary to the map illustration. (C) The lands designated as intensive use zones incorporate substantial areas that are rarely or never used by NANA residents. For example, the whole area around the Red Dog deposit lies outside the region fished by Kivalina or Noatak people and at the very margin of the area hunted for caribou (Braund and Burnham 1983). (D) All data available to me suggest that many of the area designated as intensive use zones in reality are used only rarely for subsistence purposes. For example, there is at least one allotment at Feniak Lake, but I seriously doubt that the area indicated has received anything but the slightest use (and that probably mostly recreational) in the past 50 years.

The basic problem in any attempt to characterize subsistence use of the disputed area is that few recent detailed studies are available. In the western portion of the area, the preparation of the Red Dog EIS involved a fairly intensive subsistence study (Braund and Burnham 1983: *Red Dog Mining Project: Kivalina and Noatak Subsistence Use Patterns* ; also found in Cominco baseline study). Land and resource use in the far eastern portion of the territory is discussed in a study of Anaktuvuk Pass Iñupiat subsistence activities (Hall, Gerlach and Blackman 1985). However, the only specific study (scattered data are available in studies with other foci) apparently dealing with subsistence use in the central portion of the disputed territory is that conducted by NANA as part of its Coastal Management program which

resulted in the map reproduced as Exhibit D-5. As crucial data such as the research design, actual data gathering techniques, basic definitions, data actually collected and type of analysis are not made available, it is impossible to evaluate NANA's assertions about subsistence use in relation to the issues involved in the detachment question.

A brief summary of the available data suggests that NANA residents made moderate use of some areas within the western portion of the proposed detachment for hunting (but apparently rarely for fishing). In the Noatak basin, the western two "intensive subsistence use" areas delineated on the map also receive light to moderate use, but subsistence activities are mainly confined to the main river valley and may not extend as far north as indicated. In the central portion of the river, the occasional useage that occurs apparently is pretty much confined to the immediate river valley. According to the map, the two eastern use areas barely impinge on the proposed detachment area (and, in actuality, the subsistence activities being depicted may not extend into the detachment area); the available evidence indicates that these areas receive only occasional attention from subsistence users.

It must be stressed that NANA may possess better data on the harvesting of subsistence resources in the proposed detachment area. However, the data presently available to the North Slope Borough suggests that the proposed detachment area has not been particularly important, in subsistence terms, to the residents of NANA, except perhaps in the very western portion.

In conclusion, a specific study directed towards establishing the nature and intensity of subsistence harvesting within the disputed area is necessary. A general map is not sufficient evidence for the assertion that the people of Noatak and Kivalina "... have commonly used the land and rivers of the proposed detachment for harvesting subsistence resources" (Brief, page 22; emphasis mine).

Conclusion

The available evidence indicates that the residents of the North Slope Borough rarely if ever have directly utilized the resources of the proposed detachment area during the past 75 years, with the exception of the inland Iñupiat/Anaktuvuk Pass people who regularly engage in subsistence activities in the very eastern portion of the area. On the other hand, a thorough review of the available evidence and further field work quite likely will disclose that NANA's claim of extensive subsistence resource harvesting in much of the proposed detachment area is not an accurate reflection of reality.

Sent to all MAYORS

March 12, 1985

Dear :

RE: DEADLINE FOR LEGISLATIVE REVIEW ANNEXATION PETITIONS

This is to inform you that the Local Boundary Commission has identified June 30, 1985, as the final date that the Division of Municipal and Regional Assistance is to accept legislative review annexation petitions for consideration by the Second Session of the Fourteenth Legislature.

Therefore, if your community or residents intend to submit a legislative review annexation petition in 1985, the steps which must be taken before legislative review annexation recommendations are submitted to the Legislature are:

1. The Department of Community and Regional Affairs must review and accept the petition and issue a factual report which contains a recommendation concerning the proposed action.
2. Following the issuance of the report, the Commission must schedule and conduct a public hearing on the action in the city proposing the annexation.
3. The Commission must develop a recommendation for the Legislature on the proposed action.
4. The Commission must submit an annual report to the Legislature, with all legislative review recommendations, within the first ten (10) days of the 1986 session.

