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May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimweger

*CRA JOINT S/H 2-11-75 3:30pm*

*CRA Regular 2-6-86 3:37pm*

# MEMORANDUM

State of Alaska  
Community & Regional Affairs

TO: Local Boundary  
Commission Members

DATE: November 6, 1985

FILE NO:

TELEPHONE NO: 561-8586

FROM: ~~Mark~~ <sup>AKR</sup> Rutherford  
Director  
Municipal and Regional  
Assistance Division

SUBJECT: North Slope Borough  
Detachment

The purpose of this memorandum is threefold:

1. to formally advise you that the Commissioner of the Department of Community and Regional Affairs will petition the Local Boundary Commission for the detachment of certain lands from the jurisdiction of the North Slope Borough;
2. to recommend a schedule for the proceedings relating to this matter; and
3. to request a waiver of the requirement to comply with certain provisions of the regulations relating to municipal boundary changes involving legislative review (19 AAC 10.450 - 620).

## Action to be taken by the Department

To facilitate the creation of a borough in the NANA region, the Department of Community and Regional Affairs will seek detachment from the jurisdiction of the North Slope Borough of all of the territory which lies within the boundaries of the NANA Regional Corporation (see attached map).

The Department will seek detachment through the legislative review method, which is the only process available in this particular instance. Our petition will seek the detachment only on the condition that a borough is formed in the NANA region which includes all of the territory proposed for detachment.

## Schedule

It is anticipated that a petition for the incorporation of a borough in the NANA region will be filed with the Commission next month.

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Because the proposed detachment is critical to the feasibility of the proposed incorporation of a borough in the NANA region, it is essential that action be taken on the detachment petition in time for consideration by the Second Session of the Fourteenth Legislature. Failing that, the incorporation proceedings would be delayed at least until March of 1987 when action on the detachment could be taken by the First Session of the Fifteenth Legislature.

We plan to submit the completed petition to the Commission on or about November 22, 1985. A copy of the petition will be provided to the North Slope Borough at the same time it is submitted to the Commission. We have been advised that the North Slope Borough will oppose this effort.

As you are aware, the administrative regulations relating to such matters do not provide rules governing the timely submission of answering briefs and response briefs. This has created difficulties for the Commission in the past. To avoid such difficulties in this instance, we urge the Commission to establish a formal schedule for these proceedings.

We recommend that you stipulate the following schedule for these proceedings:

11/20/85 - decision by the Commission on the issues raised in this memorandum;

11/22/85 - petition for detachment received by the Commission from the Department;

12/18/85 - written comments and answering briefs relating to the proposed detachment must be submitted to Marty Rutherford at the Department of Community and Regional Affairs;

12/23/85 - rebuttals from the Department of Community and Regional Affairs to all written comments and answering brief must be completed;

12/28/85 - a report and recommendation to the Local Boundary Commission regarding this matter must be prepared;

01/10/86 - public hearing by the Local Boundary Commission to be held in Barrow regarding the proposed detachment;

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01/11/86 - public hearing by the Local Boundary Commission to be held regarding the proposed detachment to be held in Kotzebue regarding the proposed detachment;

01/12 -14/86 - decisional session on the petition for detachment to be held in Anchorage.

To the extent that the submission of the Department's petition is delayed beyond November 22, 1985, we recommend that the above schedule be adjusted accordingly.

We believe that our proposed schedule would allow the Commission adequate opportunity to consider and act on this matter in time for submission of a possible boundary change recommendation to be submitted to the next regular session of the legislature by the January 22, 1986, deadline.

We are presently publishing notice of our intent to file this petition (copy attached) in the Anchorage Daily News, a daily newspaper of statewide circulation, and the Tundra Times, a weekly newspaper (published Mondays) of general circulation within the North Slope Borough. This advance formal notice will permit interested parties to request copies of the petition in advance of filing of the document with the Commission. Once the petition is filed, we will also publish formal notice of the filing to fulfill the technical requirements of the regulations governing such matters.

Copies of all notices and the petition will be provided to interested parties at the earliest opportunity. The North Slope Borough maintains an office in Anchorage which has telecopying capabilities with its office in Barrow. To the extent possible, all notices and formal documents relating to this matter will be provided to the North Slope Borough office in Anchorage on the same day that they are filed with the Commission.

It is highly likely that the North Slope Borough may object to this proposed schedule. However, the Department wishes to make it known to the Commission that the North Slope Borough has been examining and addressing this matter for many months. In the letter of October 10, 1985, to Commissioner Emil Notti from Borough Mayor George Ahmaogak (copy enclosed), it was stated that:

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"Over the past nine months, Borough officials met publicly and with NANA representatives. This matter (the proposed detachment) has been discussed at Planning Commission workshops, public hearings and meetings, and at Borough Assembly workshops, public hearings and meetings. The Borough Assembly traveled to Kotzebue to give NANA region residents an opportunity to express their views."

Further, the North Slope Borough has employed a consultant (Kevin Waring) to offer extensive advice and technical assistance in this matter. Mr. Waring was involved when the proposed detachment was being discussed between representatives of the NANA region and the Borough, and has remained involved to the present time. Finally, Mr. Waring, Earl Finkler (Borough Planning Director), Harold Curran (Borough Attorney), and others have met with the State on a number of occasions since the State itself began considering initiation of the petition.

North Slope Borough representatives are being given access to all public records in the possession of the Department relating to this matter. On October 28 and November 5, Kevin Waring spent several hours reviewing and obtaining copies of the State's records relating to the incorporation of the North Slope Borough and other matters.

While the Borough has had far greater opportunity to prepare for these proceedings than has the State, the State is confident the recommended schedule is reasonable. It is our hope that the Commission will concur.

#### Request for Waivers

Pursuant to 19 AAC 10.590, the Department requests that the Commission grant a waiver of certain provisions of the regulations which might otherwise technically apply to this proposed detachment. 19 AAC 10.590 provides that:

The commission will, in its discretion, waive compliance with the regulations of this chapter if substantial rights of interested parties are not prejudiced by the waiver. A deviation from the procedures set forth in this chapter is waived by the commission unless the commission or a party objects.

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As demonstrated in this section, the regulatory provisions for which the Department seeks a waiver are inappropriate to this action given the role of the Department as petitioner and/or given the nature of the proposed boundary change (i.e., the detachment of a sizable, remote, unpopulated and undeveloped area). Further, the waiver of the particular regulations sought by the Department will not prejudice substantial rights of the North Slope Borough.

The particular sections of the regulations for which the Department hereby requests a waiver and the basis for each requested waiver are as follows:

- ° 19 AAC 10.490(a)(1)(B) - The petitioner shall append to the petition the following exhibits: a map or maps showing sufficient detail to define the streets and roadways of the municipality.

Basis for waiver: Strictly interpreted, this standard would require the Department to provide a map showing all of the streets and roadways within the North Slope Borough. Such information may be relevant for boundary changes which involve areas having interconnected roadways, however, such is not the case in this instance. The area proposed for detachment does not have a road interconnecting it with the remainder of the North Slope Borough. Thus, this requirement is inapplicable to these proceedings.

While the Department is technically seeking a waiver of this provision, we will provide the Commission with substantially comparable information. The Department will include in its petition and/or at the hearings to be held on this matter, the most recent available U.S. Geological Survey maps of the entire Borough. The Department will also provide for consideration at the hearings, a 1:250,000 scale topographic map of the territory proposed for detachment.

- ° 19 AAC 10.490(a)(2) - The petitioner shall append to the petition the following exhibits: an affidavit of the petitioner, or his representative who prepared the petition, ...stating what a census or other reliable enumeration of the territory was conducted by him or under his direct supervision, specifying the dates when the census or enumeration was begun and completed and verifying that it was taken accurately. ;

Basis for waiver: It is believed that the territory proposed for detachment is virtually uninhabited.

While the Department is technically seeking a waiver on this provision, we will provide the Commission with substantially comparable information. The Department will seek information concerning population from the reports of the Federal Decennial Census, the North Slope Borough, the NANA Corporation, officials of the Noatak National Preserve and the State Demographer in an effort to determine the extent of any population in the area.

- 19 AAC 10.520(a) The department will review the petition and brief and determine whether they (1) are in substantially the proper form; and (2) contain the factual information required by this chapter.

Basis for waiver: Since the Department's capabilities to determine whether the petition and brief are in the proper form and content directly relate to our capability to develop a petition in the proper form and content, there is no purpose served by literally applying this provision.

While the Department is seeking a technical waiver of this provision, the Commissioner of the Department will, pursuant to the provisions of AS 44.47.050, delegate to an independent agency or representative of the State, the responsibility to determine the substantial compliance of the form and content of the petition to the applicable regulations. Thus, the function will still be performed, but not by this Department.

- 19 AAC 10.570 The department will prepare a report on the proposed boundary change. The report will summarize the issues raised in the petition and briefs and may comment upon those issues or any other issue which the department considers relevant to the proposal. The report will contain recommendations to the commission. The report will be filed with the commission before the date of the hearing established under 19 AAC 10.540.

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Basis for waiver: Since the Department is in the unique position of acting as a petitioner, any report and recommendation on this matter would be consistent with our petition, initial brief and any response brief.

While the Department is seeking a technical waiver of this provision, the Commissioner of the Department will, pursuant to the provisions of AS 44.47.050, delegate to an independent agency or representative of the State, the responsibility to prepare a report and recommendation to the Local Boundary Commission concerning this matter. Thus, the function will still be performed, but not by this Department.

We will be pleased to discuss these matters with you at your meeting of November 9, 1985, in Anchorage.

For your information, copies of this memorandum, as well as formal notice of the November 9 meeting (copy attached) have been provided to the representatives of the North Slope Borough noted below in order to provide them with the opportunity to appear before the Commission on November 9, if they so choose.

