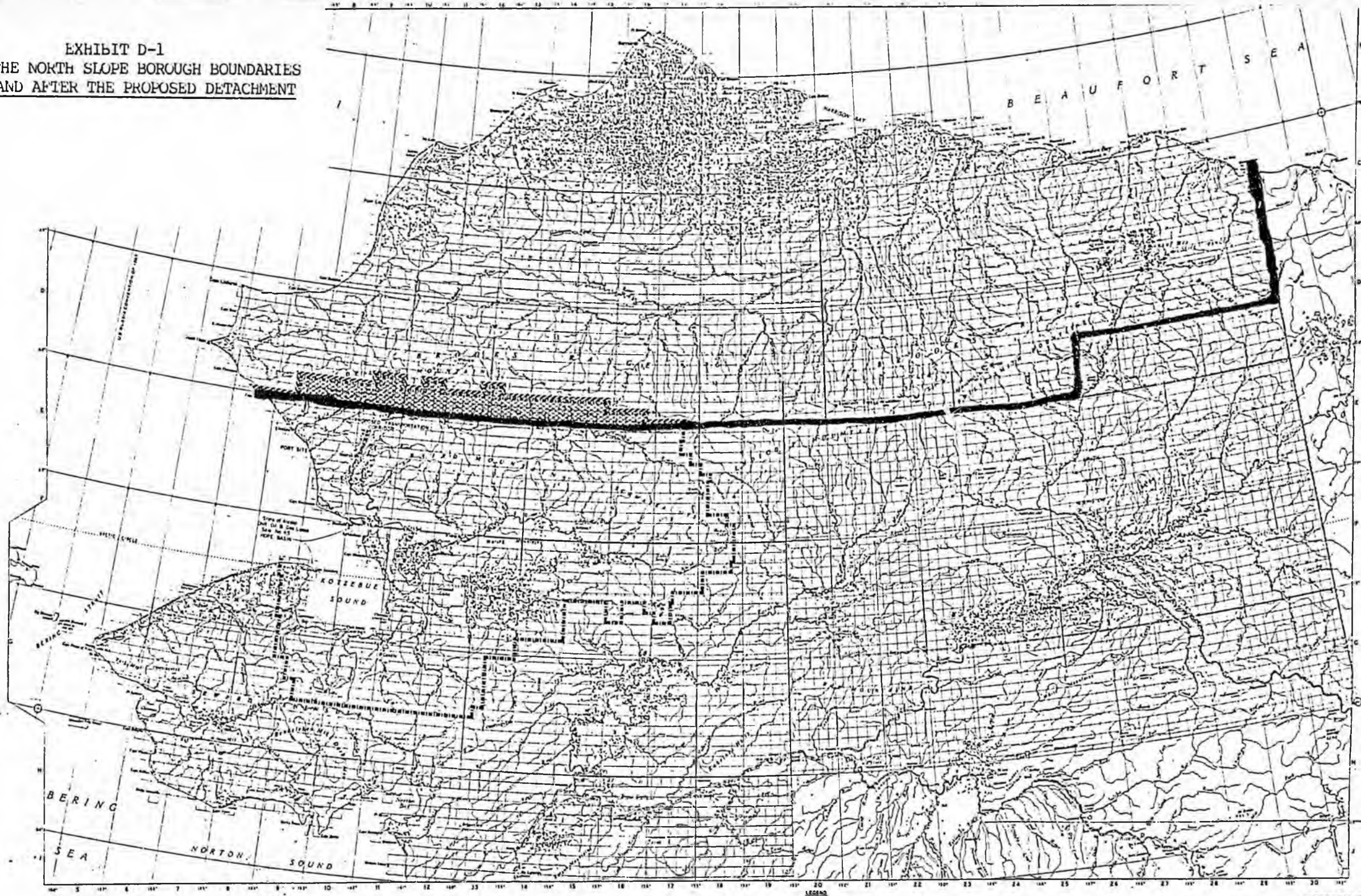


ALASKA LEGISLATURE COMMITTEE FILES 1905-1900

3842 SCRA NORTH SLOPE LAND - NORTH SLOPE OPPOSITION BRIEF 78

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



U.S. DEPARTMENT OF THE INTERIOR
 GEOLOGICAL SURVEY

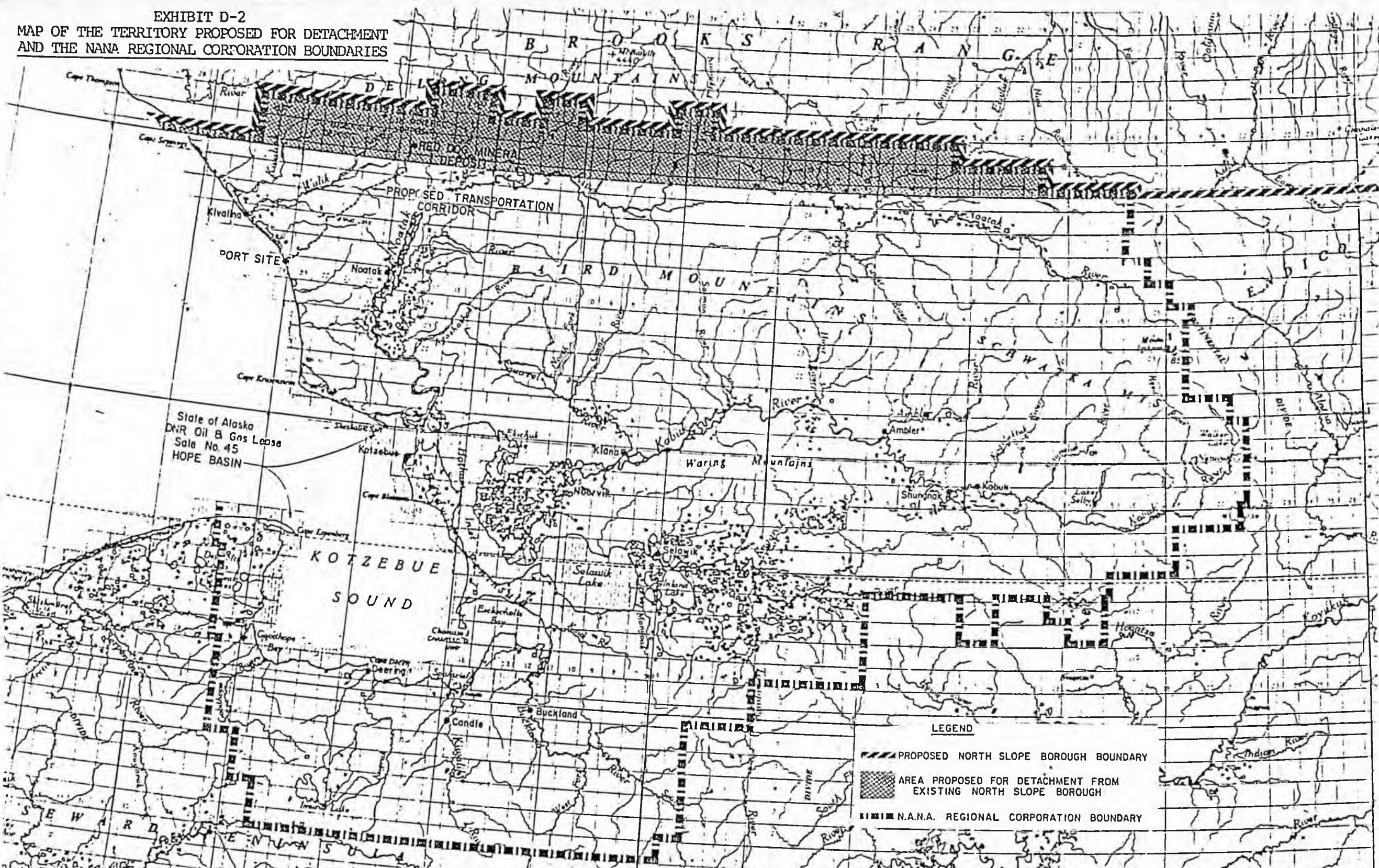
LEGEND
 - - - - - PROPOSED NORTH SLOPE BOROUGH BOUNDARY
 [Hatched Area] AREA PROPOSED FOR DETACHMENT FROM EXISTING NORTH SLOPE BOROUGH
 - - - - - Seward Peninsula REGIONAL CORPORATION BOUNDARY

Alaska Equal Area Projection
 SCALE 1:100,000

106 MILE BY U.S. GEOLOGICAL SURVEY
 WASHINGTON, DC 20515
 SEPARATE MAPS EDITION: 11-88
 SHEET NUMBER: 02

EXHIBIT D-2

MAP OF THE TERRITORY PROPOSED FOR DETACHMENT AND THE NANA REGIONAL CORPORATION BOUNDARIES



LEGEND




-  PROPOSED NORTH SLOPE BOROUGH BOUNDARY
-  AREA PROPOSED FOR DETACHMENT FROM EXISTING NORTH SLOPE BOROUGH
-  N.A.N.A. REGIONAL CORPORATION BOUNDARY