At a minimum, twelve (12) weeks are required to complete the Department's report to the Commission. The Local Boundary Commission will not schedule hearings until the Department's reports for legislative review annexations are completed.

RE: DEADLINE FOR LEGISLATIVE REVIEW ANNEXATION PETITIONS
March 11, 1985
Page 2

Because the logistics involved in completing the necessary reports and holding hearings for several such annexations prior to the statutory deadline become quite difficult if petitions are submitted late in the year. The Local Boundary Commission has determined that the Commission will not be able to act on legislative review annexation petitions received after June 30, 1985 for submittal to the Second Session of the Fourteenth Legislature.

If you have any questions concerning this decision or if this deadline is going to create extreme difficulties, please contact Gene Kane, Staff Assistant to the Local Boundary Commission, in Anchorage at 561-8586.

Sincerely,

Marty Rutherford
Director

cc: Emil Notti, Commissioner, Department of Community and
Regional Affairs
Local Boundary Commission Members
MRAD Field Offices

Harold - I have asked for copy of LBC
minutes or other record of meeting
at which they discussed reason
for this policy. KW

ERIC E. WOHLFORTH
ROBERT B. FLINT
TIMOTHY G. MIDDLETON
PETER ARGETSINGER
ROBERT M. JOHNSON
GEORGE T. FREEMAN

LAW OFFICES
WOHLFORTH & FLINT
A PROFESSIONAL CORPORATION
900 WEST 5TH AVENUE, SUITE
ANCHORAGE, ALASKA 99501

Matanuska-SUSITNA BOROUGH
Date Rec'd: 8-11-82 Initials: [initials]
Noted By: _____
TELEPHONE AREA CODE 907 276-6401

August 11, 1982

NSB ATTACHMENT #

AAA

Mr. Gary Thurlow
Borough Manager
Matanuska-Susitna Borough
P.O. Box B
Palmer, Alaska 99645

Re: In the Matter of the Detachment of Territory
from the Matanuska-Susitna Borough

Dear Mr. Thurlow:

In our capacity as bond counsel, you have advised us that there is a pending petition for detachment of certain property from the Matanuska-Susitna Borough. The area proposed to be detached has an assessed valuation amounting to \$6,941,700. The total assessed valuation of the Borough, including the area proposed for detachment, is \$1,220,634,129.

The assessed valuation of the property proposed to be detached is so modest in comparison to the total assessed valuation of the entire Borough as not to create in and of itself a problem in necessary disclosure for future Borough bond financings or to appear to detract from the Borough's power to pay bonded indebtedness and other charges.

However, in our opinion, the successful detachment of the area would create a precedent for future detachments which would warrant disclosure in bond offering documents so as to put potential investors in Borough bonds on notice that the tax base of the Borough may be eroded further and more significantly. To my knowledge, no detachment or disannexation petitions have been granted with respect to those municipalities in the State, including the Matanuska-Susitna Borough, which have sold bonds for their various public purposes. The Matanuska-Susitna Borough is a substantial issuer of public indebtedness now having an outstanding indebtedness understood to be \$61,668,000. In our opinion, a granting of the detachment petition, since it would establish a precedent for future such actions, could

EXHIBIT "B"

Exhibit 1
18-37

Mr. Gary Thurlow
August 11, 1982
Page 2

significantly detract from the Borough's continued ability
to access public borrowing markets at reasonable rates.

If further information is needed, please call on
us.