Attachments:

map of the territory proposed for detachment  
letter from NSB Mayor Ahmaogak dated 10/10/85  
copy of notice of November 9 meeting  
notice of intent to file petition

cc: ✓ Emil Notti, Commissioner, DCRA  
The Honorable George Ahmaogak, Mayor, North Slope Borough  
Sandra McConkey, Special Assistant to the Mayor, NSB  
Kevin Waring, NSB Consultant  
John Schaeffer, NANA Regional Corporation  
Marie Greene, Maniilaq Association  
Ed Busch, Maniilaq Consultant

# NORTH SLOPE BOROUGH

## ANCHORAGE LIAISON OFFICE

3201 "C" Street, Suite 602  
Anchorage, Alaska 99503

Phone: 907-561-5144

George N. Ahmaogak, Sr., Mayor



### Local Boundary Commission Members

In the Matter of the  
Detachment of the  
Red Dog Mine from the  
North Slope Borough

Brief of the North Slope Borough

The purpose of this memorandum is to help the Commissioners obtain a full and complete picture of events involving the North Slope Borough (NSB) which are unfolding. In particular, it is intended as NSB's reply to a memorandum from Marty Rutherford to the Commission, dated November 6, 1985.

As the Commissioners may be aware, NSB has initiated litigation over Mr. Emil Notti and the Department of Community and Regional Affairs' efforts to detach land from NSB. NSB does not allege any wrongdoing by the Local Boundary Commission (LBC) or its Commissioners.

The basis for NSB's suit against Commissioner Notti and the Department of Community and Regional Affairs (DCRA) concerns the manner in which it was decided to pursue this unprecedented detachment of land from NSB. Never before has the Commissioner of DCRA on his own initiative attempted to alter the tax base of an organized borough. The manner in which this decision was made and the reasons for it have not been communicated to the North Slope Borough or the general public. Why is this happening? Who wants this to happen?

As you know, NSB voters rejected this boundary change in an election held on October 1, 1985. Shortly thereafter, representatives of NANA regional corporation drafted and submitted a boundary change petition for Commissioner Notti's consideration around October 4, 1985. Also around October 4, Marty Rutherford met with the staff of DCRA and directed the staff to begin preparation of a boundary change petition for Commissioner Notti's signature. Before you now is DCRA's requests that you "waive" certain regulations and set an abbreviated schedule for decision.

No boundary change petition affecting NSB is currently before the LBC. The notice of this hearing, however, lists DCRA as "petitioner". DCRA's memorandum of November 6, 1985 states "the Commissioner.... will petition... for the detachment of certain lands from the jurisdiction of the North Slope

Borough." A memorandum of November 1, 1985 from Commissioner Notti to DCRA staff directs the preparation of a boundary change petition. Yet as of November 7, 1985, DCRA still insisted that there was no petition drafted, nor had any decision to submit a petition been made.

On November 7, 1985, representatives from NSB met with members of DCRA staff to ask what information formed the basis for the detachment petition. We were given all of DCRA's paperwork on this matter. There was no factual information contained therein upon which to base a decision to petition for detachment. How was the pressing need for a boundary change brought home to Commissioner Notti if there are no facts upon which to base it? Attached for your information are NSB's submittals to DCRA. They do not support Commissioner Notti's decision.

DCRA's memorandum of November 6, 1985 to the LBC members makes several statements which lack factual foundation. It says:

"Because the proposed detachment is critical to the feasibility of the proposed incorporation of a borough in the NANA region, it is essential that action be taken on the detachment petition in time for consideration by the Second Session of the Fourteenth Legislature. Failing that, the incorporation proceedings would be delayed at least until March of 1987..."

First, where is the factual basis for the claim that the proposed incorporation is infeasible absent NSB lands? Is there no other real or personal property in the NANA region? We have received no official, comprehensive study on the fiscal basis for the new borough. Must the proposed borough's boundaries be contiguous with the NANA corporation's boundaries? Second, even if the land is ultimately essential to the feasibility of a NANA region borough, why is it "essential" that this detachment be considered by the upcoming legislative session? The petition to incorporate the NANA borough is not even submitted yet. Why the haste?

DCRA states that NSB has been considering the proposed detachment for many months. That is true. The fact that NSB has considered this question long and hard in no way can be used to imply that the LBC will not require as much time to address this issue or that NSB will not need time to oppose this detachment effort.

Finally, DCRA attempts to give the LBC members the impression that NSB has been kept informed of all developments as they occurred. Nothing could be further from the truth. NSB learned of Commissioner Notti's intention to submit a detachment petition through the television news. This meeting tonight was not noticed to NSB except through the Anchorage papers. Only after NSB's protest over being "frozen out" of the process has NSB been kept informed. It has taken a lawsuit to extract information which should, as a courtesy if nothing else, have been provided NSB.

DCRA proposes a schedule for hearing the detachment petition. The LBC members should ask themselves several questions before accepting the proposed

timetable. Why is an issue of importance to every unified municipal government in the state only scheduled for public hearings in Barrow and Kotzebue? Why not allow other concerned and involved citizens and governments the opportunity to speak? Why is the LBC given less than two months to decide this important issue? Why must this whole affair be conducted in the midst of the winter holidays? What is the rush? The proposed timetable stands in marked contrast to that proposed to the LBC in May of 1985 by the LBC's attorneys, Lane, Powell, Barker & Hicks. Both timetables are attached for comparison. NSB would ask the LBC to reject the proposed timetable in favor of one more suited to careful deliberation and decision making.

Hearings in Barrow and Kotzebue are desirable. There are other locations throughout the state where hearings should be held.

DCRA requests that certain regulations be waived in the hearing of the detachment petition. NSB supports some of the waivers; others it does not.

NSB opposes the waiver of 19 AAC 10.490 (a)(1)(B) [dealing with road-maps]. The road system of NSB may not be extensive, yet it exists. The road to the Red Dog Mine will link NSB to an ocean port, open and ice-free for much longer than NSB's Arctic coastline is. Primitive roads in the area of the mine, in surrounding areas, and throughout NSB will eventually link. The LBC should know the nature and extent of this road system. The maps which DCRA proposes to submit will not provide the LBC with this information. Hence, NSB objects to waiver of the road map provision contained in 19 AAC 10.490 (a)(1)(B).

As for the waiver of 19 AAC 10.490 (a)(2) [census information], NSB would agree that a census of the area in question might reveal little in the way of year round residential use. NSB's tax base, however, depends in part on industrial residents. Residents need not be full time to be of import. There is development in the area now. People are in the area now. There are other mining interests in the area which should be identified. Hence, there is need for a census of the area identifying the inhabitants and other interests within the area.

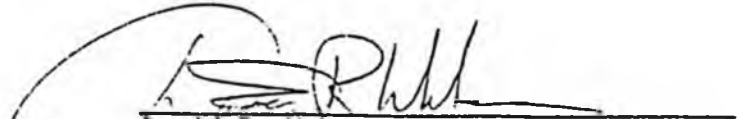
NSB agrees that some alternative must be found to DCRA's review of the petition and brief for compliance [19 AAC 10.520 (a)], and DCRA's issuing a report on the proposed boundary change [19 AAC 10.570]. Since DCRA is in the unique position of being the petitioner in this instance, having DCRA review of its own work would be highly improper. NSB would request that an entity outside of state government be assigned to perform these tasks. NSB would also ask that the LBC chose the entity to which these functions are delegated. No state bureaucracy, much less DCRA, should be allowed to choose who will review the State's work. Further, given the fact that whoever is chose will not have extensive experience in the area, the abbreviated time for review is unreasonable.

In conclusion, NSB would urge the LBC not to hurry a proceeding of statewide import and impact. All interested parties should be given an opportunity to be heard. The schedule proposed by DCRA would stifle input in a rush to decision. This ill-conceived and unseemly attempt to hurry the LBC

in its decision making process should be denied. DCRA's petition and brief should be reviewed by an outside agency not of DCRA's choosing.

Thank you for the opportunity to present information and argument on these issues. An important wide ranging and long lasting precedent will be the result of this petition. Please establish the proper precedent.

DATED this 9th day of November, 1985

A handwritten signature in black ink, appearing to read 'D. R. Weber', is written over a horizontal line. A large, sweeping flourish extends from the left side of the signature.

David R. Weber  
Assistant Borough Attorney  
North Slope Borough

DW/es





# 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 P  
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

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.

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

BEFORE THE LOCAL BOUNDARY COMMISSION  
OF THE STATE OF ALASKA

*Alford*  
*Senate*  
*C+RA*

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

LOCAL BOUNDARY COMMISSION  
DECISIONAL MEETING

JANUARY 18 -- 19, 1986  
JUNEAU, ALASKA

BRIEFING MATERIALS

## SUGGESTED AGENDA

1. Explanation of Proposed Schedule
2. Update on Borough Suit
3. Commission Questions of Counsel and Staff
4. Explanation of Decision-Making Matrix by Staff
5. Brief Description of Factors by Staff
6. Decisions by Commission on Factors to be Employed
7. Discussion by Commission of Each Factor With Reference to the Pertinent Briefs, Public Comments, and Record. Develop Guidelines for Staff to Prepare Proposed Findings of Fact

RECESS to Allow Staff to Draft Proposed Findings and Commissioners to Review Text of Proposed Initial Portion of Decision

8. Review by Commission of Proposed Findings of Fact
9. Commission Makes Best Interest Determinations

BRIEF RECESS to Allow Staff to Draft Determinations, if Pertinent, and Other Portions of Decision if Commission Has Acted Favorably or Unfavorably Toward Petitioner

10. Guarantee of Services -- 19 AAC 10.240 -- if Pertinent
11. Assets and Liabilities to be Divided -- 19 AAC 10.250 -- if Pertinent
12. Vote on Motion to Approve Petition

BRIEF RECESS, if Necessary, for Housekeeping Editing With Respect to Decision Document

13. Other Matters

LOCAL BOUNDARY COMMISSION

STATE OF ALASKA

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

SUGGESTED STATEMENT OF DECISION IN RESPONSE TO  
PETITION FOR LOCAL GOVERNMENT BOUNDARY CHANGE

[Note: The following proposed text of a decision statement has been prepared by Wilson L. Condon, special counsel to the Local Boundary Commission, to assist it with its deliberations in the above-referenced matter. Under the Alaska Administrative Procedures Act, AS 44.62.570, the Superior Court, sitting in review of agency decisions, considers the following:

- (1) whether the agency has proceeded without or in excess of its jurisdiction;
- (2) whether there was a fair hearing;
- (3) whether there was a prejudicial abuse of discretion, which is established, if
  - (a) the agency has not proceeded in the manner required by law;
  - (b) the order or decision is not supported by the findings; or
  - (c) the findings are not supported by the evidence on the record.]