EXHIBIT D-3

MAP OF THE TRANSPORTATION ROUTES AND FACILITIES
OF THE NORTH SLOPE BOROUGH

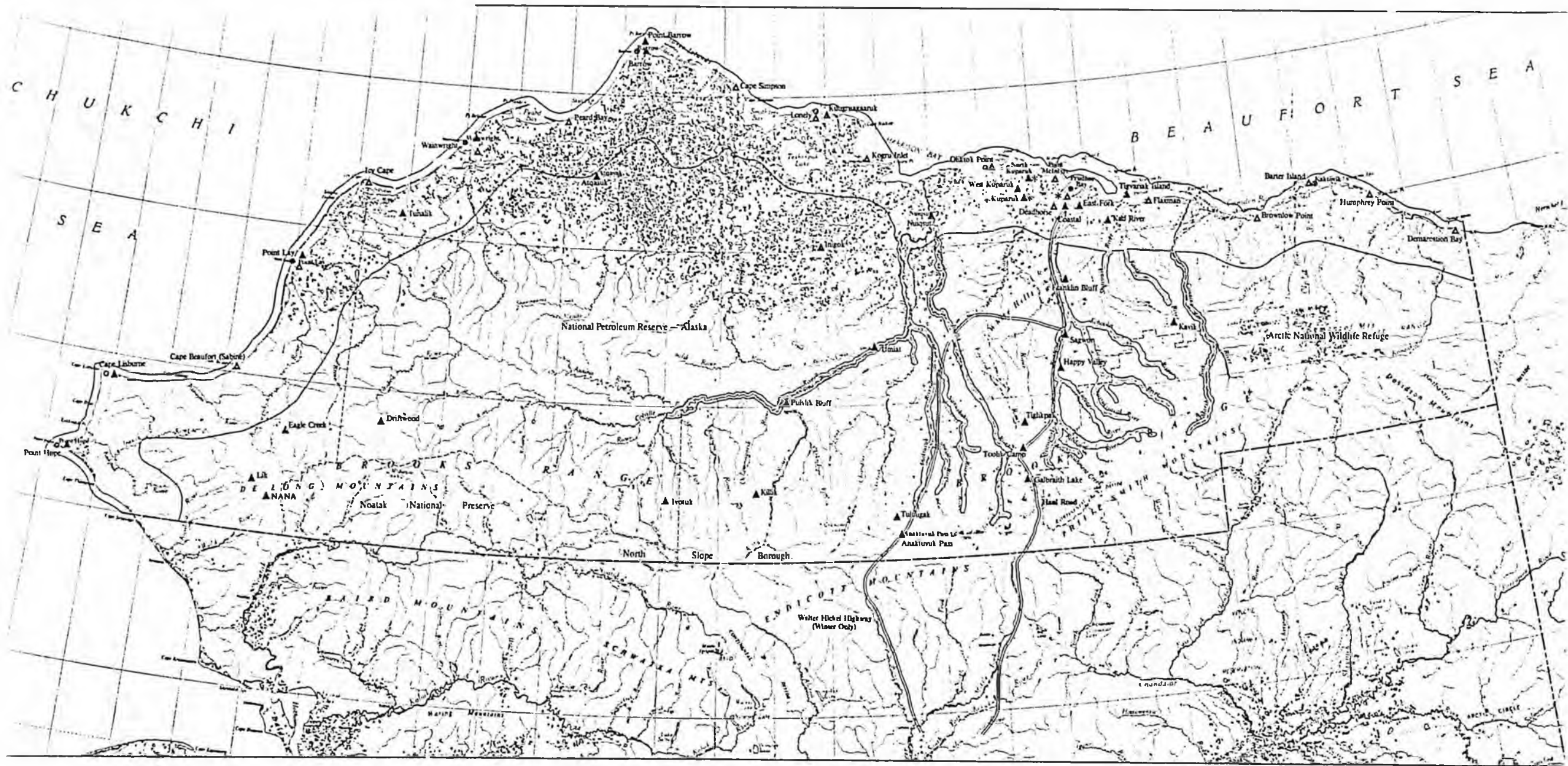
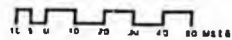
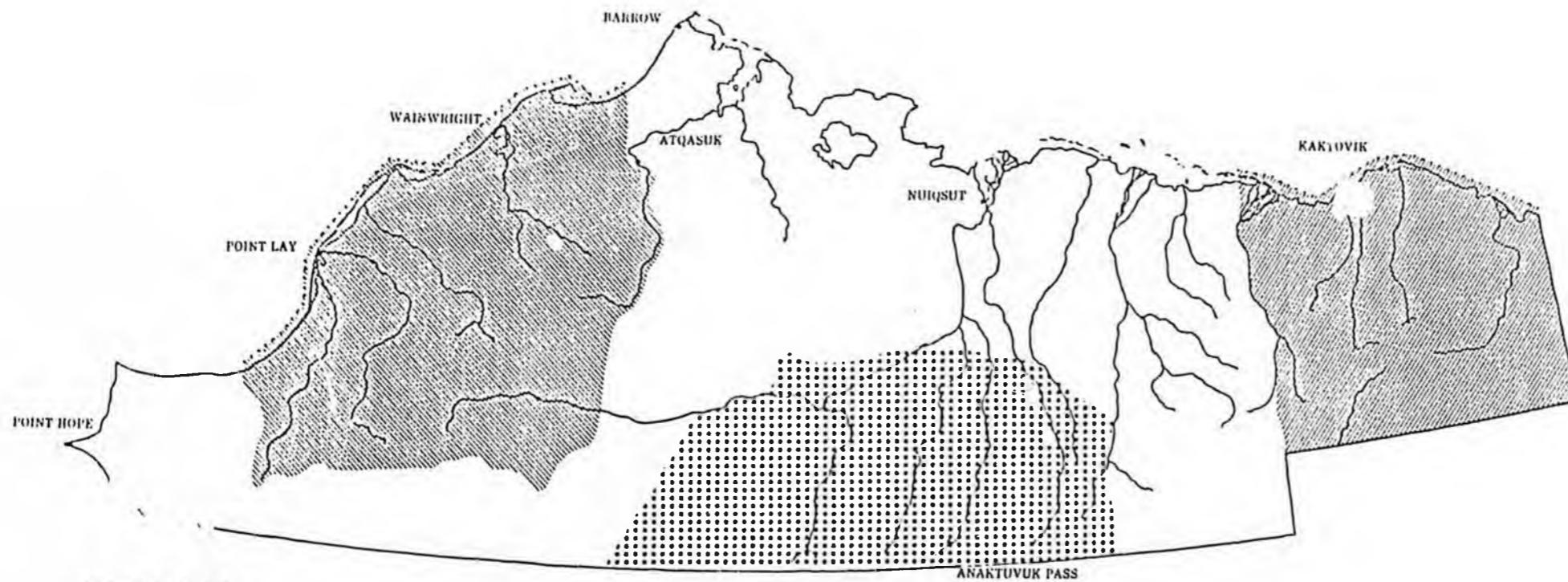