Very truly yours,

WOHLFORTH & FLINT

By Eric E. Wohlforth
Eric E. Wohlforth

EEW/cm

STATE OF ALASKA
LOCAL BOUNDARY COMMISSION

STATEMENT OF DECISION

Decision regarding the)
petition for the detachment)
of the Lake Louise area)
containing 432 square miles)
from the Matanuska-Susitna)
Borough)

On July 29, 1982 the Department received the Lake Louise petition to detach 432 square miles of territory from the Matanuska-Susitna Borough.

After reviewing the petition for accuracy and completeness it was forwarded to the Matanuska-Susitna Borough on August 6, 1982. In accordance with 19 AAC 10.640, the Matanuska-Susitna Borough Assembly held a public review (August 17) on the petition and returned the petition with the Borough's Answering Brief to the Department on August 20, 1982.

Pursuant to proper notice the Local Boundary Commission held a public hearing on the petition for the proposed detachment on September 25, 1982. The hearing began at 1:00 p.m. in the Evergreen Lodge at Lake Louise. Local Boundary Commission members present were: Sheila Gallagher, Sigvald Strandberg, Bert Greist, and Josephine Anderson. Testimony was presented by Paul Holland, Petitioners' Representative, Gary Thurlow, representing the Matanuska-Susitna Borough, and sixteen additional speakers.

On January 8, 1983 in Juneau, Alaska, at 4:30 p.m. the Commission held its decisional meeting on the Lake Louise detachment petition. Local Boundary Commission members present were: Sheila Gallagher, Bert Greist, Sigvald Strandberg, and Charles Bettisworth.

Upon consideration of the Lake Louise petition to detach 432 square miles of territory from the Matanuska-Susitna Borough, the September 9, 1982 Report of the Department, the November 1, 1982 Supplemental Report of the Department, and the testimony presented at the public hearing, the Local Boundary Commission hereby makes the following findings of fact:

1. The detachment of the Lake Louise area from the Matanuska-Susitna Borough would not be in the best interests of the State, the Lake Louise area, and the Matanuska-Susitna Borough.

The Borough form of government establishes the means of providing local government for an area of the State which is culturally, economically, and geographically related. If the Lake Louise territory was allowed to detach, it would become part of the unorganized borough. In essence, the detachment would remove a portion of an organized borough which has been functioning and providing services on a regional basis for the past eighteen years. The Lake Louise area would then become a part of the State's administrative responsibility. Given the fact that the Matanuska-Susitna Borough was formed by legislative action, and that the removal of the Lake Louise area would only transfer the responsibility of service delivery to the State, the Commission finds no best interest to be achieved for the State. Perhaps most significant with respect to the issue of the State's interest, the Lake Louise area is characteristic of vast areas of the eleven existing organized boroughs and unified municipalities. If this area detaches it could set a precedent that could readily be followed by similar areas.

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

The State of Alaska is anticipating distributing 2,635 parcels of land in the Lake Louise area over the next three years. With this potential for future growth and development in the Lake Louise area, it is possible that the community of Lake Louise will have an increasing need for borough areawide services.

- 2) The Matanuska-Susitna Borough has 20,544 square miles with a population of 19,123. Within this immense area there is a diversity of social, cultural and economic settings. More than 70% of all borough residents live outside the four largest communities (Palmer, Wasilla, Houston and Talkeetna). The rural population of the borough has many similarities in that it is distributed along the road system, it experiences high unemployment and seasonal work, and has moved to the rural areas of the Borough within the last 20 years. There are no indications that the residents of the Lake Louise community differ substantially from the majority of the Borough residents residing in the rural areas of the Borough.

- 3) The Matanuska-Susitna Borough currently levies an areawide mill rate of 4.9 mills and a nonareawide mill rate of 0.5 mills. The areawide functions are primarily concerned with the education, school bond debt service, planning, land management and taxation. The remoteness and insignificant school age population of Lake Louise has, from a practical standpoint, limited Borough services. However, that is not to say that with the future anticipated growth within the Lake Louise area that the residents and future residents would not receive services commensurate with the rest of the Matanuska-Susitna Borough and the potential for such services will encourage the area's growth.