BY THE COMMISSION:

AS 44.47.567 mandates that the Local Boundary Commission "shall . . . consider a local government boundary change requested of it by . . . the commissioner of community and

regional affairs. . . ." AS 44.47.567(a)(3). The statute empowers the Commission to "conduct meetings and hearings to consider local government boundary changes and other matters related to local government boundary changes. . ." and to "present to the legislature during the first 10 days of a regular session proposed local government boundary changes. . . ." AS 44.47.-567(b)(1) and (2).

AS 44.47.583 provides that when a local government boundary change is proposed to the legislature during the first 10 days of any regular session, the change becomes effective 45 days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house.

On November 22, 1985, the Commissioner of the Alaska Department of Community and Regional Affairs (the Petitioner) filed a Petition under 19 AAC 10.470(a)(4), seeking detachment of a specified territory from the North Slope Borough. The territory in question lies along the southwestern boundary of the North Slope Borough and substantially overlaps the northern boundary of the Northwest Alaska Native Association (NANA) Regional Corporation. Subsection 470(a)(4) expressly authorizes the Commissioner to initiate such a petition.

The procedures for boundary changes requiring legislative review are set forth in Article 13 of the Commission's regulations. 19 AAC 10.450 -- 19 AAC 10.620. For the reasons set forth below, the Commission is satisfied that its procedures have

been complied with and that a complete and adequate record has been developed to support a decision in response to this petition.

Sections 480, 490, and 500 specify the form and contents of the petition and the materials which must accompany it. Section 480(b)(1) -- (10) itemizes the basic information which must be adduced regarding the territory in question:

(b) The petition shall contain the following information about the territory:

(1) the name and residence address or mailing address of each petitioner;

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

(3) a legal boundary description;

(4) a legal description of the boundaries of the municipality should the boundary change be effected;

(5) the assessed or estimated value of taxable property, giving separate totals for real and personal property;

(6) the number of residents in the territory;

(7) the rate or rates at which real and personal property are taxed;

(8) the rate or rates of sales and use taxes levied and collected;

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

(10) the population and area of the municipality affected by the proposed boundary change.

Based upon its examination of the petition, the Commission determines that each required element of information has been supplied.

Section 490(a)(1) -- (5) itemizes five categories of exhibits which shall be appended to the petition:

(a) The petitioner shall append to the petition the following exhibits:

(1) a map or maps showing

(A) the present boundaries of the municipality whose boundaries are to be changed and the boundaries of the municipality if the proposed boundary change becomes effective; and

(B) sufficient detail to define the streets and roadways of the municipality;

(2) an affidavit of the petitioner, or his representative who prepared the petition, indicating the source from which the information contained in the petition was acquired and stating that a census or other reliable enumeration of the territory was conducted by him or under his direct supervision, specifying the dates when the census or enumeration was begun and completed and verifying that it was taken accurately;

(3) a copy of the agreements, if any, entered into with another municipality regarding the transitional provision of services and distribution of assets and liabilities;

(4) a certified copy of the resolution or ordinance authorizing the municipality to file the petition if the petitioner is a municipality;

(5) the affidavit of the petitioner or his representative that service of the petition has been made in compliance with 19 AAC 10.510.

Inasmuch as the Petitioner is the Commissioner and not a

municipality, the Commission determines that items 490(a)(3) and (4) are not applicable. Accordingly, the Commission waives compliance with these two requirements. 19 AAC 10.590. Based upon its examination of the exhibits accompanying the petition, the Commission determines that each of the remaining required exhibits has been supplied.

Section 500 states that the petition must be accompanied by a written brief setting forth the reasons supporting the boundary change and demonstrating that the change meets the applicable standards for detachment. Based upon its review of Petitioner's Brief filed with the Petition, the Commission determines that this requirement has also been satisfied. See 19 AAC 10.520.

Section 510 provides that the Petitioner shall, by certified mail, serve a copy of the petition, exhibits, and brief upon every municipality in or adjoining the territory. In addition, the Petitioner shall arrange to have these materials available for public inspection at a designated place in or near the territory. The territory in question is not inhabited. Consequently it would not be possible to effect service upon municipalities "in or adjoining the territory."

Actual notice of the petition materials has been given to the North Slope Borough (NSB) and to the Northwest Alaska Native Association Regional Corporation (NANA), the two entities (see 19 AAC 10.550(a)) most proximate to the territory. As discussed more fully in the body of this decision, both NSB and NANA

have actively participated before the Commission in this proceeding. Furthermore, numerous public hearings have been convened and extensive public testimony taken from residents of both NSB and NANA. Based on these facts, the Commission determines that the service requirements of 19 AAC 10.510(a) and (b) have been substantially complied with. To the extent that strict, technical compliance with sec. 510 may not have been effectuated, the Commission determines that substantial rights of interested parties have not been prejudiced and notes that no party has raised an objection. Accordingly, any defects in service are waived. 19 AAC 10.590.

Section 530 obligates the Petitioner to cause notice of the filing of the petition to be published in a newspaper of general circulation in the territory in the form specified by the Commission. 19 AAC 10.530(a). The Petitioner shall furnish proof of compliance with the notice requirement. 19 AAC 10.530(b). The Petitioner has submitted publishers' affidavits from the following newspapers documenting notice of the petition:

[[insert here a tabularized list of the newspapers]]

Based upon these publishers' affidavits, the Commission determines that the notice requirement has been satisfied.

Section 540 provides for the Commission to establish a time and place for a hearing concerning the proposed boundary change "which shall be held in or near the territory." 19 AAC

10.540, first sentence. Compare AS 44.47.581. Hearings on the petition were held in Anchorage, Noatak, Kotzebue, Point Hope and Barrow on January 8, 9, and 10. The Commission also received testimony by teleconference from residents of other villages in the NANA region and the North Slope Borough at Kotzebue and Barrow, respectively. In light of these extensive hearings in the two areas which geographically overlap the territory in question, the Commission determines that the hearing requirement has been satisfied.

Section 550 accommodates the right of a person or entity residing or owning property in the territory or the governing body of a municipality affected by a proposed boundary change to file an "answering brief" in opposition to the change. On December 18, 1985, the NSB filed its Brief in Opposition, which has been duly accepted and considered by the Commission.

Section 560 invites the Petitioner to file a brief in reply to any new matter raised in an answering brief filed under sec. 550. On December 23, 1985, the Petitioner filed his brief replying to the NSB brief.

Two other briefs have been filed with the Commission by NANA. The first, submitted on December 18, 1985, supported the petition. The second, submitted on December 23, 1985, responded to NSB's answering brief. Nothing in the Commission's regulations expressly authorizes or prohibits interested persons from filing briefs supporting a petition or replying to an answering brief. Inasmuch as the clear purpose of AS 44.47.581, which

mandates hearings "in or near the vicinity of the area affected by the change," is to allow interested persons and entities to place their views on the record before the Commission, the Commission sees no reason to disallow or ignore NANA's briefs. Accordingly, the NANA briefs have been incorporated into the record for the purpose of assisting the Commission in rendering an informed and responsive decision.

Section 570 obligates the Department of Community and Regional Affairs to prepare and file a report with the Commission prior to the hearing summarizing the issues raised in the petition and briefs and containing recommendations to the Commission. Inasmuch as the Commissioner of Community and Regional Affairs was the petitioner in this proceeding, to avoid any appearance of impropriety or conflict of interest, he unconditionally delegated to the State of Alaska Office of Management and Budget (OMB) the responsibility for acting as staff to the Commission with respect to the instant petition. On January 3, 1986, OMB filed with the Commission the report required by sec. 570. It should go without saying that this report is merely advisory to the Commission, and has in no way bound, qualified or prejudiced our decision.

There can be little doubt that this is the most important boundary matter to be presented to the Commission in the last decade. Therefore, the Commissioners have individually examined, reviewed, analyzed, and reflected on the record so that they may bring their most informed, best judgment to bear on this crucial decision. As a result of these extensive individual

efforts, the Commission has placed relatively little reliance on the sec. 570 staff report prepared by OMB contrasted with the more substantial reliance we would place upon the staff report in a more routine matter.

Section 580 specifies that the Commission's public hearing and decisional meeting concerning a proposed boundary change will be conducted in the manner set forth in 19 AAC 10.420 -- 19 AAC 10.430. The tapes and transcripts of the public hearings of January 8, 9, and 10 confirm that sec. 420 governed the conduct of those hearings.

On January 11, 1986, the Commission convened its initial decisional meeting at Fairbanks. Given the size of the record and the importance and complexity of the issues presented, it was not possible for the Commission to render a decision at that time. Accordingly, on January 18 and 19, 1986, the Commission reconvened its decisional meeting at Juneau, Alaska, within 90 days of the public hearings, as required by 19 AAC 10.430(a). During this decisional meeting, the Commission has examined all aspects of the written and oral testimony before it, has considered other relevant and reliable information available to it, and herewith enters its decision.

[END OF PROCEDURAL SECTION OF SUGGESTED  
STATEMENT OF DECISION]

FACTOR

1. Are the social, cultural and economic characteristics of the population of the territory proposed to be detached substantially different or in conflict with those of the remainder of the population located in the detaching borough?

Subissues

Source in This Proceeding

19 AAC 10.230(a)(1)

Proposed Interpretation or Definition

Addressed by Petitioner

- Brief in Support of Petition..... pp. 21-24
- Reply to North Slope Borough Brief in Opposition..... pp. 7-12

Respondent North Slope Borough Brief in Opposition.. pp. 30-33,  
52

NANA Briefs

- Comments Supporting Petition..... pp. 2-3
- Comments in Reply to Brief in Opposition.... p. 12

Pertinent Facts

FACTOR

2. Does the geographic location or configuration of the territory proposed to be detached preclude the provision of borough services provided other areas of the detaching borough or make the provision of borough services impractical?