EXHIBIT D-4
 MAP OF THE VILLAGE AREAS OF INFLUENCE
 WITHIN THE NORTH SLOPE BOROUGH

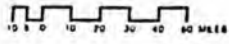
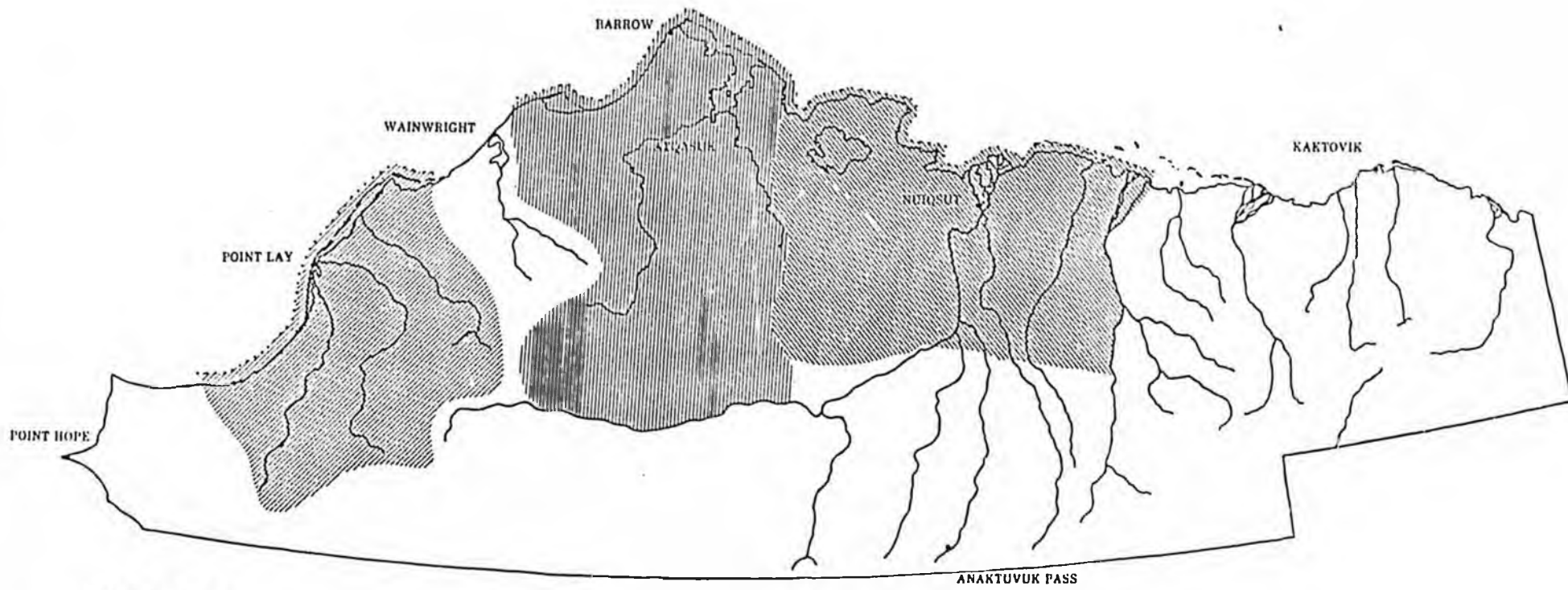


- LEGEND**
-  WAINWRIGHT
 -  ANAKTUVUK
 -  KAKLOVIK
 -  5-Mile Limit (Representational Only)