4. Communications with the Lake Louise area are more difficult than in many other areas of the Matanuska-Susitna Borough. The community has limited telephone service in that it can only be reached through a radio patch phone service in Anchorage. This does make immediate communication between the Borough government and the community relatively difficult. However, the community of Lake Louise is accessible by road on a year round basis. This enables the community to receive scheduled mail service. Therefore, it can be concluded that although communication and transportation services to the Lake Louise area are relatively difficult they do not preclude the exchange necessary for response of an integrated local government.

THEREFORE, the Commission hereby does not approve the petition to detach the Lake Louise area containing 432 square miles of territory from the Matanuska-Susitna Borough and will recommend against such action to the First Session of the Thirteenth Legislature of the State of Alaska; and

THEREFORE, the Commission does recognize that there are areas of the unorganized borough of the State that are receiving the equivalent of municipal services without the responsibility of local tax contributions. Additionally, there are remote areas of the State's organized boroughs that are assessed taxes for the delivery of minimal services which in the unorganized borough are paid for by the State; and

THEREFORE, the Commission recommends to the First Session of the Thirteenth Legislature that it investigate the need for the formation of borough governments in areas of the State that have the economic base available to cover the cost of such government.

Decided on the 8th day of January, 1983.

STATE OF ALASKA LOCAL BOUNDARY COMMISSION

By: Sheila Gallagher Date: 2/28/83
Sheila Gallagher, Acting Chairman

By: Charles Bettisworth Date: 2/29/83
Charles Bettisworth, Member

By: _____ Date: _____
Bert Greist, Member

By: Sigvald Strandberg (DISSENTING VOTE) Date: 2/16/83
Sigvald Strandberg, Member

STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

DIVISION OF LOCAL GOVERNMENT ASSISTANCE

JAY S. HAMMOND, GOVERNOR

REPLY TO:

- POUCH BH
JUNEAU, ALASKA 99811
(907) 465-4707
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(907) 543-3475
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NOME, ALASKA 99762
(907) 443-5457
- P.O. BOX 280
KOTZEBUE, ALASKA 99752
(907) 442-3675
- 1514 CUSHMAN RM. 211
FAIRBANKS, ALASKA 99701
(907) 452-7126

September 22, 1982

Lake Louise Detachment Petition

To Whom It May Concern:

The Report to the Local Boundary Commission of the State of Alaska on the Petition to Detach the Lake Louise Area from the Matanuska-Susitna Borough, contains two errors. Please note the following changes (underlined material indicates text that is being added and bracketed material in capital letters indicates deletion).

- 1) Page 3 - The second to last sentence in the third paragraph should be amended to read:

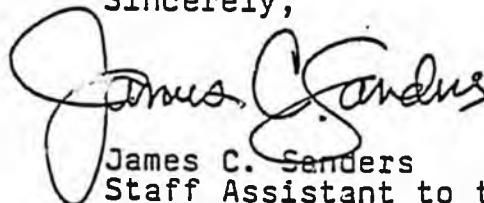
In the past 18 years only [ONE] two boroughs (the North Slope Borough and the Haines Borough) have been established.

- 2) Page 4 The last sentence of the second paragraph should be amended to read:

When this growth does begin to occur, the need for borough areawide services (education [FIRE] and planning) will become evident.

Thank you for your indulgence.

Sincerely,



James C. Sanders
Staff Assistant to the
Local Boundary Commission

JCS/sj

NSB ATTACHMENT # **BBB**

REPORT TO THE LOCAL BOUNDARY COMMISSION OF THE
STATE OF ALASKA ON THE
PETITION TO DETACH THE LAKE LOUISE AREA FROM THE
MATANUSKA-SUSITNA BOROUGH

Department of Community and Regional Affairs
Division of Local Government Assistance

September 9, 1982

I. INTRODUCTION

The Matanuska-Susitna Borough was incorporated on January 1, 1964 under the provisions of Chapter 52, SLA 1963, known as the "Mandatory Borough Act". The Borough is comprised of approximately 20,544 square miles and has an estimated population of 19,123.