Subissues

Source in This Proceeding

19 AAC 10.230(a)(2)

Proposed Interpretation or Definition

Addressed by Petitioner

- Brief in Support of Petition..... pp. 24-27  
(along w/Factor 3)
- Reply to North Slope Borough Brief in  
Opposition..... pp. 12-13  
(along w/Factor 3)

Respondent North Slope Borough Brief in Opposition.. pp. 34-35

NANA Briefs

- Comments Supporting Petition..... pp. 1, 6
- Comments in Reply to Brief in Opposition.... None

Pertinent Facts

FACTOR

3. Does the lack of transportation facilities preclude the communication and exchange necessary for responsive and integrated local government?

Subissues

Source in This Proceeding

19 AAC 10.230(a)(3)

Proposed Interpretation or Definition

Addressed by Petitioner

- Brief in Support of Petition..... pp. 24-27  
(along w/Factor 2)
- Reply to North Slope Borough Brief in Opposition..... pp. 12-13  
(along w/Factor 2)

Respondent North Slope Borough Brief in Opposition.. pp. 35-36

NANA Briefs

- Comments Supporting Petition..... p. 6
- Comments in Reply to Brief in Opposition.... None

Pertinent Facts

FACTOR

Will the proposed detachment maximize or promote local self-government?

Subissues

Source in This Proceeding

Petitioner's Brief in Support of Petition

Proposed Interpretation or Definition

Addressed by Petitioner

- Brief in Support of Petition..... pp. 14-18  
29-30
- Reply to North Slope Borough Brief in  
Opposition..... None

Respondent North Slope Borough Brief in Opposition.. pp. 39-40,  
45

NANA Briefs

- Comments Supporting Petition..... pp. 3-4
- Comments in Reply to Brief in Opposition.... pp. 4-6

Pertinent Facts

FACTOR

5. Will the proposed detachment facilitate resource development in Northwest Alaska?

Subissues

Source in This Proceeding

Petitioner's Brief in Support of Petition

Proposed Interpretation or Definition

Addressed by Petitioner

- Brief in Support of Petition..... pp. 30-31
- Reply to North Slope Borough Brief in Opposition..... None

Respondent North Slope Borough Brief in Opposition.. pp. 44-45, 52

NANA Briefs

- Comments Supporting Petition..... pp. 5-6
- Comments in Reply to Brief in Opposition.... pp. 12-13

Pertinent Facts

FACTOR

6. Will the proposed detachment encourage efficiency in the provision of local government services to the proposed detached territory?

Subissues

Source in This Proceeding

Petitioner's Brief in Support of Petition (Note this Factor largely follows 19 AAC 10.190(a)(3))

Proposed Interpretation or Definition

Addressed by Petitioner

- Brief in Support of Petition..... pp. 31-32
- Reply to North Slope Borough Brief in Opposition..... pp. 16-18

Respondent North Slope Borough Brief in Opposition.. NOT DIRECTLY  
[But see pp. 34-37, 45-46, and 52]

NANA Briefs

- Comments Supporting Petition..... pp. 6-7
- Comments in Reply to Brief in Opposition.... pp. 4-5

Pertinent Facts

FACTOR

7. Will the proposed detachment adversely affect the present and future finances of the North Slope Borough?

Subissues

Source in This Proceeding

Petitioner's Brief in Support of Petition

Proposed Interpretation or Definition

Addressed by Petitioner

- Brief in Support of Petition..... pp. 32-33
- Reply to North Slope Borough Brief in Opposition..... pp. 16-18

Respondent North Slope Borough Brief in Opposition.. pp. 38-39,  
43,46-  
49, 52

NANA Briefs

- Comments Supporting Petition..... p. 7
- Comments in Reply to Brief in Opposition.... None

Pertinent Facts

FACTOR

8. Will the proposed detachment strengthen or weaken the long-term stability of all borough boundaries and borough finances throughout Alaska?

Subissues

Source in This Proceeding

Respondent North Slope Borough's Brief in Opposition

Proposed Interpretation or Definition

Addressed by Petitioner

-- <u>Brief in Support of Petition</u> .....	None
-- <u>Reply to North Slope Borough Brief in Opposition</u> .....	pp. 15-16
<u>Respondent North Slope Borough Brief in Opposition</u> ..	pp. 39-43, 48-50, 52-53

NANA Briefs

-- <u>Comments Supporting Petition</u> .....	None
-- <u>Comments in Reply to Brief in Opposition</u> ....	None

Pertinent Facts

FACTOR

9. Will the proposed detachment protect subsistence resources and balance development and conservation concerns?

Subissues

Source in This Proceeding

Respondent North Slope Borough's Brief in Opposition

Proposed Interpretation or Definition

Addressed by Petitioner

-- Brief in Support of Petition..... pp. 21-24  
(as part of Factor 1)

-- Reply to North Slope Borough Brief in  
Opposition..... None

Respondent North Slope Borough Brief in Opposition.. p. 45

NANA Briefs

-- Comments Supporting Petition..... Not as a  
specific separate factor

-- Comments in Reply to Brief in Opposition.... p. 12

Pertinent Facts

FACTOR

10. Will the proposed detachment promote harmonious relations between neighbors?

Subissues

Source in This Proceeding

Petitioner's Brief in Support of Petition

Proposed Interpretation or Definition

Addressed by Petitioner

-- Brief in Support of Petition..... p. 34

-- Reply to North Slope Borough Brief in Opposition..... p. 18

Respondent North Slope Borough Brief in Opposition.. pp. 29-30, 51-52

NANA Briefs

-- Comments Supporting Petition..... pp. 2-3, 6-7

-- Comments in Reply to Brief in Opposition.... pp. 8-12

Pertinent Facts

FACTOR

11. What does the record of the public hearings and other information submitted in this proceeding show regarding pertinent public opinion on the proposed detachment?

Subissues

Source in This Proceeding

Respondent North Slope Borough's Brief in Opposition

Proposed Interpretation or Definition

Addressed by Petitioner

-- Brief in Support of Petition..... None

-- Reply to North Slope Borough Brief in  
Opposition..... pp. 14-15

Respondent North Slope Borough Brief in Opposition.. p. 46

NANA Briefs

-- Comments Supporting Petition..... pp. 8-9

-- Comments in Reply to Brief in Opposition.... None

Pertinent Facts

FACTOR

12. Will the proposed detachment aid in perfecting the boundaries of the North Slope Borough and the proposed Northwest Alaska Borough according to existing historical and cultural use areas and topography?

Subissues

Source in This Proceeding

Petitioner's Brief in Support of Petition

Proposed Interpretation or Definition

Addressed by Petitioner

- Brief in Support of Petition..... pp. 2-8
- Reply to North Slope Borough Brief in Opposition..... pp. 5-7

Respondent North Slope Borough Brief in Opposition.. p. 45

NANA Briefs

- Comments Supporting Petition..... pp. 2-3
- Comments in Reply to Brief in Opposition.... pp. 8-12

Pertinent Facts

# NORTH SLOPE BOROUGH

## OFFICE OF THE MAYOR

P.O. Box 69  
Barrow, Alaska 99723

Phone: 907-852-2611

George N. Ahmaogak, Sr., Mayor



December 27, 1985

JAN 10 1986

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

Dear Senator DeVries:

As you know, the State Department of Community and Regional Affairs filed a petition on November 22, 1985 to detach over 2.1 million acres from the North Slope Borough. This proposed action is contrary to the expressed wishes of the North Slope Borough voters. Further, no provision for compensation to the Borough for loss of tax base is included in the State's petition. Such compensation is required by law.

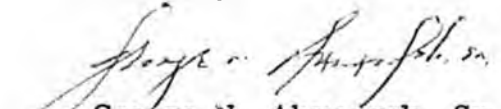
I am writing to remind you of the limited and rushed schedule of Local Boundary Commission public hearings on this matter. The LBC will hold the following hearings:

1. January 8, 1986  
Anchorage, 10:00 AM  
University Plaza Building  
349 E. 36th Avenue  
Suite 404
2. January 9, 1986  
10:00 AM Noatak School  
7:00 PM Kotzebue Senior Citizens' Center
3. January 10, 1986  
10:00 AM Point Hope High School Library  
7:00 PM Barrow High School Auditorium
4. January 11, 1986  
11:00 AM  
Fairbanks, Alaska

Since it is possible that the entire matter will wind up for action during the first 45 days of the Legislature, I would urge you to come to Barrow for the last meeting of the LBC on January 10. The LBC has already scheduled a decisional meeting the morning after the Barrow hearing in Fairbanks at 11:00 AM January 11, 1986. There are no scheduled flights from Barrow to Fairbanks between the evening Barrow hearing on January 10 and the decision meeting on January 11. Any of our residents who are interested would have to take an expensive charter flight to attend the Fairbanks meeting.

I would encourage you to attend the Barrow or another Local Boundary Commission hearings and experience the local input for yourself. Thank you for your time and consideration.

Sincerely,



George N. Ahmaogak, Sr.  
Mayor

STATE OF ALASKA  
LOCAL BOUNDARY COMMISSION  
NOTICE OF MEETING

Notice is hereby given that a meeting of the Alaska Local Boundary Commission will be held beginning at 2:00 p.m., Monday, December 9, 1985, at the following location:

Division of Municipal and Regional Assistance  
Department of Community and Regional Affairs  
University Plaza Bldg., 949 East 36th Avenue, Suite 404  
Anchorage, Alaska 99508  
telephone: 561-8586

The purpose of the meeting includes the following:

1. Establishing schedule (dates, times and locations) for hearings to be held on the petition for the detachment of approximately 3,298 square miles of territory from the North Slope Borough (note: this supercedes previous notice that the schedule for hearings would be set by the Local Boundary Commission at a meeting on 12/9 beginning at 7:00 p.m.);
2. Establishing schedule for a hearing to be held in Unalaska concerning the petition for the annexation of territory to the City of Unalaska.
3. Reaching a decision on the petition for annexation of territory to the City of St. Paul;
4. Reaching a decision on the petition for annexation of territory to the City of Angoon;
5. Conducting a public hearing via teleconference and reaching a decision on the petition submitted by the City of Kodiak for annexation of areas identified as Southeast Addition No. 2, Hospital Subdivision, Mission Lake Neighborhood and the unsurveyed portion of Mission Lake. The area proposed for annexation totals approximately 0.1271 square miles.
6. Reaching a decision on the petition for annexation of territory to the City of Ketchikan (Gisse-Furuseth Addition);

Following action on the first 4 items listed above, the Commission will recess until 7:00 p.m., at which time it will begin the public hearing on the petition for annexation to the City of Kodiak. The Kodiak hearing will be held via teleconference at the following location:

Kodiak Island Borough Building  
Room 231  
720 Mill Bay Road  
Kodiak, Alaska

Following its hearing on the petition, the Commission may take any one of the following actions on the petition:

- 1. Reject the petition;
- 2. Amend the boundaries of the territory proposed for annexation and approve the petition, or;
- 3. Approve the petition as submitted.