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

JANUARY 1, 1983

WICKERSHAM & FLAVIN

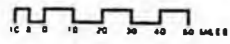
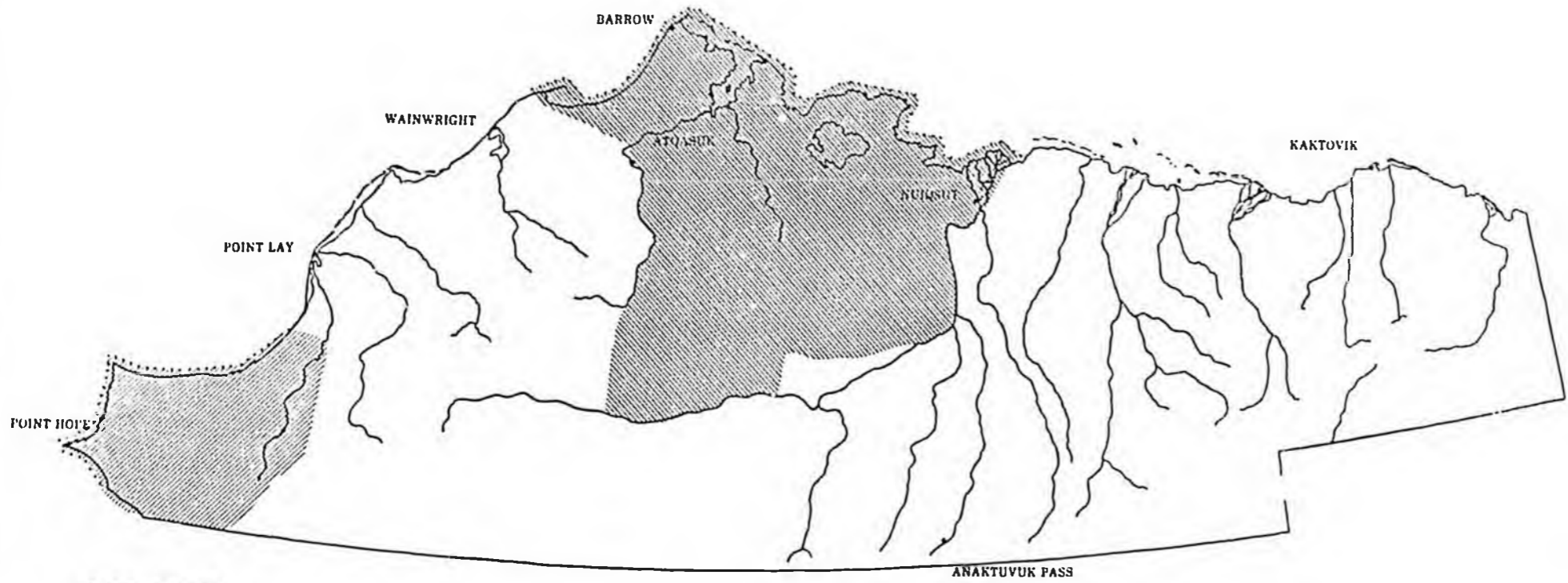


- LEGEND**
-  POINT LAY
 -  ATKASUK
 -  NUIQSUT
 -  3-Mile Limit (Representational Only)

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

JANUARY 1, 1983

WICKERSHAM & FLAVIN



LEGEND
[Cross-hatch pattern] POINT INFLUENCE
[Dotted line] 3-Mile Limit (Representational Only)

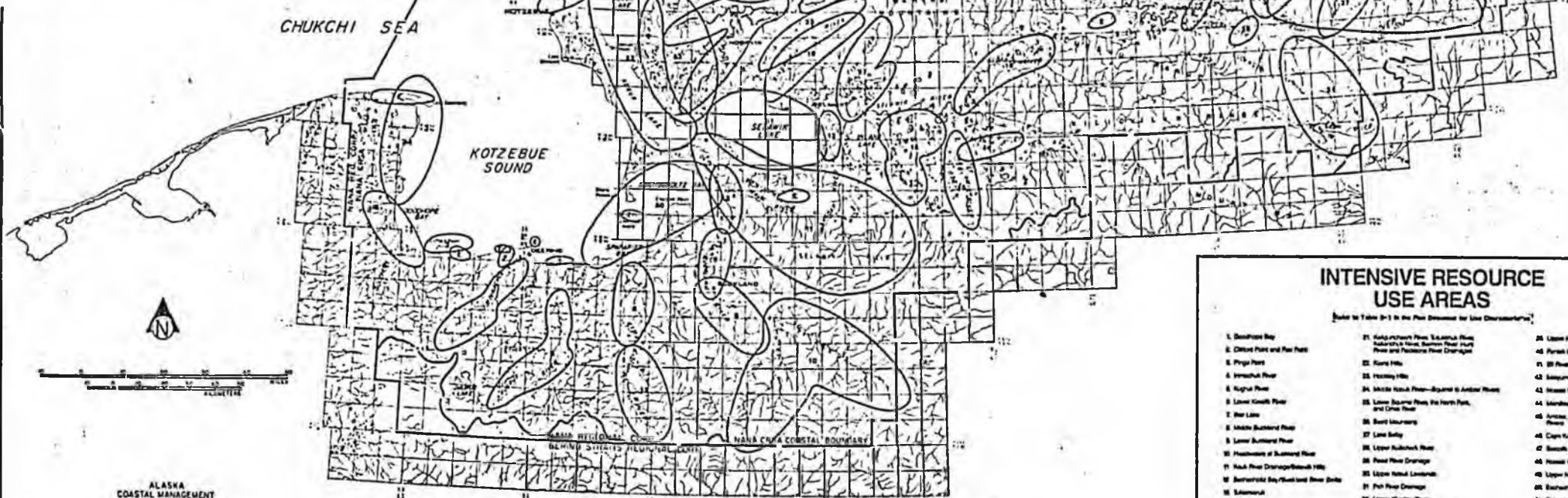
NORTH SLOPE BOROUGH
COMPREHENSIVE PLAN
MAP 11C
VILLAGE AREAS OF INFLUENCE

JANUARY 1, 1983

WICKERSHAM & FLAVIN

ARCTIC
OCEAN

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



ALASKA
COASTAL MANAGEMENT
PROGRAM

INTENSIVE RESOURCE
USE AREAS

(Refer to Table D-1 in the Plan Document for Area Descriptions)