The Matanuska-Susitna Borough is the second largest in the State (behind the North Slope Borough), with a land mass exceeding the combined areas of the Haines Borough, Bristol Bay Borough, Kodiak Island Borough, Ketchikan Gateway Borough, City and Borough of Sitka, City and Borough of Juneau and the Municipality of Anchorage. Although much of the Matanuska-Susitna Borough is accessible by road, there are large areas which are remote and inaccessible.

The area of Lake Louise is located in the extreme eastern portion of the Matanuska-Susitna Borough. The area is accessed by an 18 mile road leading from the Glenn Highway to the southern end of Lake Louise. The community, based at the southern end of Lake Louise, is approximately 136 highway miles from Palmer and 45 highway miles from Glennallen. The map at the end of this report identifies the area proposed for detachment from the Matanuska-Susitna Borough.

The majority of the Lake Louise residents are seasonally employed during the summer months. The three lodges on the southern end of Lake Louise provide the economic and population base for the community. The majority of the land within the territory proposed for detachment is owned by the State. The Matanuska-Susitna Borough owns no land within the territory proposed for detachment.

The petition proposes to detach 432 square miles of territory from the Matanuska-Susitna Borough. The area proposed for detachment comprises 2.10% of the Borough territory, and the Lake Louise population (33) represents 0.17% of the Borough population. Of the 432 square miles proposed for detachment, 216 square miles are uninhabited State land.

According to the Borough, there are 28 registered voters and 213 dwellings in the Lake Louise area. Most of these dwellings are recreational in nature. There are 363 tax parcels in private ownership in the Lake Louise area. The property tax to be generated from the territory proposed for detachment during the current fiscal year is approximately \$37,485. The total assessed valuation of the real and personal property at Lake Louise is \$6,941,700 or 0.67% of the total assessed value of the Borough (\$1,037,000,000). The residents of the Lake Louise area contend that they receive no Borough services. The Borough, however, does maintain a public landfill in the Lake Louise area and

offers an educational program for Lake Louise students if they choose to attend school in Glennallen. According to Paul Holland, petitioners' representative, there were no children from Lake Louise attending the Glennallen school last year nor will there be this year. There are only two children in Lake Louise of school age. These students from Lake Louise have chosen a home teaching option which is provided by the Borough and the State of Alaska. The Borough also exercises planning on an areawide basis. Although the effect of the planning activities may not be readily apparent in Lake Louise, the prospect of several thousand new land owners in the area (details below) establishes the need for planning of future growth and development in the Lake Louise area.

According to the Borough, the State of Alaska is going to subdivide and distribute land in the Lake Louise area in the immediate future. An additional 2,635 parcels of land will be transferred from State ownership to private ownership. Therefore, there will likely be significant growth in the Lake Louise area within the next several years. According to the Alaska Department of Natural Resources, the State has classified 102.87 square miles of this territory for remote parcel distribution. In the State fiscal year 1983, approximately 23.44 square miles of this land will be distributed in 30 acre parcels. Additionally, 22.6 square miles of land around the lake have been classified for subdivision disposal. Approximately 3,200 acres (5 square miles) will be distributed by the State during fiscal years 1983 and 1984. These parcels will be 5 to 10 acre plots.

II. PROCEEDINGS TO DATE

On July 29, 1982 the Department received the Lake Louise petition to detach 432 square miles of territory from the Matanuska-Susitna Borough by the "local action - election" process. This petition was submitted to replace the withdrawn Legislative Review detachment petition submitted on April 20, 1982. After reviewing the current petition for accuracy and completeness it was forwarded to the Matanuska-Susitna Borough on August 6, 1982. In accordance with AAC 10.640, the Matanuska-Susitna Borough Assembly held a public review (August 17) of the petition and returned the petition with the Borough's Answering Brief to the Department on August 20, 1982.

