

ALASKA LEGISLATIVE COMMITTEE FILES 1965-1980 80/2

3843 SCRA NORTH SLOPE OPPOSITION BRIEF 79

RECEIVED

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

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

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

I. Introduction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

* * *

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. HEDLAND: Is any of that land populated?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Id. at p.215.

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

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

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

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

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

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

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

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

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

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

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

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

VI. The Proposed Detachment Should be Approved Without Delay.

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

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

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

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

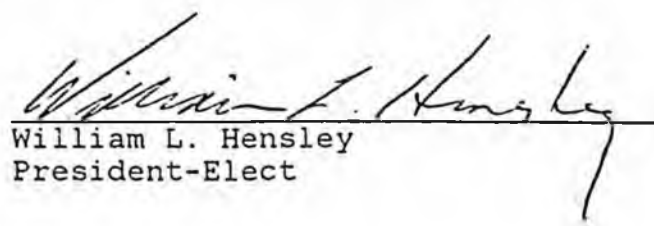
The North Slope Borough has raised no credible argument why the Commission should delay in considering the petition. The proposed detachment has been the subject of public debate for several years. The positions of the interested parties have been fully briefed and documented before the Commission. There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

VII. Conclusion.

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

DATED this 3rd day of January 1986.

NANA REGIONAL CORPORATION, INC.



William L. Hensley
President-Elect

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

2 THIRD JUDICIAL DISTRICT AT PALMER

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

7 Plaintiffs,)

8 v.)

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

14 Defendants,)

15 and)

16 NORTH SLOPE BOROUGH,)

17 Defendant-Intervenor.)

18 Case No. JPA-82-1131 Civ.

19 AFFIDAVIT

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

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

25 BOROUGH SERVICES AT PRUDHOE BAY - DEADHORSE

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

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

32 (a) Potable Water

(b) Sewage Treatment

(c) Solid Waste Disposal via Incineration

(d) Solid Waste Landfill

(e) Sludge Treatment and Disposal

(f) Police Protection

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- (g) Search and Rescue Services
- (h) Land Use Zoning and Regulation
- (i) Environmental Inspection and Protection
- (j) Administration, Finance, Legal and other

general administrative support for above services

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

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

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

NEGATIVE IMPACT OF FISCAL YEAR 1982 - 1983 BUDGET REDUCTION

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

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

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

	Original <u>82-3</u>	Substitute <u>82-3</u>	<u>Reduction</u>
17			
18	\$4,892,500	\$3,392,500	\$ 1,500,000
19			
20	7,224,500	5,724,500	1,500,000
21	8,910,000	7,410,000	1,500,000
22	4,662,100	3,662,100	1,000,000
23			
24	6,180,700	5,680,600	500,100
25	538,700	438,300	100,400
26	3,100,100	2,800,100	300,000
27			
28	1,759,500	759,500	1,000,000
29	7,102,300	5,602,300	1,500,000
30	5,367,600	4,092,600	<u>1,275,000</u>
31	TOTAL REDUCTIONS		<u>\$10,175,500</u>
32	49,738,000 ±		

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

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

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

9. The North Slope Borough cut in excess of 36 positions spread over various departments.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 BASIC SERVICES PROVIDED BY THE NORTH SLOPE BOROUGH

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

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

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

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

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

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

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

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

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

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

DATED: Jan 21 1983

Eugene Brower
EUGENE BROWER, Mayor of the North Slope Borough

SUBSCRIBED AND SWORN to before me this 31 day of January, 1983.

Richard C. [Signature]
Notary Public in and for the State of Alaska. My Commission Expires: 11/21/83

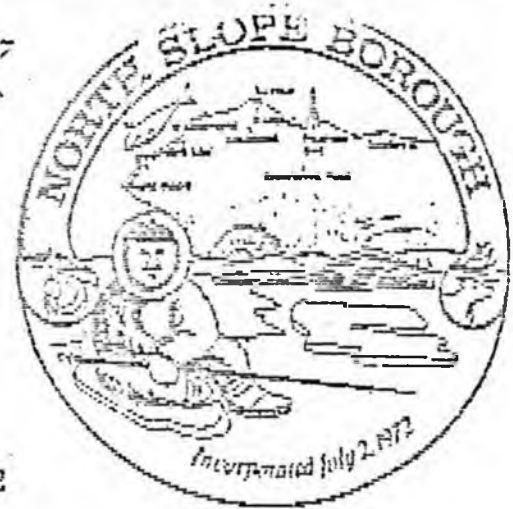
NORTH SLOPE BOROUGH

OFFICE OF THE MAYOR

P.O. Box 59
Barrow, Alaska 99723

Phone: 907-852-2611

Eugene Brower, Mayor



March 12, 1982

Assembly
North Slope Borough
Barrow, Alaska 99723

Gentlemen and Lady:

Enclosed you will find Ordinance 82-3 (Substitute) which now totals \$201,604,800 in comparison to the \$214,180,300 of the original submission.

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

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

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

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

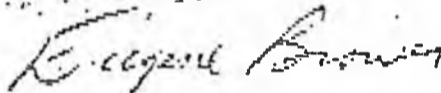
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Exhibit A, page 1

	<u>Original 82-3</u>	<u>Substitute 82-3</u>	<u>Reduction</u>
Administration & Finance	\$5,190,700	\$5,680,000	\$ 500,100
Legal	538,700	. 438,300	100,400
Planning & Community Services	3,100,100	2,800,100	300,000
Environmental Protection & Conservation	1,759,500	759,500	1,000,000
Health	7,102,300	5,602,300	1,500,000
Housing Agency	5,367,600	4,092,600	1,275,000
Debt Service	100,370,000	100,370,000	--
Down Payment Cap. Projects	15,383,400	15,383,400	--
TOTAL General Fund	\$197,925,700	\$185,350,200	\$12,575,500
Service Area 10 Fund	16,254,600	16,254,000	--
TOTAL	\$214,180,300	\$201,604,800	12,575,500

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

Sincerely,



Eugene Brower, Mayor
North Slope Borough

*

Exhibit A, page 2

RECEIVED

DEC 18 1985

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

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

COMMENTS OF NANA REGIONAL CORPORATION, INC. SUPPORTING
PETITION FOR DETACHMENT FROM THE NORTH SLOPE BOROUGH

Pursuant to 19 AAC 10.530, the NANA Regional Corporation, Inc. ("NANA") submits the following comments supporting the Petition for Detachment from the North Slope Borough filed by the Commissioner of the Alaska Department of Community and Regional Affairs ("Petitioner") on November 22, 1985.

I. Introduction.

NANA supports the boundary change requested by Petitioner. The proposed boundary change is essential to the formation of a borough for the NANA Region (Brief of Petitioner, pp. 14-18). NANA views the formation of a borough for our region as essential to the well being of our shareholders who comprise approximately 85 percent of the population of the NANA Region. Crucial issues of local control, appropriate land use, and preservation of traditions and culture, all require the formation of a borough for this region. This view is held not only by the NANA Regional Corporation, but also by the other major institutions in our region such as the Maniilaq Association, the non-profit regional corporation servicing our area, and the Northwest Arctic School District.

NANA also is the principal owner of private property within the area proposed for detachment from the North Slope Borough (the "Detachment Area"). NANA is planning the development of the Red Dog mineral deposit on NANA-owned land in the Detachment Area. This development will provide substantial economic benefits to NANA's shareholders and the NANA Region. The proposed boundary change will unify local government responsibility for the area containing the Red Dog Mine development, and the region that will experience the major economic effects of that development. This unification of local government responsibility will facilitate the orderly and efficient development of the Red Dog Mine, and the planning for, and delivery of services to, the area principally affected by that development. For these reasons NANA supports the proposed boundary change even though NANA and the Kotzebue Village Corporation will be the second and third largest tax-payers, respectively, in the borough for the NANA Region.

The brief of Petitioner demonstrates that the proposed boundary change is in the public interest and meets the legal criteria for approval of a detachment. These comments address

several points which NANA believes merit particular attention by the Commission. First, the boundary that petitioner seeks to change resulted from historic accident and not from a conscious policy choice under statutory standards. Second, the Commission's principal concern in this proceeding should be statewide interests, as opposed to local interests, and the proposed boundary change serves important statewide interests. None of the harm to statewide interests that might arise from the moving of territory from an organized local government into the Unorganized Borough will result here, because territory in effect is being moved from one organized borough to another. Third, the proposed boundary change is in the best interest of the North Slope Borough, particularly when significant non-economic factors are given due consideration. Fourth, the proposed boundary change clearly is in the best interest of the Detachment Area and the NANA Region as a whole. Finally, the imminence of major development in the NANA Region requires that a borough for that region, and this proposed boundary change, be approved without delay.

II. The Proposed Boundary Change Corrects an Inappropriate Boundary.

The southwest boundary of the North Slope Borough was established through historic accident rather than through conscious policy choice. When the Local Boundary Commission reviewed the North Slope Borough's incorporation in 1971 and 1972, the Commission was led to believe that the southwest boundary of the North Slope Borough would coincide with the boundary to be established between the Arctic Slope Region and the NANA Region under the Alaska Native Claims Settlement Act (Brief of Petitioner, pp. 3-7). The boundary between the two regions had not been established at that time, because it was not known with which region the village of Point Hope would choose to associate. Later, Point Hope chose to be part of the Arctic Slope Region. Once this choice had been made, NANA and Arctic Slope Region representatives negotiated the current boundary between the two regions. 1/

The negotiators for NANA and Arctic Slope Region drew the mutual boundary of their regions to reflect, as nearly as possible, the historical, traditional and existing use and occupancy of land in Northwest Alaska. Using this standard, the proper boundary between the two regions is the crest of the

1. Petitioner's Brief, at p. 7, implies that this boundary was determined unilaterally by the Secretary of the Interior. In fact, the Secretary of the Interior merely adopted the boundary that the people of the two regions had agreed on among themselves.