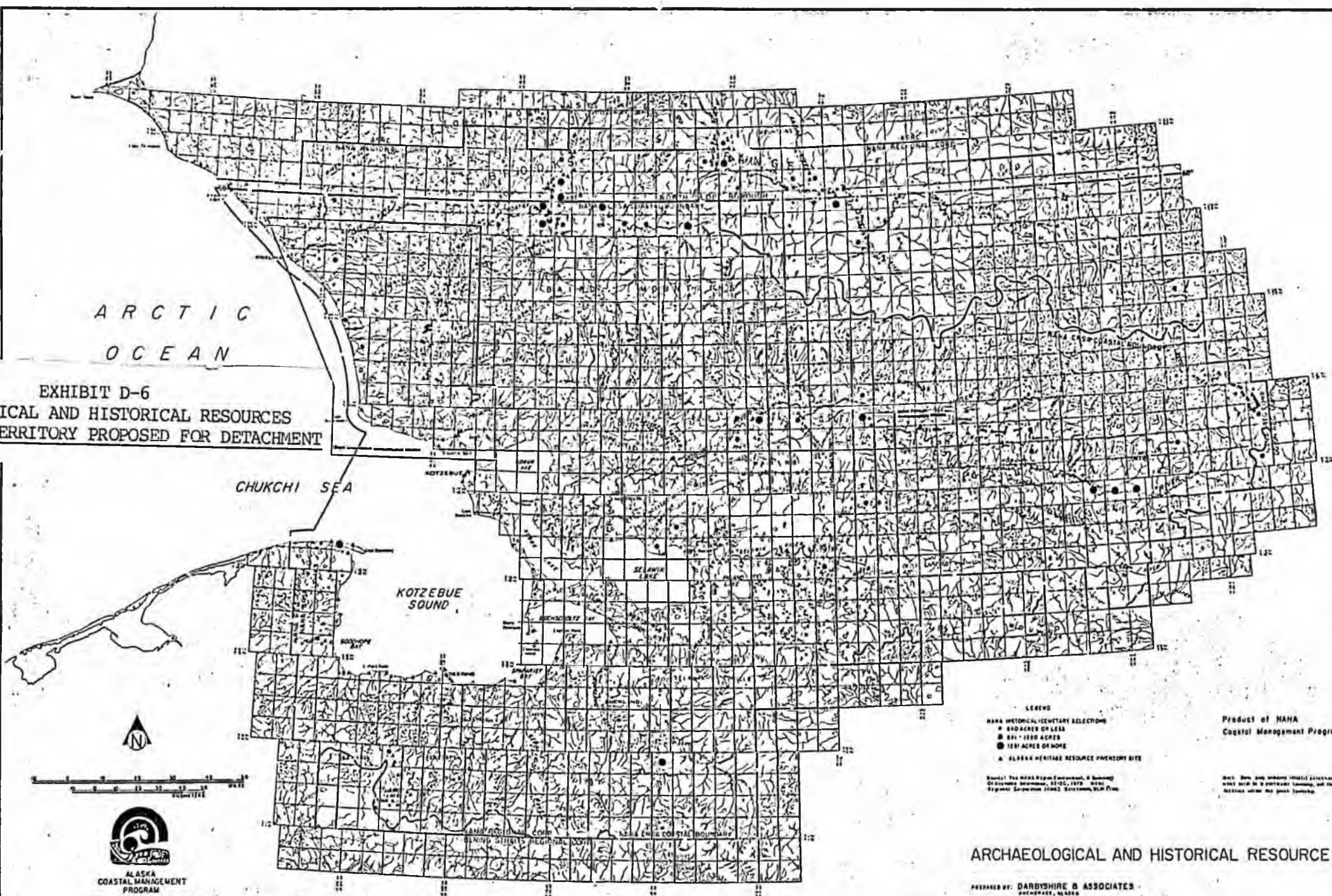
- | | | |
|---|--|--|
| 1. Sushitov Bay | 21. Koyuk River, Koyuk River
Subsidiary Flow, Bottom River Flow
Flow and Fishery Flow Drainage | 25. Upper Kuskokwim River Drainage |
| 2. Chukchi Point and River Flow | 22. Koyuk River | 26. Porcupine Lake |
| 3. Porcupine Lake | 23. Yonkoyuk Hills | 27. 20 River Trapping Area |
| 4. Inuvialuk River | 24. Middle Kuskokwim—Seward to Anbar River | 28. Seward Mountains |
| 5. Kuyuk River | 25. Lower Kuskokwim, the North Fork,
and Cape River | 29. Wasatch Mountains |
| 6. Lower Kuskokwim River | 26. Seward Mountains | 30. Mendenhall River |
| 7. Bear Lake | 27. Lake Selkirk | 31. Anbar, Shungnak, and Niglituk
River |
| 8. Middle Kuskokwim River | 28. Upper Kuskokwim River | 32. Cape Krusenstern |
| 9. Lower Kuskokwim River | 29. River Flow Drainage | 33. Seward River Delta |
| 10. Hatcher's of Seward River | 30. River Flow Drainage | 34. Kuskokwim River Mouth |
| 11. Kuskokwim River Drainage/Beaufort Hills | 31. Upper Kuskokwim | 35. Upper Kuskokwim River Trapping Area |
| 12. Beaufort Bay/Beaufort River Delta | 32. Pot River Drainage | 36. Ekwok Bay |
| 13. Seward Lake | 33. Upper Kuskokwim River | 37. Seward Lake |
| 14. Seward River | 34. Upper Kuskokwim River | 38. Kuskokwim Lake |
| 15. Seward River | 35. South Kuskokwim River | 39. Kuskokwim River Delta |
| 16. Seward River Delta Area | 36. South Kuskokwim River | 40. Cape Seward |
| 17. Pot River | 37. South Kuskokwim River Drainage | 41. Egg Gathering Area
J&E W |
| 18. Seward River Pot Camp | 38. Middle Kuskokwim River | |
| 19. Seward River | 39. Seward Lake | |
| 20. Main Channel of the Lower Kuskokwim | | |