Proper notice has been given for the Local Boundary Commission's public hearing and decisional meeting on the Lake Louise detachment petition. This hearing is scheduled for September 25, 1982 at 1:00 p.m. in the Evergreen Lodge at Lake Louise.

III. STANDARDS FOR DETACHMENT FROM AN ORGANIZED BOROUGH

The following discussion outlines the considerations the Local Boundary Commission must weigh according to statutes and regulations in reaching a decision on the petition to detach the Lake Louise area from the Matanuska-Susitna Borough.

WILL THE DETACHMENT BE IN THE BEST INTEREST OF THE STATE, THE LAKE LOUISE AREA AND THE MATANUSKA-SUSITNA BOROUGH?
(19 AAC 10.230)

The issue of best interest must be addressed at each level before an overall consensus can be achieved on this issue. It is difficult to determine what effect the detachment of the Lake Louise area would have upon the State as a whole.

It is fair to state that the Alaska Constitution anticipates that the entire State would be divided into organized boroughs with some areas of the State that could not economically support a borough, becoming the unorganized borough. More than 26 years have passed since the Constitution was ratified by the voters, yet only 25 per cent of the area of the State is organized through borough governments. In the past 18 years only one borough (the North Slope Borough) has been established. No boroughs have been formed in the past 10 years.

The borough form of government establishes a means of providing local government for an area of the State which is culturally, economically and geographically related. If the Lake Louise territory was allowed to detach, it would become part of the unorganized borough. In essence, the detachment would remove a portion of an organized borough which has been functioning and providing services on a regional basis for the past eighteen years. The Lake Louise area would then become a part of the State's administrative responsibility. Given the fact that the Matanuska-Susitna Borough was formed by legislative action, and that the removal of the Lake Louise area would only transfer the responsibility of service delivery to the State, the Department finds no best interest to be achieved for the State. Perhaps most significant with respect to the issue of the State's interest, the Lake Louise area is characteristic of vast areas within the eleven existing organized boroughs and unified municipalities. If this area detaches it could set a precedent that could readily be followed by similar areas. Such would have a significant adverse effect on the State.

The Matanuska-Susitna Borough would be adversely affected by the

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

The residents of the Lake Louise community feel that there are definite benefits in detaching from the Matanuska-Susitna Borough. Primarily they would not be paying taxes for services which they feel are not received. Currently, 73% of the Borough's areawide mill levy is for education, 2% for parks and recreation, 3% for planning, 2% for civil engineering, 2% for assessment and property management and 18% for other costs. The residents of this area feel that the unorganized borough which borders the Lake Louise lake system offers an opportunity to continue living the same lifestyle without the burden of taxation without reciprocal benefits. While the desire to avoid taxation is readily appreciated, this approach ignores the potential for growth following the State distribution of 2,635 parcels of land in the Lake Louise area. When this growth does begin to occur, the need for borough areawide services (education, fire and planning) will become evident.

ARE THE SOCIAL, CULTURAL AND ECONOMIC CHARACTERISTICS OF THE POPULATION OF LAKE LOUISE SUBSTANTIALLY DIFFERENT OR IN CONFLICT WITH THE REMAINDER OF THE POPULATION OF THE BOROUGH?
(19 AAC 10.230)

The Matanuska-Susitna Borough has 20,544 square miles with a population of 19,123. Within this immense area there is a diversity of social, cultural and economic settings. More than 70 per cent of all borough residents live outside the four largest communities (Palmer, Wasilla, Houston and Talkeetna). The rural population of the Borough has many similarities in that it is distributed along the road system, it experiences high unemployment and seasonal work, and has moved to the rural areas of the Borough within the last twenty years. There are no indications that the residents of the Lake Louise community differ substantially from the majority of Borough residents residing in the rural areas of the Borough.