Brooks Range. All watersheds flowing north from the crest of the Brooks Range are considered part of Arctic Slope Region, and those flowing south part of the NANA Region. This explains why the regions' boundary is not a straight line and is drawn in such a way as to include in the NANA Region Brooks Range drainages such as Wrench Creek, Kelly River, Avan River, Kugururok River, Trail Creek, Tunit Creek, Nimiuktuk River, and others. The Brooks Range crest is also a dividing line that properly places within the NANA Region entire major drainages of extreme importance to the people of the NANA Region such as the Singoalik, Kivalina, Wulik and Noatak Rivers.

In the record of proceedings before the Local Boundary Commission on the North Slope Borough incorporation, the Northwest Arctic Native Association raised the issue that the southern boundary proposed for the North Slope Borough did not conform to the traditional cultural and geographic boundary of the Arctic Slope Region. However, nothing in the record cited by Petitioner indicates that this issue was considered in detail. This is unfortunate, because the boundary negotiated for the NANA and Arctic Slope Regions, unlike the 68th Parallel Boundary of the North Slope Borough, conforms closely to standards for borough boundaries in AS 29.18.030, in particular that (1) "the population of the area is interrelated and integrated as to its social, cultural and economic activities", and (2) "the boundaries of the proposed borough conform generally to natural geography..." Now is the time for the Local Boundary Commission to correct this boundary discrepancy.

III. The Proposed Boundary Change Serves Important Statewide Interests.

Article X, Section 12 of the Alaska Constitution provided for a Local Boundary Commission so that local government boundaries would be established in accordance with statewide needs rather than solely to serve local interests. This function of the Commission has been recognized from the early years of statehood:

Article X [of the Alaska Constitution] was drafted and submitted by the Committee on Local Government, which held a series of 31 meetings between November 15 and December 19, 1955. An examination of the relevant minutes of those meetings shows clearly the concept that was in mind when the local boundary commission section was being considered: that local political decisions do not usually create proper boundaries and that boundaries should be established at the state level. The advantage of the method proposed, in the words of the committee --

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

Fairview Public Utility District No. 1 v. City of Anchorage, 368 P.2d 540, 543 (Ak. 1962) (footnotes omitted). Other decisions have also emphasized the importance of this function of the Commission:

The basic purpose for creating the boundary commission and conferring upon it the powers that it possesses was to obviate the type of situation that existed here where there was a controversy over municipal boundaries which apparently could not be settled at the local level. As we pointed out in the Fairview case, the concept that was in mind when the local boundary commission section of the Constitution was being considered by the constitutional convention was that local political decisions do not usually create proper boundaries and that boundaries should be established at the State level.

Oesau v. City of Dillingham, 439 P.2d 180, 183-184 (Ak. 1968) (footnote omitted).

This proposed boundary change calls for the Commission to serve its constitutional function of considering statewide interests as opposed to local concerns. The State has two major interests that will be served by the proposed detachment. The detachment will promote local self government in northwest Alaska, and will promote resource development and employment in northwest Alaska.

The State has a substantial interest in maximizing local self-government in northwest Alaska. It is the State's policy, expressed in Article X, Section 1 of the Alaska Constitution, "to provide for maximum local self-government." In northwest Alaska, this goal will be served best by forming a borough for the NANA Region. The Detachment Area is an indispensable part of a borough for the NANA Region. A financial analysis conducted for NANA indicates that a borough for the NANA Region presently would at best have marginal financial feasibility. Even under optimistic assumptions, revenues from the

Region's present tax base, principally located in the City of Kotzebue, would barely cover the local costs of the three mandatory borough functions of planning, tax collection and education (Brief of Petitioner, pp. 15-17). Assuring sufficient funding for these mandatory functions, plus other borough services, requires the additional tax base that the Red Dog Mine development will provide. Hence, this proposed boundary change is an essential and vital prerequisite to providing maximum local self-government to northwest Alaska and the NANA Region.

In addition to maximizing local self-government, the State has a substantial interest in promoting resource development and employment in northwest Alaska. The development of the Red Dog mineral deposit will provide significant employment opportunities in northwest Alaska, an area in urgent need of such opportunities. The proposed Red Dog Mine will be served by the State-financed Delong Mountain Transportation Project, consisting of a road and port facility for the export of ore from the mine. The port facility and the road are located within the NANA Region; the port and over 85 percent of the road will be located outside the present North Slope Borough boundary. Two villages in the NANA Region, Kivalina and Noatak, are located 18 and 25 miles, respectively, from the proposed port or road. The efficient and orderly development of the Red Dog Mine, and of other mineral deposits that could be served by the Delong Mountain Transportation System, will be best served if one political subdivision provides local government planning, regulation and services for the entire area affected by the Delong Mountain Transportation System and the Red Dog and neighboring mineral deposits. A unified approach to such matters as land use planning and regulation, environmental protection, and local government permitting will serve the public interest better by providing comprehensive and consistent planning and regulation for the entire region. It will also reduce substantially the regulatory burden upon the development of these projects. Additionally, the physical proximity of a borough government for the NANA Region, most likely based in Kotzebue, as compared to the North Slope Borough government located in Barrow, should enhance the efficiency and effectiveness of local government decision-making related to the Red Dog development (Brief of Petitioner, pp. 25-27).

The proposed boundary change involves no harm to any State interest. The proposed boundary change becomes effective only upon the approval of the incorporation of a borough for the NANA Region. None of the harm to statewide interests that might result from moving territory from an incorporated borough to the Unorganized Borough is at issue here. The effect of the proposed boundary change is to transfer territory from one organized borough to another. The treatment of past proposals to "disincorporate" organized borough territory provides no precedent for

action on this petition, and approving this petition does not establish a precedent to support future "disincorporation" proposals. Approval of the present petition only calls upon the Commission to perform the function approved by the Alaska Supreme Court in the Fairview and Oesau cases - adjusting local government boundaries to serve statewide needs, as opposed to local interests.

IV. The Proposed Boundary Change is in the Best Interest of the North Slope Borough.

The "best interest" standard in 19 AAC 10.230(a) requires a balancing of the advantages and disadvantages to the North Slope Borough arising from the proposed boundary change. The possibility that some disadvantage to the North Slope Borough will result from the proposed boundary change does not defeat the boundary change if anticipated benefits to the North Slope Borough outweigh those disadvantages. The proposed detachment provides benefits to the North Slope Borough that significantly outweigh the minimal change in its tax base that will result from the boundary change.

The jurisdiction of the North Slope Borough covers a vast territory, approximately 87,500 square miles. The seat of borough administration is in Barrow. For the purpose of delivering borough services from Barrow, the Detachment Area is on the most remote periphery of the North Slope Borough. No estimate of the cost to the North Slope Borough of delivering services to the Detachment Area has been developed, but it is clear that the logistical difficulties inherent in that service delivery (Brief of Petitioner, pp. 24-27) will make it extremely expensive.

The major access to the Detachment Area will be the port and road comprising the DeLong Mountain Transportation System. The port and over 85 percent of the road will be located outside the present North Slope Borough boundary. The efficient and orderly development of the Red Dog Mine and its surroundings will require a unified planning and administrative effort for the Detachment Area and the DeLong Mountain transportation area. Such an effort will be far more expensive and cumbersome if it requires cooperative action by two local governments, rather than being undertaken exclusively by one.

Most of the persons to be served in the Detachment Area now have and will continue to have economic, social and cultural ties to the NANA Region rather than to the North Slope Borough, increasing the difficulties of communication and participation necessary to the effective delivery of services from the North Slope Borough. That the persons in the Detachment Area lack ties to the North Slope Borough also raises the issue of their effective representation by a North Slope Borough government, and the

effect on that government of disharmony and dissension between the people of the NANA and Arctic Slope Regions (Brief of Petitioner, p. 34).

The North Slope Borough will benefit significantly by avoiding these burdens upon its finances, operations, and political processes. To be balanced against this significant benefit from the proposed boundary change there is only a minimal loss to the tax base of the North Slope Borough. The full development of the Red Dog Mine will result in an assessed valuation in the Detachment Area of up to \$250 million. While this tax base is essential to the viability of a borough for the NANA Region, it represents a mere 2 percent of the current \$12,268,737,790 of assessed valuation in the North Slope Borough. Moreover, oilfield development in the North Slope Borough during 1986 and 1987 will add several billion more dollars to the North Slope Borough tax base. Even the North Slope Borough's own financial advisor can identify no significant harm to the borough's financial position that could result from the proposed boundary change (Brief of Petitioner, Attachment 35). The North Slope Borough financial advisor's only concern rests on the absurd premise that the proposed boundary change could be viewed as a precedent for detaching Prudhoe Bay from the North Slope Borough. Any objective evaluation of the financial effects of the proposed boundary change on the North Slope Borough will conclude that those effects are outweighed by benefits that indicate the detachment is in the North Slope Borough's best interest. Providing such an objective evaluation is, of course, precisely the function of the Commission under Article X, Section 12 of the Alaska Constitution.