Decisions by the Commission may be appealed.

The Commission may, in its discretion, consider matters other than those referenced above.

If, for any reason, (e.g. equipment malfunction, inadequate meeting room capacity, etc.), the Local Boundary Commission is unable to conduct the meeting at the time and/or place specified in this notice, the meeting will be delayed until later that day

*Yvonne  
10*

or will be rescheduled to a new time, as early as is practicable. Notice of such delay or rescheduling will be formally provided at the time and at the location of the meeting as originally scheduled.

For further information or a copy of the meeting agenda, contact:

Marty Rutherford, Director  
Division of Municipal and Regional Assistance  
Department of Community and Regional Affairs  
949 East 36th Avenue, Suite 404  
Anchorage, Alaska 99508  
(Telephone 561-8586)

FACTOR

13. Will the proposed detachment facilitate control over industrial development and management of rapid social and economic change by those communities and people most affected by them?

Subissues

Source in This Proceeding

Specific Concerns of Public Witnesses Particularly From Noatak and Kivalina and generally in NANA briefs

Proposed Interpretation or Definition

Addressed by Petitioner

-- Brief in Support of Petition..... None

-- Reply to North Slope Borough Brief in Opposition..... None

Respondent North Slope Borough Brief in Opposition.. None

NANA Briefs

-- Comments Supporting Petition..... pp. 7-9  
12

-- Comments in Reply to Brief in Opposition.... None

Pertinent Facts

FACTOR

14. Will the proposed detachment promote the equitable distribution of resources among regions in rural Alaska?

Subissues

Source in This Proceeding

Section 19 AAC 10.570 Staff Report

Proposed Interpretation or Definition

Addressed by Petitioner

-- Brief in Support of Petition ..... None

-- Reply to North Slope Borough Brief in Opposition . None

Respondent North Slope Borough Brief in Opposition ..... None

NANA Briefs

-- Comments Supporting Petition ..... None

-- Comments in Reply to Brief in Opposition ..... None

Pertinent Facts

FACTOR

15. Could uncontrolled development occur before the proposed Northwest Alaska Borough can implement its regulatory and planning powers?

Subissues

Source in This Proceeding

Respondent North Slope Borough's Brief in Opposition

Proposed Interpretation or Definition

Addressed by Petitioner

- Brief in Support of Petition..... None
- Reply to North Slope Borough Brief in Opposition ..... None

Respondent North Slope Borough Brief in Opposition.. pp. 45-46

NANA Briefs

- Comments Supporting Petition..... None
- Comments in Reply to Brief in Opposition.... None

Pertinent Facts

Talk by:

GEORGE N. AHMAOGAK, SR.

Mayor, North Slope Borough

Prepared for:

Alaska Conference of Mayors

Alaska Municipal League

November 15, 1985

Fairbanks, Alaska

It's a pleasure to be here today, and to speak before the Alaska Conference of Mayors and the Alaska Municipal League and become even more acquainted with so many distinguished Mayors and fellow Alaskans.

Last March, NANA Regional Corporation, co-developer of the Red Dog mine, proposed to the North Slope Borough that we should detach about 430,000 acres, including the Red Dog mine, so that they could have a tax base for a borough of their own.

For nearly six months, we negotiated with NANA region representatives to find a way to make a boundary change and help found their borough in a way that did not harm our borough's creditworthiness. Finally, in August, we agreed to put NANA's best proposal for detachment before our voters at a referendum. We agreed to let NANA representatives campaign for their proposal and we agreed that the Borough administration would take a neutral stand. If the voters approved, we would begin detachment proceedings ourselves. WELL, THE VOTERS REJECTED NANA'S PROPOSAL. Most likely, they found it too speculative about compensation and too speculative about commitment of NANA residents to form their own borough. IN ANY CASE, THE VOTERS HAVE SPOKEN AND I, AS MAYOR OF THE NORTH SLOPE BOROUGH, INTEND TO SUPPORT THEIR DECISION.

All along, we have been aware that the Commissioner of the Department of Community and Regional Affairs has authority to initiate a detachment petition, although this authority has never before been exercised. Since the October election, we have repeatedly asked DCRA to tell us what

steps, if any they are considering. We asked them orally and then in writing to provide us any and all background documents they had prepared on this detachment issue and its connection to any future NANA borough -- WE RECEIVED NOTHING. Meanwhile, my staff and I hear about DCRA's plans to file a detachment petition on statewide television news. We learn on a Monday about DCRA's plans to ask the Local Boundary Commission the next Saturday to consider an accelerated hearing schedule and to waive unspecified regulations in the morning newspaper's legal notices.

This was the point at which we went to State Superior Court a week ago Wednesday for help in getting access to public documents that we and everyone else are entitled to see. The State was told to give us all the documents we asked for -- immediately. Hence, we did finally receive them.

Before we go any further, let me make absolutely clear to you all that we did not expect to find anything improper in the Department's activities on this business. What we expected to find was an empty file, empty of the sort of background data, analyses of issues, handwritten memos about options and all the other paperwork that usually leads up to an important and controversial public policy initiative. That is about what we found -- NOTHING:

- no record of consultation with elected local officials of the North Slope Borough.

- no correspondence in support of detachment or borough incorporation by elected public officials in the NANA region, including lack of support from the ten incorporated municipalities or the REAA School Board, Coastal Resource Service Area Board or Regional Housing Authority.
  
- no study of alternative means to support a NANA region borough.
  
- no technical or policy analyses of the substantive issues involved in detachment.

So where do matters stand? Right now, there are two important events pending in the next two weeks. On November 20, the LBC is going to take up DCRA's request to adopt an accelerated schedule to decide this matter by mid-January, and to waive certain regulations. On November 22, the legal notice says the Commissioner will submit a petition to the LBC to detach some 3,298 square miles from the North Slope Borough. And, at some future date, the NANA region residents are supposed to submit a borough incorporation petition.

FOR THE SHORT RUN, THE MAIN ISSUE IS DCRA'S RECOMMENDATION TO THE LBC TO GET THE WHOLE BUSINESS OVER WITHIN SEVEN HOLIDAY-FILLED WEEKS, BEFORE THEY EVEN TAKE UP THE ISSUE OF NANA REGION BOROUGH INCORPORATION. This seems odd since it was previously stated that at a minimum, twelve weeks were required to complete the Department's report to the Commission and that

the Local Boundary Commission would not schedule hearings until the Department's reports for legislative review annexations are completed.

For the long run, the key issue is how the State regards the territorial and fiscal integrity of the established boundaries of existing boroughs. This is an important issue for each and every municipality to be concerned about.

The LBC is being asked to establish some bad precedents for the future. For example, precedents to:

- By-pass regulations and regular proceedings, regardless of the complexities of the issues and requirements of due process.
- Pit established governments against the unorganized borough.
- Undo boundaries that the LBC unanimously approved, unani-  
mously, more than a decade ago.
- Make boundary adjustments that benefit private economic inter-  
ests at the expense of established governments.
- Raise doubts in the financial community about the stability of the  
boundaries and tax base of Alaska local governments.
- Redistribute the tax base of established boroughs and cities to  
finance new boroughs.

LOCAL GOVERNMENTS IN ALASKA DON'T NEED THESE PRECEDENTS. With declining state revenues, most of you will be facing the need to return to more local bonding to pay for capital improvements. Do you want the State of Alaska sending a message to Wall Street that it may shuffle around local government tax assets? What do you think that will do for your financial standing? Let me read you what Eric Wohlforth, Alaska's foremost municipal bond counsel, had to say when the LBC was considering a detachment petition filed by some rural residents of the Mat-Su Borough.

Mr. Wohlforth said, I quote:

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

THAT'S EXACTLY WHAT OUR OWN NORTH SLOPE BOROUGH UNDERWRITERS HAVE WARNED US WILL BE THE REACTION OF THE FINANCIAL MARKETS IF THEY SEE THE STATE PROMOTING THIS KIND OF TAX BASE REDISTRIBUTION. IT'S WHAT YOUR OWN FINANCIAL ADVISORS WILL TELL YOU.

For the past year, since I was elected Mayor of the North Slope Borough, I have dedicated myself to restore good financial practices and to improve the Borough's credibility with the business and financial community and throughout the State. I have cut the budget, deferred or cancelled capital improvements, frozen the mill rate, and I intend to do more of the same. Our efforts have received positive responses, both from our residents and the financial community. I can't now stand idly by and let the State chip away at our fiscal base, especially after the voters have spoken. If the Department carries out its promise to submit a detachment petition, then we will deal with these issues before the Local Boundary Commission.

But enough of this, let's get positive. THE NORTH SLOPE BOROUGH HAS ALWAYS ENJOYED A GOOD RELATIONSHIP WITH COMMUNITY AND REGIONAL AFFAIRS AND I INTEND FOR THAT TO CONTINUE. I WOULD LIKE TO PRAISE COMMISSIONER NOTTI. We should give him credit for being willing to put something on the line to promote the first new borough since the creation of our own North Slope Borough. That's a good policy. For being willing to promote real private economic development in rural areas. That's a good policy, too. I support those policies

and I suspect you all do. But I think the Commissioner has gotten some bad advice about the best way to carry out these policies.

FORCED DETACHMENTS FROM ESTABLISHED GOVERNMENTS, AGAINST THE VOTE OF THE LOCAL ELECTORATE, SHOULD BE THE LAST RESORT FOR FUNDING BOROUGH DEVELOPMENT IN THE UNORGANIZED BOROUGH.