IS THE GEOGRAPHIC LOCATION OR CONFIGURATION OF THE TERRITORY PRECLUDING THE PROVISION OF BOROUGH SERVICES PROVIDED OTHER AREAS OF THE BOROUGH OR MAKING THE PROVISION OF BOROUGH SERVICES IMPRACTICAL? (19 AAC 10.230)

The Matanuska-Susitna Borough currently levies an areawide mill rate of 4.9 mills and a non-areawide mill rate of 0.5 mills. The areawide functions are primarily concerned with the education, school bond debt service, planning, land management and taxation. The non-areawide functions are primarily concerned with libraries, emergency medical services, solid waste disposal and animal control. The geographic location of the Lake Louise area and its small school age population make the provision of education services to the community impractical at this time. As there is no school in the Lake Louise area, all of the students have opted for education correspondence courses. However, the students do have a choice between the Borough administered correspondence course or the State administered course. The Borough is also willing to pay the Copper River Regional Educational Attendance Area \$2,180 for each child from the Lake Louise area who chooses to attend school in the Glennallen school. The Matanuska-Susitna Borough has made arrangements with the State of Alaska's Department of Education Student Transportation Office for school bus transportation for Lake Louise children who wish to attend the Glennallen school.

The remoteness and insignificant school aged population of Lake Louise has, from a practical standpoint, limited Borough services. However, that is not to say with the future anticipated growth within the Lake Louise area that the residents and future residents would not receive services commensurate with the rest of the Matanuska-Susitna Borough and the potential for such service will encourage the area's growth.

IS THE LACK OF TRANSPORTATION FACILITIES INCLUDING THE COMMUNICATION AND EXCHANGE NECESSARY FOR RESPONSIVE AND INTEGRATED LOCAL GOVERNMENT? (19 AAC 10.230)

Communications with the Lake Louise area are more difficult than in many other areas of the Matanuska-Susitna Borough. The community has limited telephone service in that it can only be reached through a radio patch phone service in Anchorage. This does make immediate communication between the Borough government and the community relatively difficult. However, the community of Lake Louise is accessible by road on a year-round basis. This enables the community to receive scheduled mail service. Therefore, it can be concluded that although communication and transportation services to the Lake Louise area are relatively difficult they do not preclude the exchange necessary for responsive and integrated local government.

IV. CONCLUSIONS AND RECOMMENDATIONS

The detachment proposal has almost total support among the residents of the Lake Louise community. The residents of this area feel that they are paying an inequitable amount of Borough taxes and are being ill-served by a more urban based Borough government. To some degree, the concerns of the Lake Louise residents are justified. Some arewide services provided by the Borough to Lake Louise residents are not available at the same level as those provided to the more populated and accessible areas of the Borough.

However, as the Matanuska Susitna Borough continues to grow and particularly the Lake Louise area begins to enter a development phase, the commonality of social, cultural and economic interests of both groups will begin to merge.

There are no geographic configurations which preclude the provision of Borough services to the area, and there are facilities which adequately allow proper communication between the Lake Louise area and the Borough seat of government. Further, it is apparent that the proposed detachment is not in the best interests of the State or the Matanuska-Susitna Borough.

In the Department's view the standards for detachment as prescribed in 19 AAC 10.230. have not been met in the Lake Louise petition to detach from the Matanuska-Susitna Borough. Therefore, the Department of Community and Regional Affairs recommends that the Local Boundary Commission deny the detachment proposal in the Lake Louise petition.

The Department further recommends that the Local Boundary Commission, in its annual report to the legislature, address the issue and status of borough government throughout the State. Particularly, there is a need for a thorough review of the inequitable burden for the payment of local services (particularly education) which currently exists within organized boroughs. Hopefully, this would encourage the State to develop a means of resolving this longstanding inequity.