V. Approving the Proposed Boundary Change at this Time is in the Best Interest of the Detachment Area and the Nana Region.

The people of the NANA region should not be delayed in their efforts to establish a financially viable borough government to address the imminent effects of the Red Dog Mine development. Construction of the mine, road and port facilities is expected to begin during the summer of 1986. Direct employment resulting from construction activities is expected to reach 143 full time equivalent jobs between 1986 and 1988. From 1986 to 1990, there will be approximately 500 construction jobs available. One estimate has projected a gross payroll of \$8.8 million per year for the period 1986 to 1988.

Direct employment resulting from the operation of the mine is expected to reach between 350 and 400 jobs, with an annual payroll of between \$11.2 million and \$12.9 million. Additionally, an estimated 156 to 303 secondary and indirect jobs are expected to be created. An estimated 78 to 135 of these secondary and indirect jobs are expected to be created in Kotzebue and surrounding villages.

As of 1983, a study estimated that there were approximately 1,200 full time equivalent jobs in the NANA Region (Job Availability and Market Relations for the NANA Region, 1982-1990, Darbyshire and Associates, 1983, Attachment 21 to Brief of Petitioner). Development and operation of the Red Dog Mine thus will increase employment in the NANA Region by nearly 50 percent within the next two to four years. The dramatic economic and social impact of this change in the NANA Region should be evident. To plan and otherwise prepare for such change at the local level, NANA believes that it is critical that a borough be formed at the earliest opportunity.

It also is the view of NANA and the residents of its villages (especially Kivalina and Noatak) that there should be but one transportation facility (road and port) serving the Red Dog Mine and the surrounding area (including the Lik deposit). Furthermore, all lands to be developed in this portion of the region, including the transportation facilities serving them, should be located in one borough. This will insure that local residents set the course of development desired by them through the actions of their elected borough representatives, and that their desires are carried out through the exercise of mandatory planning and zoning functions of their borough. As things stand now, these decisions of critical importance to our people are being made in Barrow, hundreds of miles from where our people live.

Presently, a petition to incorporate a borough for the NANA Region is circulating among residents of the region. It is expected that the petition will be ready for submission to the Department of Community and Regional Affairs in January 1986. Incorporating a borough is only the first step toward preparing a local government response to the imminent development impact described above. Borough staff must be hired. Internal operating procedures must be developed. Plans must be made, policies debated, and implementing legislation passed. Even if the incorporation process proceeds without delay, months will pass before actual programs and regulatory measures are in place. No more time must be allowed to pass.

Approval of the proposed boundary change under the schedule adopted by the Local Boundary Commission will allow ample time for public input to, and consideration of, the proposed boundary change. Meetings, correspondence and work sessions between representatives of the NANA Region and the North Slope Borough concerning the proposed boundary change began in 1982 and continued through 1985. Representatives from the North Slope Borough have included Mayors Eugene Brower and George Ahmaogak, the North Slope Borough Assembly, the North Slope Borough Planning Commission, and current and former North Slope Borough Planning Directors and their staff. NANA Region repre-

sentatives have included the NANA Regional Corporation, the Maniilaq Association, the Northwest Arctic School District, and the City of Kotzebue. Meetings have taken place in Barrow, Kotzebue, Red Dog, Anchorage, and the villages of the North Slope Borough.

From 1982 through 1983, several attempts were made to bring the North Slope Borough Assembly and Administration members to the NANA Region for a tour of the Red Dog site. This resulted in one visit to the site during the summer of 1983. Throughout 1983, several meetings and work sessions with the North Slope Borough Assembly were held in both Barrow and Kotzebue. In October of 1983, materials describing the Red Dog project were submitted to then Mayor Eugene Brower for the North Slope Borough Assembly to review. A formal request to the North Slope Borough Assembly to detach lands in the southwest corner of the borough was made during their November meeting. In December of 1983, those same materials were submitted to the North Slope Borough Planning Commission for their consideration, followed by a formal request to redraw the borough's southwest boundary in January of 1984.

Correspondence, meetings and work sessions increased during the 1984 - 1985 period. Shortly after the North Slope Borough mayoral election in the fall of 1984, work began with the newly elected Mayor George Ahmaogak and his administration. This was followed by over a half dozen hearings and work sessions concerning this matter conducted in Barrow by the North Slope Borough Planning Commission. Thus, the present petition has been preceded by over three years of public review and discussion.

V. Conclusion.

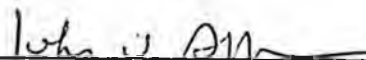
For the reasons stated above, it is in the best interests of the State, the area to be detached, and the North Slope Borough, to approve this proposed boundary change without delay. NANA requests that the Local Boundary Commission approve the proposed boundary change subject to voter approval of a borough for the NANA Region including the territory to be detached.

Respectfully submitted this 18th day of December 1985.

NANA Regional Corporation, Inc.

RECEIVED

DEC 18 1985


John W. Schaeffer
President

Dept. of Comm. & Reg. Affairs
Div. of Municipal & Reg. Ass't.

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)
_____)

REPLY TO NSB BRIEF IN OPPOSITION TO PETITION FOR DETACHMENT

Pursuant to the provisions of 19 AAC 10.560, this is in reply to the December 18, 1985 "Brief In Opposition To Petition For Detachment", prepared by the North Slope Borough (Respondent). The following is a rebuttal of the pertinent issues raised in the Respondent's Opposition Brief.

I. DUE PROCESS

The Petitioner has made every effort to be open and fair regarding this matter. Wherever the responsibility of the Department of Community and Regional Affairs to serve as staff to the Local Boundary Commission has had the potential to conflict with Commissioner Notti's role as Petitioner, those potentially conflicting responsibilities have been unconditionally delegated to an independent agency.

A. Impartial Tribunal

The participation in these proceedings by Commission Member Bert Greist is being challenged by the Respondent because of an alleged appearance of conflict of interest. The Petitioner believes that any questions concerning the propriety of Mr. Greist's participation rightfully belong before the Commission. The Petitioner's wish is only that the proposed detachment be judged fairly on its merits of substance.

B. Notice and Opportunity to be Heard

As was evidenced in the Petitioner's Brief and the Brief dated December 18 from the NANA Regional Corporation, the question of detachment has been considered extensively by

the North Slope Borough over the past three years. The Respondent notes that it has had only seventeen working days to prepare its Brief. Thus, the Respondent claims that it has not had an adequate opportunity to prepare for this action. This is not true. In addition to the considerable effort over the past three years, the Respondent has been intensively preparing for the petition to be submitted by Commissioner Notti since October. A substantial number of staff and outside consultants have been working on the matter. While seventeen "working days" have lapsed between the date of the petition and the date of the Respondent's Brief, it is possible and indeed likely that the Respondent has spent one hundred or more full time equivalent staff days on its brief. The extent of the resources dedicated to the effort of the brief would be a much more accurate measure of the adequacy of the time permitted for response. Recall that a couple of years ago dozens of carpenters built a house in Palmer in a matter of a few hours.

The Respondent notes that the petition and exhibits fill a 35 pound box. While that is so, the Petition and Brief comprise only 68 pages, compared to 54 pages in the Respondent's Opposition Brief. The bulk of the Petitioner's submission consists of 38 attachments to the Brief. Of those, 15 are documents either prepared by the North Slope Borough or are a part of the record relating to the original incorporation of the Borough. Letters and maps totalling 35 pages make up 13 of the other attachments. Most of the remaining 10 attachments are documents that the Borough is presumably very aware of and familiar with (e.g. Alaska Taxable, EIS Statement for the Red Dog Mine, etc.).

The Respondent claims impropriety in the fact that the Petitioner received a "document dated October 4, 1985 and titled 'Example Detachment Petition prepared by NANA'". The Respondent goes to great length to note similarities in elements of that document and the Petition. Thus, the

Respondent concludes that representatives of NANA had more notice of the petition and greater opportunity to prepare for this action. Ironically, the referenced document was originally prepared last summer by Tom Klinkner (Attorney with the firm of Wolforth and Flint) for use by the North Slope Borough when it was considering detachment. Similarities to the brief are only coincidental. The Petitioner independently arrived at the same conclusions as Mr. Klinkner. There exist only so many ways to make pertinent arguments.

The Respondent references the resolution passed by the Alaska Municipal League. This resolution simply states that the Local Boundary Commission should view these actions carefully. The record clearly demonstrates that the Commission is doing this. The implication that the Alaska Municipal League finds the process or the timelines established for this action to be inappropriate is simply not true.

The Petitioner believes that it and the Local Boundary Commission have and will continue to provide every practical opportunity to the North Slope Borough and other interested parties to fairly and fully participate in all proceedings relating to this matter.

C. Expedited Briefing and Hearing Schedule

The Respondent claims that the Commission has set an expedited briefing and hearing schedule and that this important matter will not be given the consideration it deserves. The time schedule is not unreasonable, nor is it without precedent. For example, two years ago on November 29, 1983, the Commission received a petition for a change in the boundaries of the City of Kodiak using the same process to which the current petition is subject. The Commission held its hearing regarding that petition on January 7, 1984, and submitted its recommendation on the matter to the Legislature twelve days later. With respect to the current proceedings, it should be noted for the record that the Commission has agreed

only to attempt to reach a decision on the petition in time for possible action by the Second Session of the Fourteenth Legislature. The Petitioner is confident that should the Commission be unsatisfied that it has received all information which is relevant and available, the decision will be delayed until that information is provided.