THERE ARE OTHER, BETTER IDEAS, ESPECIALLY IN THIS CASE, THAT CAN HELP SOLVE THE PROBLEM THAT THE COMMISSIONER AND NANA AND OUR NORTH SLOPE BOROUGH AND EVERY ONE OF US KNOWS EXISTS IN THE UNORGANIZED BOROUGH AND THAT WE'D ALL LIKE TO SEE SOLVED SOMEDAY. THAT'S THE PROBLEM OF HOW TO FINANCE BOROUGH GOVERNMENTS IN RURAL ALASKA. I said that detachment should be a last resort. Let me suggest some other solutions for consideration.

- With over \$2 billion in NANA royalties in the offering plus the jobs and income the mine project will bring to the NANA region, the local resources to fund local government will be there.

- State statutes authorize the Local Boundary Commission to "make studies of local government boundary problems." Considering the number of borough boundary change proposals of this sort that have been attempted in the past and probably lie ahead, maybe it would be appropriate to get the issue out of local politics and ask the LBC itself to address the

issue and set some general policy guidelines, rather than deal on an ad hoc, case-by-case basis.

- Another alternative is to give NSB and NANA more time to work it out before escalating to a controversial Statewide issue. I still think that a negotiated, equitable agreement on a boundary adjustment is possible between residents of the NANA region and the North Slope Borough, with minimal involvement by the State or by the LBC. This boundary change is a complex issue that is going to take time and effort to solve, regardless of what approach anyone takes. NANA representatives and we have both been trying hard so far to resolve this complicated issue without involving the State administration or the LBC. But we have had to work without any clear sense of how standards and guidelines applied to this situation. That has made it hard to negotiate on a realistic basis. Not surprisingly, the first effort didn't reach success. Some helpful policy guidelines, not intervention, from the LBC could pave the way for a voluntary agreement.

- FINALLY, IF ALL ELSE FAILS AND THE DEPARTMENT STILL WISHES TO CONSIDER THE LAST RESORT OF INITIATING ITS OWN DETACHMENT PETITION, THEN THAT DECISION SHOULD BE TAKEN ONLY AFTER THE DEPARTMENT HAS:

\*held hearings through the localities to give local residents a chance to speak directly on both the detachment and new borough incorporation.

\*thoroughly researched the factual, procedural and substantive issues involved in this double decision to create a new borough by detachment of tax base from a neighboring jurisdiction.

\*prepared and submitted for public review and hearings a statement of the general principles and policies the Department will apply in this case and all similar cases affecting other municipalities.

Again, I want to see NANA region residents achieve a successful borough if, that is what they want. I'm willing to meet with the Commission to look for solutions. I AM ALSO WILLING TO CHAIR A TASK FORCE, TO WORK WITH REPRESENTATIVES OF THE NANA REGION AND OTHER RURAL AREAS TO HELP LOOK FOR SOME NEW APPROACHES TO BOROUGH DEVELOPMENT.

In closing, I ask for the support of this body on behalf of the North Slope Borough as we endeavor to seek a fair and considerate resolution to this most important issue that confronts us all. I would also ask the Mayors and the Municipal League to support the Resolution on the proposed detachment submitted by the North Slope Borough.

In addition, some of my staff is present in the audience today so as to assist in answering any detailed questions you may have.

Thank you.

## Supplement to Mayor Ahmaogak's Speech

In opposing this detachment, I'm taking my cues from the precedents set in previous cases:

- o In 1971, there was a Captain Cook borough petition. The City of Anchorage wanted to detach from the old Greater Anchorage Borough. The Boundary Commission rejected the idea.
- o In 1974 there was a proposed detachment of the Eagle River - Chugiak area for a new borough. The Boundary Commission rejected it and when the Legislature attempted to create the new borough by law, the State Supreme Court declared it unconstitutional as special local legislation.
- o The proposed Nikiski Borough, in 1973, involved an attempt to detach the oil and gas tax base from the Kenai Borough. The Boundary Commission said "no".
- o The most recent case, in 1982, involved the Boundary Commission's rejection of the proposed Lake Louise detachment in the Mat-Su Borough as not being in the State's interest.

I want to keep these established precedents and principles kept intact as we and other boroughs deal with economic development projects at their borough's edge or just over the edge of borough boundaries.

Let's consider:

1. The U.S., Borax Quartz Hill mine just outside the Ketchikan Borough.
2. Oil and gas and Beluga development across the Inlet, but still within the Kenai Borough.
3. The Greens Creek lead zinc mine on Admiralty Island just outside the Juneau Borough.

I hope the previous examples emphasize the widespread implications of CRA's proposed recommendation in the North Slope detachment issue.

## Anchorage Daily News



Winner, 1976 Pulitzer Prize Gold Medal for Public Service

Gerald E. Grilly  
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Howard Weaver  
Managing Editor

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Editorial Page Editor

Katherine Fanning, Editor and Publisher 1971 to 1983  
Lawrence Fanning, Editor and Publisher 1987 to 1971

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# Boundary change questions linger

Should the state remove the Red Dog mine from the North Slope Borough to provide a tax base for a future borough in the Kotzebue region? The idea has been around for some time, but Gov. Bill Sheffield's decision to push for the boundary change is new. His move raises some disturbing questions about a governor's role in boundary changes and the lack of public involvement in the decision.

Only local governments, residents in affected areas and the governor's head of Community and Regional Affairs can ask the state's Local Boundary Commission for boundary changes. But the affected area is uninhabited and North Slope voters rejected the idea in an advisory vote this fall. Thus, Kotzebue-area residents who want Red Dog in their planned borough must rely on the Sheffield administration to ask for the change.

Administration officials say the move reflects the state's long-standing policy of encouraging formation of local governments. But this case isn't so simple; it involves moving a multimillion-dollar tax base from an existing borough to help a would-be local government.

Even if such a move is necessary for a new borough to have an adequate tax base, would that justify any governor's push for a boundary change against the will of the affected government or residents of the area? If Gov. Sheffield can push this change, are there any limits to the kind of boundary changes a governor can try to impose on local governments?

And what process did the Sheffield administration follow in deciding to push for the change? That decision took place out of public view. On an issue fraught with such high stakes and broad implications, any decision on the state's role deserves a much wider public airing.

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MARLETTE ©1985  
THE CHARLOTTE OBSERVER



"GORBA

# Boys High School c

Not long ago, I received a scathing rebuke from a reader on a column I wrote last summer. The letter writer inferred from the column that I favored a return to the entire value system of the 1950s.

The author drew that inference because I seemed to quote with approval my father's firm edict that one of my sisters could not associate with a young woman because "she has a history," as my father put it.

The argument of the author was that if I approved of my father's action, that must mean I endorse all the other value systems of that period. He said I must be prepared to accept the reimposition of segregation a rollback in the



robert maynard

bad about the er me.

Anyone who want to go back strictures of th have missed the sought to make. loss of institutio ry that I lament.

ALASKA MUNICIPAL LEAGUE RESOLUTION # 85-

A RESOLUTION ENDORSING CAREFUL PLANNING  
OF MUNICIPAL BOUNDARY CHANGES

WHEREAS, the Alaska Municipal League, as representatives of Alaskan municipalities, recognize the necessity for stable boundaries and secure sources of revenue; and

WHEREAS, developers who may wish to invest in municipalities require a strong sense of political and economic stability; and

WHEREAS, boundary changes can significantly affect the political, economic and fiscal stability of municipalities;

NOW THEREFORE BE IT RESOLVED:

That all boundary change petitions submitted to the Local Boundary Commission be processed in a careful manner, according to regulations and reasonable schedules, and with full and ample opportunity for all municipalities and other affected parties to become fully informed, to testify, and to respond.

Supplemental Information  
Mayor Ahmaogak's Speech  
November 15, 1985

Land Ownership

The Red Dog mine site is situated within the North Slope Borough, on land that the NANA regional corporation selected in 1976, some years after the North Slope Borough Boundaries were approved. NANA-owned lands are only a very small part of the proposed detachment -- less than 4%. The rest of the land is in federal or state ownership, with some other private mining claims.

Status of Red Dog Mine

Right now, as far as we know, everything is full speed ahead for the mine project. We ourselves, as the responsible local government, are working with Cominco, the mine operator, to develop a Master Plan for the mine-site. The Borough is receiving and processing permit applications right on schedule. We are not impeding progress in any way and no one has ever suggested we were.

## Supplemental Information

### Mayor Ahmaogak's Speech

November 15, 1985

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**STATE OF ALASKA  
LOCAL BOUNDARY  
COMMISSION  
NOTICE OF MEETING**

Notice is hereby given that a meeting of the Alaska Local Boundary Commission will be held beginning at 3:00 p.m., Saturday, November 9, 1985, at the following locations:

949 East 36th Avenue  
(University Plaza Bldg)  
Suite 404  
(MRAD Conference Room)  
Anchorage, Alaska 99508

In addition to issues for which previous public notice has been given, the Commission will consider matters relating to the proposed detachment of territory from the North Slope Borough.

These matters will include consideration of requests from the Alaska Department of Community and Regional Affairs (petitioner) regarding the following:

to establish a schedule for proceedings relating to the proposed detachment;

to waive certain provisions of the administrative regulations regarding the proposed detachment.

If, for any reason, (e.g. transportation delays, inadequate meeting room capacity, etc.), the Local Boundary Commission is unable to conduct the meeting at the time and/or place specified in this notice, the meeting will be delayed until later that evening or will be rescheduled to a new time, as early as is practicable. Notice of such delay or rescheduling will be formally posted by the time and at the location of the meeting as originally scheduled.

For further information or a copy of the meeting agenda, contact:

Marty Rutherford, Director  
Division of Municipal and  
Regional Assistance  
Department of Community and  
Regional Affairs  
949 East 36th Avenue, Suite 404  
Anchorage, Alaska 99508  
(Telephone 561-8586)

Pub: November 5, 6, 7, 1985

AO-21-4162

# NORTH SLOPE BOROUGH

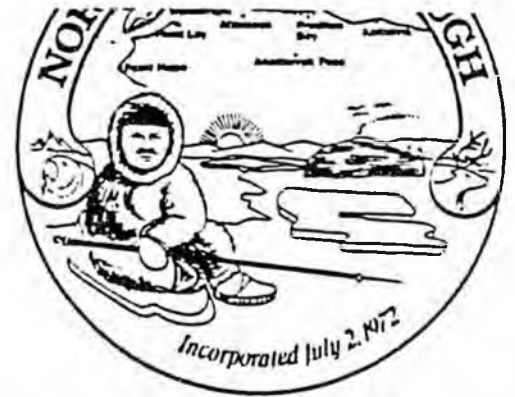
ATTACHMENT 2

## OFFICE OF THE MAYOR

P.O. Box 69  
Barrow, Alaska 99723

Phone: 907-852-2611

George N. Ahmaogak, Sr., Mayor



October 10, 1985

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

Dear Commissioner Notti:

As you may be aware, the North Slope Borough and representatives of NANA Regional Corporation have been discussing the detachment of land from the Borough. This letter is to inform you of developments which may involve your department.