ARCTIC
OCEAN

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

CHUKCHI SEA

KOTZEBUE
SOUND



LEGEND

- NAHA HISTORICAL/CEMENTARY SELECTIONS
- ◻ 500 ACRES OR LESS
- ◻ 501 - 1000 ACRES
- ◻ 1001 ACRES OR MORE
- ▲ ALASKA HERITAGE RESOURCE INVENTORY SITE

Product of NAHA
Coastal Management Program

Source: The NAHA Regional Inventory, a Summary
of Archaeological Resources, 1975; 1978; NAHA
Regional Inventory 1982; Statewide, DLM Files.

Note: Some sites indicate specific locations
while others are in general locations, and some
indicate other site types.



ALASKA
COASTAL MANAGEMENT
PROGRAM

ARCHAEOLOGICAL AND HISTORICAL RESOURCES

PREPARED BY: DARDYSHIRE & ASSOCIATES
ANCHORAGE, ALASKA

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

MEMORANDUM

State of Alaska
Community & Regional Affairs

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

DATE: November 21, 1985

FILE NO: 0312L

TELEPHONE NO:

FROM: Jeff
Deputy Commissioner

SUBJECT: Request for North
Slope Borough/NANA
Transportation
Maps

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

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

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

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

BILL SHEFFIELD, GOVERNOR

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

MUNICIPAL & REGIONAL ASSISTANCE DIVISION

November 21, 1985

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

Dear Mr. Lewis:

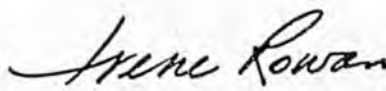
The Local Boundary Commission, at their November 20, 1985 meeting, directed that the Department request copies of available maps of the North Slope Borough showing all existing and proposed roadways and highways as well as all harbor/ports, air fields and barge and air transportation routes.

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

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

Please contact me if you have any questions.

Sincerely,


Irene Rowan
Deputy Director

cc: Local Boundary Commission Members

Marty Rutherford, Director
Municipal and Regional Assistance Division

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

BEFORE THE LOCAL BOUNDARY COMMISSION OF THE STATE OF ALASKA

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

EXHIBIT E
AFFIDAVIT OF INFORMATION SOURCES

STATE OF ALASKA)
: ss.
THIRD JUDICIAL DISTRICT)

MARTY RUTHERFORD, being first sworn, deposes and says:

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

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

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

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

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

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

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

(E) The stated assessed or estimated value of

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

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

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


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

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

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


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

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


Ms. Marty Rutherford, Director
Municipal and Regional
Assistance Division



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


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

BEFORE THE LOCAL BOUNDARY COMMISSION OF THE STATE OF ALASKA

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

EXHIBIT F
AFFIDAVIT OF SERVICE

STATE OF ALASKA)
: ss.
THIRD JUDICIAL DISTRICT)

MARTY RUTHERFORD, being first sworn, deposes and says:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Tom Klinkner
Wohlforth and Flint
900 West 5th Avenue, Suite 60
Anchorage, Alaska 99501

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Ms. Mary Williams, City Clerk
City of Ambler
General Delivery
Ambler, Alaska 99786

Ms. Lorraine Geary, City Clerk
City of Buckland
General Delivery
Buckland, Alaska 99727

Mr. John Dimmick, City Clerk
City of Deering
General Delivery
Deering, Alaska 99736

Ms. Florence Clark, City Clerk
City of Kiana
General Delivery
Kiana, Alaska 99749

Ms. Mary Frances Sage, City Clerk
City of Kivalina
P.O. Box 50079
Kivalina, Alaska 99750

Ms. Rosie Ward, City Clerk
City of Kobuk
General Delivery
Kobuk, Alaska 99751

Ms. Linda Brown, City Clerk
City of Kotzebue
P.O. Box 46
Kotzebue, Alaska 99752

Mr. James Adams
Noatak Traditional Council President
P.O. Box 81
Noatak, Alaska 99761

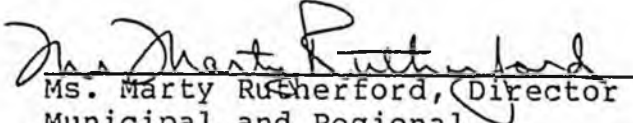
Ms. Vickie Ballot, City Clerk
City of Noorvik
P.O. Box 146
Noorvik, Alaska 99763

Ms. Kathy Jackson, City Clerk
City of Selawik
P.O. Box 49
Selawik, Alaska 99770

Ms. Dolly Custer, City Clerk
City of Shungnak
General Delivery
Shungnak, Alaska 99773


Ms. Kate Roney
Resource Management Specialist
National Park Service
P. O. Box 287
Kotzebue, Alaska 99752

Mr. Joe Britton
GCO Mineral Company
650 West 58th, Unit G
Anchorage, Alaska 99508


Ms. Marty Rutherford, Director
Municipal and Regional
Assistance Division



SUBSCRIBED AND SWORN TO before me this 22 day of
November, 1985.