The Petitioner believes, however, that the issue can be fully considered given the written material received and the testimony to be provided at the extensive public hearings to take place on this matter. The Local Boundary Commission has agreed to hold five separate hearings directly or via teleconference in Anchorage, Noatak, Kotzebue, Kivalina, Ambler, Shungnak, Noorvik, Selawik, Buckland, Deering, Kiana, Point Hope, Barrow, Anaktuvuk Pass, Atkasuk, Nuiqsut, Point Lay, Wainwright and Kaktovik.

As the Petitioner stated in its brief, given the pending development in the territory proposed for detachment, it is essential that this detachment be considered now. The issues concerning this matter are not new issues. They are not going to change. Residents of the NANA Region are seeking to form a borough. They are entitled to know whether that borough will be economically viable by having the Red Dog mine site within its boundaries. The residents want and need the borough without delay in order to implement local control possible only through a municipality. It will take time following incorporation to create an optimally organized and functioning borough. Delay in these proceedings will only frustrate the desires of the residents of the NANA Region to seek such local control.

D. Laches

The Respondent claims that because no formal challenge of the Borough's boundaries was initiated by NANA representatives over the past thirteen years, the defense of laches and the statute of limitation on the challenge of the

formation of a municipality (AS 29.18.150) are now an obstacle to the proposed detachment. This claim is without merit. The proposed detachment is not a challenge to the original incorporation, but rather is a proposed municipal boundary change fully authorized by State law.

II. ORIGINAL INCORPORATION OF THE NORTH SLOPE BOROUGH

The Respondent has alleged that, "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."

For the Respondent to state that NANA representatives "acquiesced" (i.e. agreed to without protest) and "supported" the boundaries of the proposed North Slope Borough is a gross and apparently deliberate misrepresentation of the facts. As evidenced in the Petition and Brief, the record concerning the incorporation of the North Slope Borough clearly indicates the position of the Northwest Alaska Native Association. Robert Newlin, President of the Association stated in a letter considered by the Commission (see Attachment # 5 to Petitioner's Brief for detachment) that, "I do question and strongly oppose the extent of their (proposed North Slope Borough) boundaries. If I am not mistaking, [sic] one of the provisions in proposing for a borough system is that the region involved must have direct or common interrelationships among its peoples, land, governmental agencies, or whatever. ASNA's proposed borough boundaries include all lands above the 68th parallel which includes much land in the established Northwest Alaska Native Association region, namely the upper Noatak River and its tributaries. Enclosed is a map illustrating the

established NANA region and the land in which we feel the proposed ASNA borough is trespassing. Again, on behalf of NANA, I strongly oppose ASNA's proposed borough boundary selections." (emphasis and clarification added).

Willie Hensley, President-Elect of the NANA Regional Corporation, advised the Local Boundary Commission on November 20, 1985, that at the time of the incorporation of the North Slope Borough, there was significant opposition in the NANA region to this encroachment. Mr. Hensley indicated, however, that because the Local Boundary Commission did not conduct a hearing in the NANA region, representatives were unable to adequately express their concerns over the matter. The record of the North Slope Borough incorporation indicates the lack of consideration given to Mr. Newlin's letter (see DCRA Brief - page 5).

The Respondent also discounts any significant relationship between ANCSA regional corporation boundaries and jurisdictional boundaries of political subdivisions of the State. Again, the Petitioner stresses that standards for the formation of ANCSA regional corporation boundaries are consistent with standards governing the formation of boroughs (see DCRA Brief - page 7). Further, State laws do directly link regional corporation boundaries to those of political subdivisions of the State.¹

The Respondent goes to great length to describe the disparities between the boundaries of existing boroughs and those of ANCSA regional corporations. Conveniently omitted from the Respondent's discussion however, is the fact that nearly every one of those boroughs was formed twenty-two years ago or earlier. This was many years before the idea of regional corporations was conceived. In fact, the only borough to be formed subsequent to the enactment of ANCSA is the North Slope Borough. The Petitioner has demonstrated in its Brief accompanying the petition for detachment that the Local

Boundary Commission was concerned with the relationship between the two prospective boundaries. The Petitioner has further documented that the Commission was led to believe, incorrectly, that the proposed borough boundaries would be coterminous to those of the prospective Arctic Slope Regional Corporation (see DCRA Brief - pages 4-3).

III. REGULATORY FACTORS TO BE CONSIDERED

The administrative regulations for detachment distinguish between standards which must be met and factors which, in the course of the Commission's decision, must be considered. The former consist of a determination by the Commission that the detachment is in the best interests of (1) the State, (2) the territory to be detached and (3) the borough. The factors which the Commission must consider are (1) whether the social, cultural and economic characteristics of the population of the territory are substantially different or in conflict with the population of the rest of the borough, (2) whether geographic considerations preclude the provision of borough services, (3) whether the lack of transportation facilities precludes the communication and exchange necessary for responsive and integrated local government, (4) whether services will be provided following detachment and (5) the provision for distribution of assets and liabilities.

There is no requirement that the latter must be met to any degree, cumulative or otherwise. This notwithstanding, the Petitioner believes that these factors do support the proposed detachment.

A. Social, cultural and economic factors

The Respondent claims that: "Generally, the territory is at the margin of overlapping subsistence usage by residents of NANA region and the North Slope Borough . . .".

Further, the Respondent claims, "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". If this is the case, why did the North Slope Borough fail to identify these locations as areas of use in its Coastal Management Program and Comprehensive Plans? (see DCRA Brief - Attachment 30).

The Respondent claims "historically and today, there is no uniform region-wide pattern of subsistence use throughout the area". The sources used to develop the Coastal Management Program Plan for the NANA region and the North Slope Borough present evidence to the contrary.

The Respondent states that after preparing an independent evaluation of the subsistence use map of the area proposed for detachment, Dr. Hall concluded "this map substantially overstates the geographic extent and intensity of NANA residents' subsistence use in the detachment area". The Petitioner believes that this is not true. The NANA CRSA Board and staff conducted an extensive resource inventory and analysis of the NANA Region in preparation of its Coastal Management Plan. Areas of significant resource value and potential conflict were identified. Following this, the CRSA staff obtained additional subsistence use information through field research with village residents. The NANA CRSA Board subsequently developed an approach for management of these resources. As a result, selected areas were identified by village residents and designated Restrictive/Sensitive Use Areas. This is the most restrictive management category in the NANA Coastal Management Program. Several of these areas border the North Slope Borough boundary but do not include the areas within the area of proposed detachment because of political jurisdictional restrictions. These areas include the Kivalina River, Wulik River Arctic Char Overwintering sites and the Noatak River Chum Spawning area.

Keep in mind that the data used to prepare this map was derived from information obtained directly from region residents who comprise the user groups. Dr. Hall, apparently relying upon his familiarity with the region, questions the data yet presents no additional study or source of information to convince the reader of its inaccuracy. The Respondent continues to note ". . . 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." (emphasis added) At best, this is speculation. Where is the data, the survey, or the study to substantiate this claim?

The Respondent claims ". . . Dr. Hall . . . concluded his comments on the significance [of the archaeological and historical sites] . . . as follows:

. . . it [a map of archaeological and historic sites within the territory proposed for detachment] 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 Petitioner has never claimed or implied that an ancestral distinction can be made between the residents of the NANA region and the North Slope Borough. The petition does not imply that the area was historically inhabited by ancestors not shared by the residents of the NSB or the NANA region. Rather, it recognizes common ancestral relationships. It states "The Native inhabitants of the NANA Region and the North Slope Borough probably share the same ancestral beginnings . . . ". However, it continues ". . . the indigenous peoples of the two areas are distinctive . . .". Further, the petition states "the NANA region is, for the most part, distinguished from the North Slope Region . . .". The Petitioner does not claim that the social, cultural and economic characteristics of the population

of the territory proposed for detachment are substantially different or in conflict with those of the remainder of the population located in the borough. The Petitioner has neither asserted that there is a conflict between the two regions nor has the Petitioner "fabricated" conflict, as the Respondent claims. Rather, the Petitioner claims that the area of the NANA region is distinctive and distinguished from the North Slope Region.

As the Respondent states, "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". The Respondent fails to realize that it is not necessary to identify an argument as a standard for it to be considered by the Local Boundary Commission. A close reading of the regulatory standards for detachment finds that "In determining whether to approve a detachment, the commission will consider, but is not limited to, the following factors . . ." (19 AAC 10.230.(a)). Further, frequency and degree of contact with the area of proposed detachment by a group of people does justify consideration of all dynamics of that group. The Petitioner discusses these conditions to fairly characterize the area of proposed detachment. How can the Local Boundary Commission make an informed decision if all aspects of the area are not presented? The Petitioner would be remiss in not doing so. The relationship of the area of proposed detachment to a people oriented to the NANA Region supports the Petitioner's belief that detachment is justified.

The Respondent claims that "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". Considering the fact that approximately 80% of the workforce at Red Dog will be comprised of NANA Region

residents and given the admitted similarities between the residents of this area with those of the North Slope, the Petitioner recognizes that they will probably not be substantially different from or in conflict with the population of the North Slope Borough. The Petitioner has never claimed this. The Petitioner contends that considering the composition of the area's workforce, the area will be aligned more intimately and to a greater degree with the residents of the NANA Region.