In April of 1985, NANA Regional Corporation requested the North Slope Borough to petition the Local Boundary Commission to detach about 433,000 acres of Borough territory. The land to be detached included the Red Dog Mine site and other potentially valuable mineral deposits. NANA officials stated that their purpose for requesting the detachment was to acquire a tax base for a future NANA region borough and to expedite the borough incorporation process.

The North Slope Borough has serious concerns about the loss of tax base and jurisdiction which the proposed detachment would cause. There is some concern that NANA's request may be based more on a desire to avoid taxation and regulation than to foster local government. The Borough supports the aspirations of other rural areas for self government, however, and therefore did not reject NANA Regional Corporation's request out of hand.

Over the past nine months, Borough officials met publicly and with NANA representatives. This matter has been discussed at Planning Commission workshops, public hearings and meetings, and at Borough Assembly workshops, public hearings and meetings. The Borough Assembly traveled to Kotzebue to give NANA region residents an opportunity to express their views.

Throughout our discussions with NANA, the Borough has insisted on three things. First, any detached territory must become part of a new

borough. Second, the North Slope Borough must receive fair compensation for the loss to its tax base. Third, any detachment must be approved by the North Slope Borough's electorate. The Borough's position is that it is unreasonable to expect it to unilaterally donate a valuable, long-term tax base to any proposed new borough or to provide tax relief to a private mining venture. Some quid pro quo is essential prior to any detachment. Further, our voters overwhelmingly approved the present boundaries of the Borough. It is clearly appropriate that they have a major voice in any attempt to alter these boundaries.

In August of 1985, as a result of our discussions with NANA Regional Corporation representatives, the Borough Assembly approved an ordinance. The ordinance had the support of NANA and the Borough Planning Commission. The ordinance authorized the submittal of a boundary change petition upon the filling of three essential conditions: (1) That the detached territory be incorporated into a new NANA region borough; (2) That a boundary change petition would be submitted only after the Borough was granted as equitable compensation for the detached territory; and (3) That the voters approve any attempt to alter the Borough's boundaries.

The North Slope Borough has made every effort to accommodate NANA's request. The Borough authorized and absorbed the cost of a borough-wide referendum as well as the cost of numerous meetings. Representatives of NANA Regional Corporation were encouraged to travel to our villages and present their case to our voters. The North Slope Borough has dedicated an extraordinary amount of time and effort to reach an accommodation with the advocates of the boundary change.

At the regular meeting of the North Slope Borough Assembly on October 8, 1985, the final Borough election results were certified. Included were the results of the voting on Proposition 1, which read:

PROPOSITION 1

North Slope Borough Petition the Local Boundary Commission

Should the North Slope Borough petition the Local Boundary Commission to alter the North Slope Borough boundaries to exclude 433,000 acres of area in the southwest corner of the borough on the condition that a Nana Region Borough be established with boundaries that include the Nana Region and the 433,000 acres excluded from the North Slope Borough jurisdiction?

Our voters rejected Proposition 1 by a majority of 58 percent to 42 percent.

The proposed detachment has not met with the approval of the Borough's voters. Nor is the Borough aware of any bona fide effort to

Commissioner Emil Notti  
October 10, 1985  
Page 3

incorporate a NANA regional borough. No provisions have been made or initiated to compensate the Borough. For these reasons the Borough will not seek and will oppose any attempt to alter its boundaries.

I would be most appreciative if you would keep me informed of any and all attempts to effectuate a change in the Borough's boundaries. The Borough and its public have legitimate interest in seeing that the Borough's territory and long term tax base do not suffer merely to benefit a private mining venture.

Sincerely,

George N. Ahmaogak, Sr.  
Mayor

# NORTH SLOPE BOROUGH

ATTACHMENT 3

## OFFICE OF THE MAYOR

P.O. Box 69  
Barrow, Alaska 99723

Phone: 907-852-2611

George N. Ahmaogak, Sr., Mayor



August 1, 1985

John Schaeffer, President  
NANA Corporation

Marie Greene, President  
Maniilaq Association

? At your request, the North Slope Borough (Borough) initiated its review and consideration of a request from you to detach lands totalling 433,000 acres from the southwestern portion of the Borough. These lands consist of NANA-, State-, and federally-owned lands. The primary purpose of the requested detachment would be to incorporate the Red Dog Mine Project and other potentially developable mines in the area into the new borough.

As you are aware, the late Eben Hopson and others worked long and hard in overcoming obstacles in forming the North Slope Borough and watching that dream become reality. The formation of our Borough is one that we believe was worth all of the effort involved. And we believe that its formation was then, as it continues to be now, in the best interests of our people here on the North Slope. Consequently, we also strongly support your desire to form a borough because we, like you, believe that it is in the best long term interest of residents in your area.

I wish to assure you that I, as Mayor of the North Slope Borough, encourage and fully support the formation of a borough in the Kotzebue region. I am therefore committed to assisting you in every way that I can that will be both helpful and in our mutual best interests.

I am also prepared to advocate to the Planning Commission and the Assembly at their next regularly scheduled meetings that a detachment of lands be conceptually approved subject to voters approval by North Slope Borough residents in order to eventually provide your area with an adequate tax base for operation of the new borough. It is our proposal that this detachment take place hand in hand with the formation of the Kotzebue area borough and

John Schaefer, NANA Corporation  
Marie Greene, Maniilaq Association  
Page 2

subsequent to legislation being passed which would allow the North Slope Borough to select lands which would at least partially replace lands and lost revenue due to the detachment.

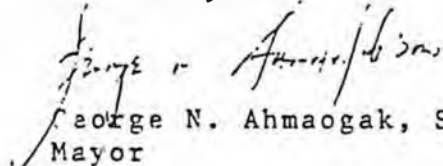
In the meantime, I and members of my staff are prepared to offer our assistance to you, if you believe that it would be helpful, such as travelling to Kotzebue and perhaps to various outlying villages in the area to assure residents of the area of our intention to detach these lands which would then become part of your new borough.

I believe that our joint efforts to initiate the formation of a Kotzebue area borough and our joint efforts to agree on a reasonable compensation package for the lands we propose to transfer to the Kotzebue area borough is to our mutual best interests. I believe that it is important to agree on an approach to the formation of your borough, including the transfer of lands, to strengthen our cultural ties that we all value. If we can walk hand in hand on this issue by agreeing to address both the formation of the Kotzebue area borough and the lands compensation package simultaneously, I believe that your area can incorporate by 1987.

I stand ready to assist you and the residents in your area at any time in an effort to bring your dream of a borough to fruition. And likewise I believe that you wish to assist us in our efforts towards compensation.

I look forward to working closely with you over the upcoming months in helping you attain your goal.

Sincerely,

  
George N. Ahmaogak, Sr.  
Mayor

cc: North Slope Borough Assembly  
North Slope Borough Planning Commission  
Representative Al Alams  
Senator Frank Ferguson

## M E M O R A N D U M

TO: Earl Finkler, Director  
Planning & Community Services

FROM: Ronald D. Brower, Administrative ~~Secretary~~  
Planning & Community Services

DATE: November 5, 1985

SUBJ: List of all Planning Commission Meeting  
Dates regarding NANA Red Dog Mine Proposal

According to my Minute files, NANA Red Dog Mine was first put on the Planning Commission agenda on March 30, 1984, but that item was deferred due to no response from NANA. Commissioner's that attended that meeting were: Mary Edwardsen, Presiding Chairman, Amos Agnassagga, Vice-Chairman, Members Bernard Nash Sr, Zacharias Hugo, Charlie Kagak, Emma Kippi, Abe Simmonds Jr., and Isaac Akootchook.

On April 27, 1984, NANA Red Dog Mine was also deferred from the agenda due to no response from NANA.

On February 15, 1985, NANA Red Dog Mine was put on the agenda and Earl Finkler gave a brief summary and history of the Red Dog Mine. Commissioner's that attended the meetings were: Brenda Itta, Presiding Chairman, ViceChairman Charlie Kagak, Members Isaac Akootchook, Emma Kippi, Bernard Nash Sr., Donald Neakok, and Nolan Solomon. The NANA Representatives were: John Schaeffer, Robert Newlin, Roland Booth, Christina Westlake, Marie Schwind, Willie Hensley and Hank Giegerich, President of Cominco, Alaska.

On March 29, 1985, the Planning Commission discussed the Red Dog Mine issue in reference to the legal questions the Commission had regarding the detachment of Red Dog and also to analysis NANA's request. Harold Curran, Borough Attorney was also present to answer any legal questions the Commissioner's have. Commissioner's that attended the meeting were: Brenda Itta, Presiding, Charlie Kagak, Abe Simmonds Jr., Isaac Akootchook, Zacharias Hugo, Bernard Nash Sr., Nolan Solomon, Herman Kignak, Amos Agnassagga, and Billy Nashoalook.

On May 3, 1985, the Planning Commission reviewed two resolutions drafted by the Planning Department staff and chose Alternate #2 also known as Resolution 85-04. Commissioner's that attended that meeting were: Brenda Itta, Presiding

Chairman, Charlie Kagak, Abe Simmonds Jr., Zacharias Hugo, Isaac Akootchook, and Thomas Brower Jr. NANA Representatives that attended were: Robert Newlin, Christina Westlake, Willie Hensley, and Robert Argetsinger.