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



RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

10/31/89
Date

North

Slope

Opposition

Brief

RECEIVED

DEC 18 1985

Received by M.K. Rutherford
DEPT. OF COMM. & REG. AFFAIRS 4:30 PM
DIV. OF MUNICIPAL & REG. ASST.

BEFORE THE LOCAL BOUNDARY COMMISSION
OF THE STATE OF ALASKA

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

BRIEF IN OPPOSITION TO PETITION FOR DETACHMENT

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1	A. Role of the Local Boundary Commission
4	B. Due Process
4	1. An Impartial Tribunal
6	2. Notice and Opportunity to be Heard
8	3. Expedited Briefing and Hearing Schedule
9	C. Laches
PAGE 10	I. HISTORY OF NORTH SLOPE BOROUGH BOUNDARIES AND ANCSA REGIONAL CORPORATION BOUNDARIES
PAGE 17	II. DESCRIPTION OF TERRITORY PROPOSED FOR DETACHMENT
17	A. Natural Geography
18	B. Historic and Contemporary Settlement and Land Use
20	C. Land Status
22	D. Red Dog Mine Project
22	1. Description of Red Dog Mine Project
22	2. Environmental and Socioeconomic Impacts of Project
25	3. Financing and Economic Impact of Project
27	4. Red Dog Planning Regime
28	5. Relation of Proposed Detachment to Mine Feasibility
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29	A. Social, Cultural and Economic Factors
34	B. Geographic Factors
35	C. Transportation and Communications Factors
37	D. Provision of Services
37	E. Distribution of Assets and Liabilities
PAGE 38	IV. APPLICATION OF BEST INTERESTS STANDARDS
39	A. Best Interests of State
44	B. Best Interests of Territory
46	C. Best Interests of North Slope Borough
PAGE 51	V. CONCLUSION

INTRODUCTION

A. ROLE OF THE LOCAL BOUNDARY COMMISSION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. DUE PROCESS

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

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

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

1. An impartial tribunal

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

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

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

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

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

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

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

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

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

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

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

2. Notice and Opportunity to be Heard

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

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

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

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

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

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

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

3. Expedited Briefing and Hearing Schedule.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I. HISTORY OF NSB BOUNDARIES AND ANCSA REGIONAL CORPORATION BOUNDARIES

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

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

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

on NSB incorporation and boundaries

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 7(a) of ANCSA states:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. DESCRIPTION OF TERRITORY PROPOSED FOR DETACHMENT

A. NATURAL GEOGRAPHY

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

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

B. HISTORIC AND CONTEMPORARY SETTLEMENT AND LAND USE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. LAND STATUS

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

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

TABLE A
LAND STATUS
PROPOSED DETACHMENT TERRITORY

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

Sources: Bureau of Land Management; Red Dog EIS

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

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

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

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

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

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

D. Red Dog Mine Project

1. Description of Red Dog Mine Project

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

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

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

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

2. Environmental and Socioeconomic Impacts of Project

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Financing and Economic Impact of Project

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

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

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

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

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

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

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

4. Red Dog Mine Planning Regime

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

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

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

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

5. Relation of Proposed Detachment to Mine Feasibility

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

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

III. REGULATORY FACTORS TO BE CONSIDERED

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

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

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

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

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

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

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

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

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

A. SOCIAL, CULTURAL AND ECONOMIC FACTORS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. GEOGRAPHIC FACTORS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. TRANSPORTATION AND COMMUNICATIONS FACTORS

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

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

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

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

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

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

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

D. PROVISION OF SERVICES.

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

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

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

E. DISTRIBUTION OF ASSETS AND LIABILITIES

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

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

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

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

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

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

IV. APPLICATION OF THE BEST INTEREST STANDARD

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

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

A. BEST INTERESTS OF THE STATE OF ALASKA.

1. Local Self Government

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

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

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

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

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

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

2. Precedents for Future Detachment

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

Beginning with the southern part of Alaska.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Economic Development and Employment

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. BEST INTERESTS OF THE NORTH SLOPE BOROUGH.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

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

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

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

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

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

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

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

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

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

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

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

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

Signature Page is Attached.

LIST OF ATTACHMENTS TO NORTH SLOPE BOPOUGH BRIEF

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Attachment S - DCRA map of Alaska municipalities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Attachment TT - Alaska's Mineral Industry, 1984.

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

Attachment VV - Map of natural resources and Alaska boroughs.

Attachment WW - North Slope Borough Land Management Regulations.

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

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

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

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

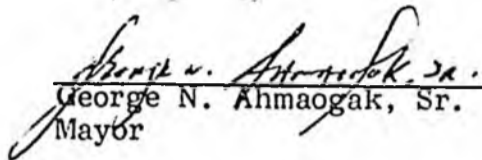
Attachment BBB - "Report to the Local Boundary Commission of the State of Alaska on the Petition to Detach the Lake Louise area from the Matanuska-Susitna Borough", September 9, 1982.

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

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

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

Respectfully submitted this 18th day of December, 1985.


George N. Ahmaogak, Sr.
Mayor

FOOTNOTES

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

Table #
NANA Region Population

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

Source: Red Dog Mine Project EIS

Table #
Average Annual Population Growth Rate

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

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

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

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