The Respondent continues "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 the result of negotiations between the developers to protect the interests of the native inhabitants of the NANA region for preservation of subsistence and natural resources not, as the Respondent implies, to be consistent with any North Slope Borough policies.

B. Geographic factors

In regard to this issue, the Respondent claims, ". . . Thus far there is absolutely no basis for any argument that the North Slope Borough cannot provide borough services to the area." The Petitioner has not claimed that the North Slope Borough cannot provide services to the area. The Petitioner's discussion of the issue centers around the "impracticality" of serving the area from the North Slope Borough. Considering that the term "impractical" is relative, the Petitioner makes the argument that "it is far more practical to deliver services to the area . . . from the NANA region." The Petitioner refines this contention with points of argument based upon geographic configuration and physical proximity to the Kotzebue Basin, transportation corridors and existing and anticipated marine and overland transportation infrastructure. Quite clearly the Petitioner demonstrates that, in relative terms, service delivery is impractical from the North Slope Borough.

The Respondent goes on, "The North Slope Borough has demonstrated its ability to develop facilities and provide services as needed at all settlements 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 Petitioner does not question the ability of the North Slope Borough to provide services to areas other than the proposed area of detachment. Rather, it acknowledges its current adequacy in this function. It simply addresses the impracticality of servicing the area from Barrow, as opposed to Kotzebue, the anticipated seat of government for the proposed NANA region borough.

C. Transportation and Communications factors

Once again, the point of the Petitioner's discussion of transportation and communication factors surrounding the area of the proposed detachment is to establish that geographic configuration, physical proximity, transportation corridors and anticipated marine and overland transportation infrastructure combine to make delivery of borough services impractical from the North Slope Borough.

The Respondent claims "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." The Respondent however, fails to present evidence that inter-regional trade occurs on any consistent basis. Further, travel within and across the area for subsistence purposes and travel or access for purposes of delivering Borough services requires totally different degrees of accessibility. Subsistence activities occur on snow machine, sled and foot. They require only the most primitive levels of overland routes. However, delivery of public services that involve capital construction require a much greater degree of access. The Petitioner's Brief quite adequately demonstrates that these access routes occur in the

southern reaches of the area of proposed detachment and are approached through the NANA region.

D. Provision of Services

The Petition requests that the Local Boundary Commission, "approve the boundary change proposed herein (by the petition) with the condition that the detachment take effect only upon the incorporation of a borough within the NANA region, the boundaries of which must include all of the territory." (see DCRA Petition - page 1). The Respondent characterizes this as a "Vague reference that detachment will be conditioned on formation of a borough." There is nothing vague about this aspect of the Petition. Nor is there any question that the Local Boundary Commission has the authority to approve the stipulation requested in the Petition (see Attachment B - opinion from Department of Law).

The Respondent states that the Commission does not have a proposal for a NANA borough as yet. In addition to being wrong, that comment is irrelevant since the petition seeks conditional detachment. For the record, Attachment 2 of the Petitioner's Brief contains a copy of the petition being circulated for the incorporation of the Northwest Arctic Borough. The incorporation Petition provides that the Borough would initially exercise the powers mandated by law (i.e. education, planning and tax assessment/collection), and would include the area to be detached from the North Slope Borough. Other services would be added as the need arose.

E. Distribution of Assets and Liabilities

The Petitioner partially agrees with the Respondent that, "even now, a measurable share of liability (for areawide bonded indebtedness) attaches to all real property valuation that is or will be developed in the detached area". We disagree with the notion of relating liabilities incurred in the past to prospective valuations. In this particular instance, the valuation of real property in the area is currently nothing. Thus, the liability is nothing.

IV. APPLICATION OF THE BEST INTEREST STANDARD

After more than three years of consideration, representatives of the North Slope Borough and the NANA Region reached an agreement concerning the proposed detachment of 433,000 acres of land from the North Slope Borough. This was done to facilitate the incorporation of a borough in the NANA Region (see DCRA Brief - Attachment # 11). The terms of that agreement required, among other provisions, that the voters of the North Slope Borough approve an advisory vote on the proposed detachment. Neither the advisory election nor the other provisions of the agreement were requirements of State laws and regulations governing the proposed detachment.

It is reasonable to conclude, considering the agreement between NANA and the Borough, that the North Slope Borough had determined that the detachment of the 433,000 acres of land would meet the standards for detachment. What, then, has changed between the date of the execution of the agreement and today when the North Slope Borough raises numerous issues in an eleven hour reversal of its position? Only one action caused the Borough to not seek detachment. On October 1, 1985, Borough residents voted against the proposed detachment (467 in favor and 651 opposed). Had 93 of the voters who voted against the proposed detachment, voted in favor of the measure (and had the other terms of the agreement been met) the North Slope Borough and not the Alaska Department of Community and Regional Affairs would have petitioned for detachment. Certainly, the Borough would not have made the arguments which it now raises as evidence that the standards for detachment are not met.

Again, voter approval is not a requirement for the type of boundary change brought before the Commission. Nor is it an issue which relates to the interests of any of the parties. Therefore, the Petitioner challenges the equitability

of the Borough's eleventh hour claim that the standards for detachment are not met. Admittedly, the State seeks to detach an area larger than the territory which was the subject of the agreement (3,298 square miles compared to 677 square miles). However, this additional territory does not detract from the degree to which the proposed detachment meets the applicable standards. Indeed, the Petitioner believes that the satisfaction of the applicable standards is greatly enhanced through the addition of the territory--which is precisely why the State chose to follow the regional corporation boundaries. If the Local Boundary Commission does not concur in the State's position that the expansion of the amount of territory proposed for detachment better meets the standards, it has the authority to reduce the territory to the 433,000 acres which were subject to the agreement between NANA and the North Slope Borough.

The Borough has long been aware of the standards for detachment and prior to December 18, 1985, had expressed no formal indication that the standards could not be met. Nonetheless, the Petitioner will address the points raised concerning this matter in the Respondent's Brief.

A. Best Interests of the State of Alaska

On August 6, 1985, the North Slope Borough Assembly made a formal finding that the proposed detachment of the 433,000 acres being considered at the time is, "a unique situation that should not serve and be construed as a precedent for others to follow" (NSB Ordinance 85-15 Substitute - emphasis added). Yet the Respondent now spends four pages of its brief weaving a fantasy that the proposed detachment will set a precedent which will result in wholesale detachments from other regional municipal governments. The statements of the Respondent are misleading and incorrect. For example, the Respondent claims that, "the long standing conflict between Klukwan and the Haines Borough" might serve as a basis for the detachment of Klukwan from the Haines Borough.

The Petitioner is unaware of any such "long standing conflict". Robert Henderson, Mayor of the Haines Borough confirmed the absence of any such conflict in a conversation with staff (Irene Rowan 12/19/85). Further, Klukwan isn't even within the Haines Borough!

B. Best Interests of the Territory to be Detached

As discussed on pages 31-32 of its brief, the Petitioner maintains that the detachment is in the best interests of the territory proposed for detachment. Nothing the Respondent has stated in its brief warrants any change of the Petitioner's position.

C. Best Interests of the North Slope Borough

The Respondent claims that the detachment will hurt the Borough's creditworthiness. In developing the Petition, Commissioner Notti sought counsel concerning this issue from the Alaska Department of Revenue and from the State Bond Committee's Financial Advisor (Government Finance Associates, Inc.). Both carefully and thoroughly examined claims of adverse impact upon the Borough's creditworthiness made in a letter dated November 6 from E.F. Hutton (see DCRA Brief - Attachment 35). The Commissioner of the Department of Revenue noted that the North Slope Borough and the investment community rely on the security provided by the revenues derived from existing and taxable property to repay the Borough's debts. Further, the Commissioner noted that, "The amounts of revenue which could be expected to result from tax levies upon the Red Dog mine as fully developed when compared to revenue requirements of the North Slope Borough for the life of outstanding bonds are insignificant and would not be considered important in maintaining the Borough's debt service schedule." The Commissioner of the Department of Revenue concluded her evaluation of the issue by stating that, "it would appear unlikely that the proposed detachment would be of either interest or significance in determining the creditworthiness of

the North Slope Borough." (see DCRA Brief - Attachment 36). The State Bond Committee's Financial Advisor, Government Finance Associates (GFA), concurred with that assessment (see DCRA Brief - Attachment 20).

The Respondent claims 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". While not discounting the significance of the voters' choice, the Local Boundary Commission was established through the State Constitution in order to make such determinations outside local political considerations. Thus, the Respondent's "best measure" of its interest is readily discounted by the State Constitution.

The Respondent claims that it will incur significant financial loss from the detachment. This is not so. The North Slope Borough will lose little from the proposed detachment. The proposed shift of the jurisdictional boundaries of the North Slope Borough affects only 3.7 percent of the total area within the Borough. The \$607,180 present value of taxable property within the area proposed to be detached represents less than five one-thousandths of one percent of the North Slope Borough's 1984 total assessed valuation of \$12,268,737,790. The prospective future value of taxable property at the Red Dog mine site represents only 2 percent of the 1984 value of the taxable property within the North Slope Borough.