On June 3, 1985, the Commission met in Anaktuvuk Pass and NANA Red Dog Mine was briefly discussed and Mayor Ahmaogak had informed th Commission that he was nbot going to make any decisions until the Assembly and Commission has had a Workshop to resolve a possibility of precedence with Oil Companies. The Commissioner's that attended the meeting were: Brenda Itta, Presiding, Cahrlie Kagak, Abe Simmonds Jr., Zacharias Hugo, Isaac Akootchook, Thomas Brower Jr., Donald Neakok, and Bernard Nash Sr. Then on June 4, 1985 the meeting reconvened in Barrow and the following NANA Representatives attended the meeting: John Schaeffer, Willie Hensley. The MANA representatives presented a letter in reference to NSB Planning Commission Resolution 85-04 which was passed by the Commission May 3, 1985.

On June 28, 1985, the Commission met in Barrow and NANA Red Dog Mine was briefly discussed when NANA turned the proposed detachment to Maniilaq Association. The following Commissioner's attended the meeting: Charlie Kagak, Presiding, Isaac Akootchook, Zacharias Hugo, Donald Neakok, Herman Kignak, Bernard Nash Sr., Brenda Itta, Abe Simmonds Jr. NANA Representatives and Maniilaq Association representatives that attended were: Eric Burcher, Don Argetsinger, Suzie Erlich, Marie Schwind, Mary Schaeffer, and Willie Hensley.

On July 22, 1985, the Commission briefly discussed the NANA Red Dog Mine and asked for an update of the Meeting which was held in Kotzebue with the NSB Assembly, Mayor Ahmaogak, Borough Attorney, and some of the Planning Department staff. the Meeting was held on July 22, 1985 and the Mayor briefly discussed the workshop and introduced NSB Ordinance 85-15 which was revised by Borough Attorney Harold Curran.

On August 5, 1985 the Commission held a Special Meeting to discuss the "Memorandum of Understanding" which was drafted by Warren Matumeak, Earl Finkler, and Mayor Ahmaogak for the Commission's review and approval. The following Commissioner's attended the meeting: Brenda Itta, Presiding, Abe Simmonds Jr., Thomas Brower Jr., Isaac Akootchook, David Stone Sr., and Billy Nashoalook.

**NANA REGIONAL CORPORATION, INC.**

POST OFFICE BOX 49 / KOTZEBUE, ALASKA 99572 / TELEPHONE (907) 442-3301



April 23, 1985

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

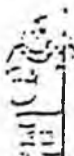
Dear Mayor Ahmaogak:

NOT ACCURATE

This letter will serve to confirm the understanding reached between your office and NANA Regional Corporation ("NANA") regarding the detachment of certain lands from the North Slope Borough ("Borough"). NANA has received title under the Alaska Native Claims Settlement Act ("ANCSA") to certain properties which are within the Borough as well as the NANA Region. These properties encompass a mineral deposit known as the Red Dog Project which can serve as the basis for the development of a borough in the NANA region. The development of a borough in the region has long been a goal of NANA but without the tax base provided by the Red Dog Project, that goal will be unattainable.

In order to facilitate the adjustment of the boundaries of the Borough, it has been agreed as follows:

1. Your office will propose and support a modification of the boundaries of the Borough which will result in the detachment of the lands described in Exhibit A to this letter. These lands are well within the NANA Region.
2. The detachment will be effectuated in the manner provided by 19 AAC 10.450 - .620 and in particular shall be initiated by a petition of the Borough Assembly. A draft petition and other supporting materials necessary for a decision by the Assembly will be prepared in a timely manner in order that they may be reviewed by the Borough Planning Commission prior to the June, 1985 Assembly meeting. Such materials, petition and appropriate ordinance, if required, will be introduced at the June, 1985 Assembly meeting,



Honorable George A. Loogak, Mayor

April 23, 1985

Page 2

with public hearings and final passage by the Assembly scheduled for the Assembly's July, 1985 meeting.

3. NANA will provide such technical support and assistance as may be necessary to develop the petition and supporting materials required by the Assembly and the local Boundary Commission in acting upon the petition for detachment.
4. Immediately following the July, 1985 final passage of the authorizing ordinance by the Assembly, the Borough will petition the Commissioner of the Department of Community and Regional Affairs for the detachment of the lands described in Exhibit A and will actively support and pursue such.
5. In keeping with its stated goal of the formation of a borough in the NANA region, NANA will actively pursue and support the activities of the residents of the NANA region to create a borough ("NANA Borough").
6. The effective date of the detachment of the Exhibit A lands shall be the date upon which the voters approve the incorporation of the NANA Borough in accordance with the laws of the State of Alaska.
7. From the date of the adoption by the Assembly of the petition for detachment until the effective date of detachment, or July 1, 1988, whichever occurs first ("Suspension Period"), NANA shall notify the Planning Department of the Borough of all activities which may take place on the Exhibit A lands owned or selected by NANA pursuant to ANCSA and which would be subject to the Borough planning processes; provided however that during such Suspension Period the requirements for filing, permitting and other approvals under the ordinances of the Borough shall be suspended for the activities arising from the Red Dog Project. Should the NANA Borough not be formed by July 1, 1988, then NANA or its lessee shall promptly make all filings with the Borough which would have been otherwise required by virtue of such activities. The Borough shall not assess any fines, late charges, or otherwise penalize NANA or its Lessee in any manner for the operations which may have been conducted during such Suspension Period.

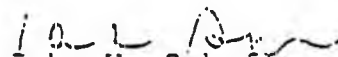
Honorable George N. Ahmaogak, Mayor  
April 23, 1985  
Page 3

8. NANA and its Lessee COMINCO shall grant to two-year residents of the Arctic Slope Region (the Borough) a priority in employment on the Red Dog Project second only to that granted to NANA's shareholders and two-year residents of the NANA Region.
9. The Borough shall provide technical assistance to the Maniilaq Association for the creation and establishment of the NANA Borough.

If this correctly reflects the position of the Borough, please execute and return to NANA the copy of this letter which I have enclosed.

Sincerely,

NANA REGIONAL CORPORATION

  
John W. Schaffer,  
President

Approved this \_\_\_\_\_ day  
of April, 1985.

\_\_\_\_\_  
George N. Ahmaogak, Sr. Mayor

STATE OF ALASKA  
LOCAL BOUNDARY COMMISSION  
MINUTES  
ANCHORAGE WORK SESSION  
FEBRUARY 25, 1985

MEMBERS PRESENT:

Gillian Smythe, Chairman  
David Hanson  
Bert Greist  
C. B. Bettisworth

PLACE:

Anchorage MRAD  
Conference Room

STAFF ABSENT:

Gene Kane  
Dan Bockhorst  
Irene Rowan  
Ike Waits  
Rick Elliott  
Bruce Webb  
Jim Sanders  
Toni Reupke  
Linda Sandison

SUBJECT:

Work Session

OTHERS PRESENT:

N/A

Chairman Gillian Smythe called the meeting to order at 1:53 p.m. and stated the purpose of the meeting.

Chairman Smythe opened the work session. Discussion followed.

M/S Bert Greist/Dave Hanson: to approve minutes of Nabesna meeting.

M/S Dave Hanson/C.B. Bettisworth: to notify Hicks that conceptual draft is expected by March 25 for LBC review and that the Commission wishes to meet with him in mid April.

M/S Dave Hanson/C.B. Bettisworth: <sup>(9K)</sup> to notify Hicks that conceptual draft is expected by March 25 for LBC review and that the Commission wishes to meet with him in mid April.

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LOCAL BOUNDARY COMMISSION  
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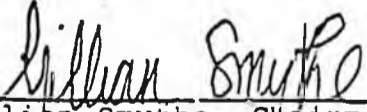
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M/S Dave Hanson/C.B. Bettisworth: to notify Hicks that conceptual draft is expected by March 25 for LBC review and that the Commission wishes to meet with him in mid April.

M/S Dave Hanson/C.B. Bettisworth: <sup>OK</sup> all Legislative review annexations to be reviewed by the Commission in 1985 should have a petition accepted by the Department no later than June 30, 1985.

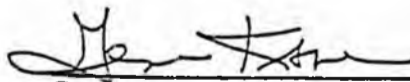
M/S Bert Greist/Dave Hanson: to adjourn 5:30 p.m.

Approved:

  
\_\_\_\_\_  
Gillian Smythe, Chairman

3/4/85  
\_\_\_\_\_  
Date

ATTESTED:

  
\_\_\_\_\_  
Gene Kane, Staff Assistant  
to the Local Boundary Commission

Corrections:

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

## 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 dated 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

specific modification as hereinafter described, the petition requesting incorporation of a first class North Slope Borough. The Commission hereby adopts the following Statement of Findings and Conclusions that are implicit in the formal acceptance of the petition as evidenced in the record of the February 23-25, 1972 decisional meeting.

## FINDINGS

### I.

#### Standards for Incorporation - AS 07.10.030

##### Population

A. "...the population of the area proposed for incorporation shall be inter-related and integrated as to its social, cultural, and economic activities."

The Commission finds that the area encompassed by the proposed boundaries contains a population which, on the whole, shares common ethnic origin and cultural heritage. Testimony, both oral and written, entered on record together with authoritative documentation (Alaska Natives and the Land) outlines the inter-related and integrated social, cultural and economic activities of the North Slope area population. The Arctic Slope Native Association, acting as the nucleus for borough study groups activity preceding initiation of the petition and as representative of the petitioners, demonstrated to the satisfaction of the Commission that significant and valuable efforts were made to engender understanding and elicit support of North Slope community residents for the borough proposition. These efforts underscored a willingness on the part of the petitioners to assume the rights and duties which would arise out of incorporation as an organized borough.

The Arctic Slope Native Association membership derives from residents of the Cities of Barrow, Wainwright, Point Hope, Anaktuvuk Pass and Kaktovik (Barter Island). The Association provides a cohesive organization through which economic, social and cultural matters may be given public forum.

B. "...the population shall be qualified and willing to assume the duties arising out of incorporation."

The Commission finds that the population of the North Slope Borough area is willing to undertake the challenge of organized borough government. Public hearing testimony given by representatives of the Cities of Barrow, Wainwright, Point Hope and Kaktovik exhibited both willingness to assume organized borough responsibilities and a general recognition of the mandatory and optional borough functions which would establish mechanisms for improving governmental services,