On the other hand, the detachment will save the North Slope Borough the cost and logistical difficulties of providing services to territory on its remote periphery, which may be served much more efficiently from a regional center located outside the North Slope Borough. Moreover, most of the persons to be served in the territory to be detached now have and will continue to have economic, social and cultural ties to

the NANA region rather than to the North Slope Borough, increasing the difficulty of communication and participation necessary to the effective delivery of local services from the North Slope Borough.

Further, retainage of the territory proposed for detachment within the boundaries of the North Slope Borough has strained the relationships between the peoples of the two regions. The Inupiat people have long prided themselves on values which include cooperation and sharing. Residents of the NANA region correctly believe that the territory proposed for detachment rightfully belongs within the jurisdiction of their region. The detachment of the territory will aid in the resolution of the conflict currently existing in the area.

All things considered, particularly the threat to harmonious relations among the people within the area and the relative difficulty which the North Slope Borough would have in serving the area, the State contends that the proposed detachment is in the best interests of the North Slope Borough.

V. CONCLUSION

The claims of the lack of due process expressed in the Respondent's Opposition Brief do not withstand reasonable scrutiny. The process being used not only meets technical requirements, but also provides the Respondent with every reasonable opportunity to present its side of the issue. The time schedule is not unreasonable, nor is it without precedent.

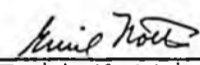
The Respondent has also failed to refute the evidence in the State's Petition and Brief which proves that the regulatory factors to be considered by the Commission support the proposed detachment. These factors include social, cultural, economic, geographic, transportation and communications considerations.

Finally, the Respondent has failed to refute the evidence in the State's Petition and Brief demonstrating that

the necessary standards concerning detachment are met. These include: (1) assurance of the delivery of municipal services following detachment; (2) equity in the distribution of assets and liabilities of the North Slope Borough; (3) that detachment is in the best interests of the State; (4) that detachment is in the best interests of the territory proposed for detachment; and (5) that detachment is in the best interests of the North Slope Borough.

Therefore, the Commissioner of the Alaska Department of Community and Regional Affairs again, respectfully requests the Local Boundary Commission concur with the position of the State and approve the current Petition for detachment. The Local Boundary Commission is further requested to recommend the boundary change proposed in this petition to the Second Session of the Fourteenth Legislature.

Submitted this 23rd day of December, 1985.



Emil Notti, Commissioner
Alaska Department of Community
and Regional Affairs

FOOTNOTES

1 AS 14.08.031 provides that, "The Department of Community and Regional Affairs in consultation with the Department of Education and local communities shall divide the unorganized borough in educational service areas using the boundaries or sub-boundaries of the regional corporation established under the Alaska Native Claims Settlement Act." (emphasis added). Other provisions of State law, in turn, relate the boundaries of regional education attendance areas to other political subdivisions of the State. For example, AS 46.40.120 states that, "Except as otherwise provided in this section, each regional educational attendance area established under AS 14.08.031 containing a part of the coastal area may be organized as a coastal resource service area." AS 14.08.031 also establishes standards for the formation of regional education attendance areas in stating, "As far as practicable, each regional education attendance area shall contain an integrated socio-economic, linguistically and culturally homogenous area. In the formation of the regional education attendance area, consideration shall be given to the transportation and communication network to facilitate the administration of education and communication between communities that comprise the area. Whenever possible, municipalities, other governmental or regional corporate entities, drainage basins and other identifiable geographic features shall be used in describing the boundaries of the regional school attendance areas . . ." (emphasis added). The standards for the formation of a regional education attendance area are strikingly similar to those provided in law for the formation of a borough (see Attachment A).

LIST OF ATTACHMENTS

Attachment A -- Standards for incorporation of organized boroughs (AS 29.18.030 and 19 AAC 10. 160).

Attachment B - Memorandum from Jonathan B. Rubini to Marty Rutherford dated July 23, 1985.

MEMORANDUM

State of Alaska

TO: Marty Rutherford, Director
Municipal & Regional Asst. Div.
Dept. of Community & Regional
Affairs

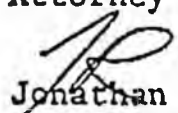
DATE: July 23, 1985

FILE NO: 366-034-86

TELEPHONE NO: 465-3600

FROM: Harold M. Brown
Attorney General

SUBJECT: LBC authority to de-
tach an area from an
organized borough

By:  Jonathan B. Rubini
Assistant Attorney General
Governmental Affairs-Juneau

You have asked whether the Local Boundary Commission (LBC) enjoys the legal authority to present to the legislature a petition which provides for the detachment of an area from an organized borough if, but only if, the area to be detached is included within a newly-formed borough. Upon your request to expedite our review of this matter, we stated our oral advice that the LBC does enjoy the requisite legal authority. We briefly set out our views below.

We are advised that the North Slope Borough presently has under consideration a proposal to detach that portion of the borough which is included within the NANA Regional Corporation. The area in question includes the Red Dog mineral deposit, and inclusion of the Red Dog site is considered essential to the formation of a new borough encompassing the NANA Regional Corporation territory.

Article X, section 12 of the Alaska Constitution provides for the establishment of the LBC, and further directs the LBC to "consider any proposed local government boundary change." (Emphasis added.) Boundary changes approved by the LBC are presented to the legislature and "shall become effective forty-five days after presentation ... unless disapproved by a [concurrent resolution]."

We have previously stated our view that the LBC enjoys broad, inherent legal authority in the discharge of its constitutional and statutory obligations. 1982 Inf. Op. Att'y Gen. (J66-585-81; Oct. 25) (copy attached). Our conclusion in this regard reflects the series of Alaska Supreme Court decisions which reflect the court's deference to recommendations and procedures adopted by the LBC. See Port Valdez Co. v. City of Valdez, 522 P.2d 1147 (Alaska 1974); Oesau v. City of Dillingham, 439 P.2d 180 (Alaska 1968); Fairview Public Utilities District Number One v. City of Anchorage, 368 P.2d 540 (Alaska 1962). Oesau is particularly illuminating, since in that case the court explicitly noted that the LBC enjoys the authority to dissolve a city notwithstanding the absence of express statutory authority to do so. Oesau, 439 P.2d at 183.

Attachment B

The immediate question is whether the constitutional effective date provision precludes the LBC presentation of a qualified boundary change, that is, a proposal which takes effect at some point -- and for some reasons -- unrelated to the 45-day provision. In most instances, the affirmative action of the legislature is required to initiate legislative action. In this instance, as in the case of legislative review of executive orders under article III, section 23, the constitution uniquely authorizes legislative "approval" through inaction. The provision reflects deference to the LBC and a desire to compel expeditious legislative attention to a LBC proposal. The constitutional provision should not be construed as a substantive limit to the otherwise broad delegation of legislative powers to the LBC. Indeed, the effective date provision is not necessarily in conflict with the broad authority of the LBC. Viewed properly, the effective date clause relates to the LBC proposal, not the underlying boundary change. Were the LBC to exercise its inherent authority to present a qualified proposal to the legislature, the proposal -- as qualified by the LBC -- takes effect 45 days after submission unless disapproved by concurrent resolution. Accordingly, we believe that the LBC enjoys the legal authority to present a qualified proposal to the legislature.

We further note that regulations adopted by the LBC further confirm the authority to present a qualified proposal. 19 AAC 10.240(b) provides:

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

The regulation expressly authorizes the LBC to condition a detachment petition upon the subsequent incorporation of a municipality including the detached area. By direct implication, the regulation reflects that the LBC may condition a detachment petition upon the subsequent incorporation of a new borough. See 1982 Inf. Op. Att'y Gen. (J66-585-81; Oct. 25). See generally U.S. Smelting, Refining and Mining Co. v. Local Boundary Comm'n, 489 P.2d 140 (Alaska 1971).

If you have any other questions, please feel free to call.

JBR/pjg
Enc.

19 AAC 10.160. INCORPORATION. An area may incorporate as an organized borough if it meets the statutory standards set forth in AS 29.18.030 and meets the following specific requirements:

(1) the area includes at least two separate communities;

(2) transportation services are available at least once a week between communities located within the area on a regularly scheduled or charter basis, or communities located within the area which do not have regularly scheduled transportation services are connected by a highway system;

(3) there are sufficient anticipated revenues to maintain and operate, at a minimum, the mandatory powers of the proposed borough government;

(4) there are at least 1,000 people located within the area; and

(5) the area includes, at a minimum, one entire regional education attendance area unless the commission determines that a smaller area can otherwise meet borough government standards for incorporation. (Eff. 2/21/82, Reg. 81)

Authority: Art. X, Sec. 12
Alaska Const.
AS 44 47 980

Sec. 29.18.030. Organized boroughs. An area may incorporate as an organized borough if it conforms to the following standards:

(1) the population of the area is interrelated and integrated as to its social, cultural, and economic activities, and is large and stable enough to support organized borough government;

(2) the boundaries of the proposed borough conform generally to natural geography and include all areas necessary for full development of local services;

(3) the economy of the area includes the human and financial resources capable of providing local services; evaluation of an area's economy includes land use, property valuations, total economic base, total personal income, resource and commercial development, anticipated functions, expenses, and income of the proposed borough;

(4) land, water, and air transportation facilities allow the communication and exchange necessary for the development of integrated local government. (§ 2 ch 118 SLA 1972)

NOTES TO DECISIONS

As to de facto incorporation, see *Jefferson v. State*, Sup. Ct. Op. No. 1084 (File No. 2000), 527 P.2d 37 (1974).

Legislation to organize a specific borough unconstitutional. — Chapter 145, SLA 1974, by which the Eagle River-Chugiak Borough was organized, contravened the provisions of Alaska Const., art. II, § 19, since it was special

and local legislation creating a new local government without regard to the general statutory provisions that prescribe the method that otherwise governs the creation of new local governmental entities from existing ones. *Abrams v. State*, Sup. Ct. Op. No. 1142 (File No. 2407), 534 P.2d 91 (1975).

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)
_____)

PETITION FOR DETACHMENT FROM THE NORTH SLOPE BOROUGH

I, Emil Notti, Commissioner of the Alaska Department of Community and Regional Affairs, (hereinafter "Petitioner") hereby petition the Local Boundary Commission of the State of Alaska (hereinafter "Commission") for a change in the jurisdictional boundaries of the North Slope Borough pursuant to the provisions of AS 29.68.010(a) and 19 AAC 10.450 - 19 AAC 10.620. More specifically, this petition seeks the detachment from the North Slope Borough of all of the territory lying within the boundaries of the NANA Regional Corporation, as well as adjacent waters seaward to a line three geographical miles distant from the coast line, an area which is more particularly described in this petition. The area sought for detachment is comprised of approximately 3,298 square miles.

This petition requests that the Commission approve the boundary change proposed herein with the condition that the detachment take effect only upon the incorporation of a borough within the NANA region, the boundaries of which must include all of the territory approved for detachment.

As the Commission is aware, the provision of 19 AAC 10.480 requiring a census or other reliable enumeration within the territory proposed for detachment was waived by the Commission on November 20, 1985, with the stipulation that the Department provide available information concerning any current population of the territory, as well as past, present and future projections of employment relating to the Red Dog mine project.

Additionally, the Commission waived on November 20, the provision of 19 AAC 10.480 requiring maps showing roadways

throughout the North Slope Borough, with the stipulation that the petitioner provide, in the petition or by future submission, existing and available maps and/or other information concerning commercial air and barge routes of the North Slope Borough and the NANA Region, as well as existing and available maps of existing and proposed roadways and highways within the North Slope Borough prepared by or on behalf of the Alaska Department of Transportation and Public Facilities and/or the North Slope Borough. Additionally, the petitioner is providing as an attachment a U.S. Geological Survey map of the entire North Slope Borough at 1:1,000,000 scale. Further, the petitioner will provide at the hearings a U.S. Geological Survey topographic map of the territory proposed for detachment at 1:250,000 scale.

To the extent practicable, the Petitioner has also included in the supporting documentation, relevant information relating to the proposed incorporation of the NANA region as a borough and information concerning the future development of the territory proposed for detachment.

The following information is submitted for consideration by the Commission:

(1) The name and mailing address of the Petitioner:

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

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

Ms. Marty Rutherford, Director
Municipal and Regional Assistance Division
Department of Community and Regional Affairs
949 East 36th Avenue, Suite 404
Anchorage, Alaska 99508

Telephone number: (907) 561-8586

(3) A legal boundary description of the territory proposed to be detached through this petition is set forth in Exhibit A.

(4) A legal boundary description of the boundaries of the North Slope Borough if the proposed detachment is effected is set forth in Exhibit B.

(5) The assessed or estimated value of taxable real and personal property within the territory proposed for detachment is as follows:

Real Property	\$	0
Personal Property	\$	607,180
TOTAL	\$	607,180

(6) The number of residents within the territory proposed for detachment:

There are no permanent residents of the territory proposed for detachment. However, there are 2 individuals presently working in the territory on the development of the Red Dog mine which might be considered residents for operating budget tax levying purposes pursuant to AS 29.53.050(b). Further information concerning past and projected future workers at the Red Dog mine site is provided in the brief attached to this petition.

(7) The rate at which real and personal property are taxed within the territory proposed for detachment and throughout the North Slope Borough:

18.37 mils.

(8) The rate or rates of sales and use taxes levied and collected within the territory proposed for detachment and throughout the North Slope Borough:

The North Slope Borough levies a 3% sales tax and a 3% use tax throughout the boundaries of the Borough. In addition, the Cities of Barrow, Nuiqsut, Point Hope and Wainwright each levy a 3% sales tax (but no use tax) within their respective jurisdictional boundaries.

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

The present outstanding bonded indebtedness of the North Slope Borough is \$1,266,991,000. There are no capital facilities owned by the North Slope Borough located in the area proposed for detachment. Accordingly, no proceeds from the sale of bonds by the North Slope Borough have been used directly for improvements within the territory proposed for detachment.

A full explanation of the bonded indebtedness of the North Slope Borough as of June 30, 1984, is attached as Exhibit C.

(10) The population and size of the municipality affected by the proposed boundary change:

The population of the North Slope Borough is 7,978 for State Revenue Sharing purposes and 12,359 for operating budget tax levying purposes pursuant to AS 29.53.050(b). The size of the North Slope

Borough is approximately 56,500,000 acres
(88,281.25 square miles).

Pursuant to 19 AAC 10.490, the Petitioner appends the following exhibits to this petition:

- (1) EXHIBIT D: Maps showing 1) the boundaries of the North Slope Borough before and after the proposed detachment; 2) the territory proposed for detachment and the NANA Regional Corporation boundaries (the area proposed by a separate petition for incorporation as a borough); 3) transportation routes and facilities of the North Slope Borough (source: North Slope Borough Coastal Management Plan - July, 1984); 4) village areas of influence within the North Slope Borough (source: North Slope Borough Comprehensive Plan Maps 11A, 11B and 11C - January, 1983); 5) intensive resource use areas within the territory proposed for detachment (source NANA Coastal Management Plan - September, 1985); 6) archaeological and historical resources within the territory proposed for detachment (source NANA Coastal Management Plan - September, 1985).

Maps which the Commission stipulated on November 20, 1985, should be made available for its review were requested from the Alaska Department of Transportation and Public Facilities and the North Slope Borough on November 21 (see Exhibits D-7 and D-8) and will be made available to the Commission by the Petitioner as soon as is practicable. These maps consist of existing and available maps and/or other information concerning commercial air and barge routes of the North Slope Borough and the NANA Region, as well as existing and available maps of existing and proposed roadways and highways within the North Slope Borough prepared by or on behalf of the Alaska Department of Transportation and Public Facilities and/or the North Slope Borough.

To the extent available and practicable, maps showing identical information but of a larger size of those included in the petition will be provided by the Petitioner at the hearings regarding this petition to be conducted by the Commission. Such maps have also been provided to the North Slope Borough. Further, such maps may be inspected prior to the hearing at the following locations:

Office of the Representative of the Petitioner:

Office of the Director
Municipal and Regional Assistance Division
Department of Community and Regional Affairs
949 East 36th Avenue, Suite 404
Anchorage, Alaska 99508
Telephone number: (907) 561-8586

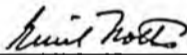
Office near the area to be detached:

Kotzebue Regional Office
Municipal and Regional Assistance Division
Department of Community and Regional Affairs
Drift Inn, Second Floor
Kotzebue, Alaska 99752
Telephone number: (907) 442-3696

- (2) EXHIBIT E: An affidavit of the Petitioner's Representative indicating the source of the information contained in the petition.
- (3) EXHIBIT F: An affidavit of the Petitioner's Representative that service of the petition has been made in compliance with 19 AAC 10.510.

Pursuant to 19 AAC 10.500, the Petitioner appends to this petition a written brief fully setting forth the reasons supporting the boundary change and demonstrating that the boundary change meets the standards established in 19 AAC 10.225 - 19 AAC 10.250 regarding detachment from an organized borough.

Respectfully submitted this 22nd day of November,
1985.



Emil Notti, Commissioner
Alaska Department of Community
and Regional Affairs

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

EXHIBIT A
THE LEGAL BOUNDARY DESCRIPTION OF THE TERRITORY PROPOSED
TO BE DETACHED FROM THE NORTH SLOPE BOROUGH

Beginning at a point in the Chukchi Sea where the westerly extension of the protracted northern boundary of Township 30 North, Range 29 West, Kateel River Meridian (approximate latitude 68 degrees 2 minutes 7.56 seconds North) intersects the westerly boundary of the State of Alaska; thence in an easterly direction along the westerly extension of the protracted northern boundary of Township 30 North, Range 29 West, Kateel River Meridian (KRM) to its intersection with the mean high tide line of the Chukchi Sea; thence continuing easterly to the protracted Northwest corner of Township 30 North, Range 25 West, (KRM); thence northerly to the protracted Northwest corner of Township 32 North, Range 25 West, (KRM); thence easterly to the protracted Southeast corner of Township 33 North; Range 18 West, (KRM); thence northerly to the protracted Northwest corner of Township 33 North; Range 17 West, (KRM); thence easterly to the protracted Northeast corner of Township 33 North; Range 15 West, (KRM); thence southerly to the protracted Southeast corner of Township 33 North; Range 15 West, (KRM); thence easterly to the protracted Southwest corner of Township 33 North; Range 12 West, (KRM); thence northerly to the protracted Northwest corner of Township 33 North; Range 12 West, (KRM); thence easterly to the protracted Northeast corner of Township 33 North; Range 11 West, (KRM); thence southerly to the protracted Southeast corner of Township 33 North; Range 11 West, (KRM); thence easterly to the protracted Southwest corner of Township 33 North; Range 6 West, (KRM); thence northerly to the protracted Northwest corner of Township 33 North; Range 6 West, (KRM); thence easterly to the protracted Northeast corner of Township 33 North; Range 5 West, (KRM); thence southerly to the protracted Southeast corner of Township 33 North; Range 5 West, (KRM); thence easterly to the protracted Northeast corner of Township 32 North; Range 7 West, (KRM); thence southerly to the protracted Southeast corner of Township 32 North; Range 7 East, (KRM); thence easterly to the protracted Northeast corner of Township 31 North; Range 11 East, (KRM); thence southerly to the protracted Southeast corner of Township 31 North; Range 11 East, (KRM); thence easterly to the protracted Northeast corner of Township 30 North; Range 15 East, (KRM); thence southerly to 68 degrees North Latitude; thence westerly along 68 degrees North Latitude Line to its intersection with the mean high tide line of the Chukchi Sea; thence continuing in a westerly direction along 68 degrees North Latitude to a point 61 the Chukchi Sea at its intersection with the westerly boundary of the State of Alaska; thence in northerly direction along the westerly boundary of the State of Alaska to a point in the Chukchi Sea at its intersection with the westerly extension of the protracted northern boundary of Township 30 North, Range 29 West, Kateel River Meridian (approximate latitude 68 degrees 2 minutes 7.56 seconds North), the point of beginning, containing 3,298 square miles, more or less, all in the Second Judicial District, State of Alaska.

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

EXHIBIT B
THE LEGAL BOUNDARY DESCRIPTION OF THE NORTH SLOPE BOROUGH
SHOULD THE PROPOSED DETACHMENT BE EFFECTED

Beginning at a point in the Chukchi Sea where the westerly extension of the protracted northern boundary of Township 30 North, Range 29 West, Kateel River Meridian (approximate latitude 68 degrees 2 minutes 7.56 seconds North) intersects the westerly boundary of the State of Alaska; thence in an easterly direction along the westerly extension of the protracted northern boundary of Township 30 North, Range 29 West, Kateel River Meridian (KRM) to its intersection with the mean high tide line of the Chukchi Sea; thence continuing easterly to the protracted Northwest corner of Township 30 North, Range 25 West, (KRM); thence northerly to the protracted Northwest corner of Township 32 North, Range 25 West, (KRM); thence easterly to the protracted Southeast corner of Township 33 North; Range 18 West, (KRM); thence northerly to the protracted Northwest corner of Township 33 North; Range 17 West, (KRM); thence easterly to the protracted Northeast corner of Township 33 North; Range 15 West, (KRM); thence southerly to the protracted Southeast corner of Township 33 North; Range 15 West, (KRM); thence easterly to the protracted Southwest corner of Township 33 North; Range 12 West, (KRM); thence northerly to the protracted Northwest corner of Township 33 North; Range 12 West, (KRM); thence easterly to the protracted Northeast corner of Township 33 North; Range 11 West, (KRM); thence southerly to the protracted Southeast corner of Township 33 North; Range 11 West, (KRM); thence easterly to the protracted Southwest corner of Township 33 North; Range 6 West, (KRM); thence northerly to the protracted Northwest corner of Township 33 North; Range 6 West, (KRM); thence easterly to the protracted Northeast corner of Township 33 North; Range 5 West, (KRM); thence southerly to the protracted Southeast corner of Township 33 North; Range 5 West, (KRM); thence easterly to the protracted Northeast corner of Township 32 North; Range 7 West, (KRM); thence southerly to the protracted Southeast corner of Township 32 North; Range 7 East, (KRM); thence easterly to the protracted Northeast corner of Township 31 North; Range 11 East, (KRM); thence southerly to the protracted Southeast corner of Township 31 North; Range 11 East, (KRM); thence easterly to the protracted Northeast corner of Township 30 North; Range 15 East, (KRM); thence southerly to 68 degrees North Latitude; thence easterly along the 68 degrees North Latitude line to 146 degrees West Longitude; thence northerly along 146 degrees West Longitude to 68 degrees 30 minutes North Latitude; thence easterly along 68 degrees 30 minutes North Latitude to the boundary common to the United States and Canada; thence northerly along the boundary common to the United States and Canada to its intersection with the mean high tide line of the Beaufort Sea; thence continuing northerly along the boundary common to the United States and Canada in the Beaufort Sea to the northerly boundary of the State of Alaska in the Beaufort Sea; thence westerly, northwesterly, westerly, southwesterly, southerly, and southeasterly along the boundary of the State of Alaska in

the Beaufort Sea, Arctic Ocean, and Chukchi Sea to a point in the Chukchi sea at its intersection with the westerly extension of the protracted northern boundary of Township 30 North, Range 29 West, Kateel River Meridian (approximate latitude 68 degrees 2 minutes 7.56 seconds North), the point of beginning, containing 84,983 square miles, more or less, all in the Second Judicial District, State of Alaska.

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

EXHIBIT C
 A FULL EXPLANATION OF THE BONDED INDEBTEDNESS
 OF THE NORTH SLOPE BOROUGH AS OF JUNE 30, 1984

NORTH SLOPE BOROUGH

NOTES TO FINANCIAL STATEMENTS
 (Continued)

CHANGES IN LONG-TERM DEBT (Continued)

General obligation bonds payable at June 30, 1984 were comprised of the following individual issues:

\$74,200,000 1978 Series i of which \$7,300,000 is for school facilities, \$7,000,000 for roads, \$40,600,000 for public housing, \$4,775,000 for water facilities, \$4,125,000 for sewage treatment, \$400,000 for airports, \$200,000 for housing and urban development, \$1,700,000 for light, heat and power, \$100,000 for public safety facilities, \$3,100,000 for sanitary facilities, \$100,000 for communication facilities, \$4,100,000 for health facilities, \$700,000 for library facilities, due on November 1, 1991; interest at 6.75 percent	\$ 7,400,000
\$70,000,000 1980 Series L of which \$7,000,000 is for public housing, \$25,700,000 for water facilities, \$32,400,000 for sewage treatment, \$3,000,000 for airports, \$600,000 for housing and urban development, \$1,100,000 for public safety facilities, \$200,000 for health facilities, due on September 20, 1991; interest at 9.25 percent	12,000,000
\$75,000,000 1981 Series M of which \$10,000,000 is for roads, \$18,000,000 for public housing, \$4,000,000 for water facilities, \$12,000,000 for sewage treatment, \$10,000,000 for airports, \$1,000,000 for light, heat and power, \$9,500,000 for public safety facilities, \$10,500,000 for sanitary facilities, due in annual installments of \$9,000,000 through March 10, 1993; interest at 11.25 percent	18,000,000
\$65,000,000 1981 Series N of which \$34,200,000 is for school facilities, \$8,900,000 for roads, \$9,200,000 for public housing, \$2,200,000 for water facilities, \$1,100,000 for airports, \$200,000 for housing and urban development, \$9,000,000 for light, heat and power, \$100,000 for public safety facilities, \$100,000 for sanitary facilities, due in annual installments of \$5,000,000 through June 15, 1993; interest at 11.2 percent	10,000,000

NORTH SLOPE BOROUGH
 NOTES TO FINANCIAL STATEMENTS
 (Continued)

CHANGES IN LONG-TERM DEBT (Continued)

\$80,000,000 1982 Series Q of which \$20,000,000 is for school facilities, \$4,000,000 for roads, \$20,000,000 for public housing, \$12,000,000 for water facilities, \$4,000,000 for light, heat and power, \$20,000,000 for sanitary facilities, due in annual installments of \$4,000,000 to \$10,000,000 through February 10, 1998; interest at 13 to 13.5 percent

\$ 64,000,000

\$80,000,000 1982 Series P of which \$19,500,000 is for school facilities, \$19,000,000 for roads, \$3,000,000 for airports, \$2,500,000 for housing and urban development, \$4,000,000 for light, heat and power, \$18,500,000 for public safety facilities, \$4,000,000 for sanitary facilities, \$40,000 for communication facilities, \$4,000,000 for health facilities, \$1,960,000 for telephone facilities, \$3,500,000 for administration facilities, due in annual installments of \$3,000,000 to \$7,000,000 through June 10, 1995; interest at 12.1 to 12.4 percent

21,000,000

\$100,000,000 1982 Series Q of which \$5,000,000 is for roads, \$18,100,000 for water facilities, \$27,900,000 for sewage treatment facilities, \$9,000,000 for light, heat and power, \$7,000,000 for sanitary facilities, \$21,000,000 for industrial park facilities, \$12,000,000 for health facilities, due in annual installments of \$1,000,000 to \$7,000,000 through June 20, 2006; interest at 8.5 to 10.5 percent

56,000,000

\$100,000,000 1983 Series R of which \$25,000,000 is for public housing, \$35,000,000 for water facilities, \$30,000,000 for sewage treatment facilities, \$10,000,000 for public safety facilities, due in annual installments of \$9,000,000 to \$13,000,000 through February 10, 1995; interest at 9.25 to 9.8 percent

47,000,000

\$100,000,000 1984 Series S of which \$85,000,000 is for retirement of Bond Anticipation Notes, Series A, \$15,000,000 for industrial park facilities, due in annual installments of \$40,925,000 and \$45,600,000 through June 30, 1986; interest at 9.25 to 9.65 percent

86,525,000

NORTH SLOPE BOROUGH
 NOTES TO FINANCIAL STATEMENTS
 (Continued)

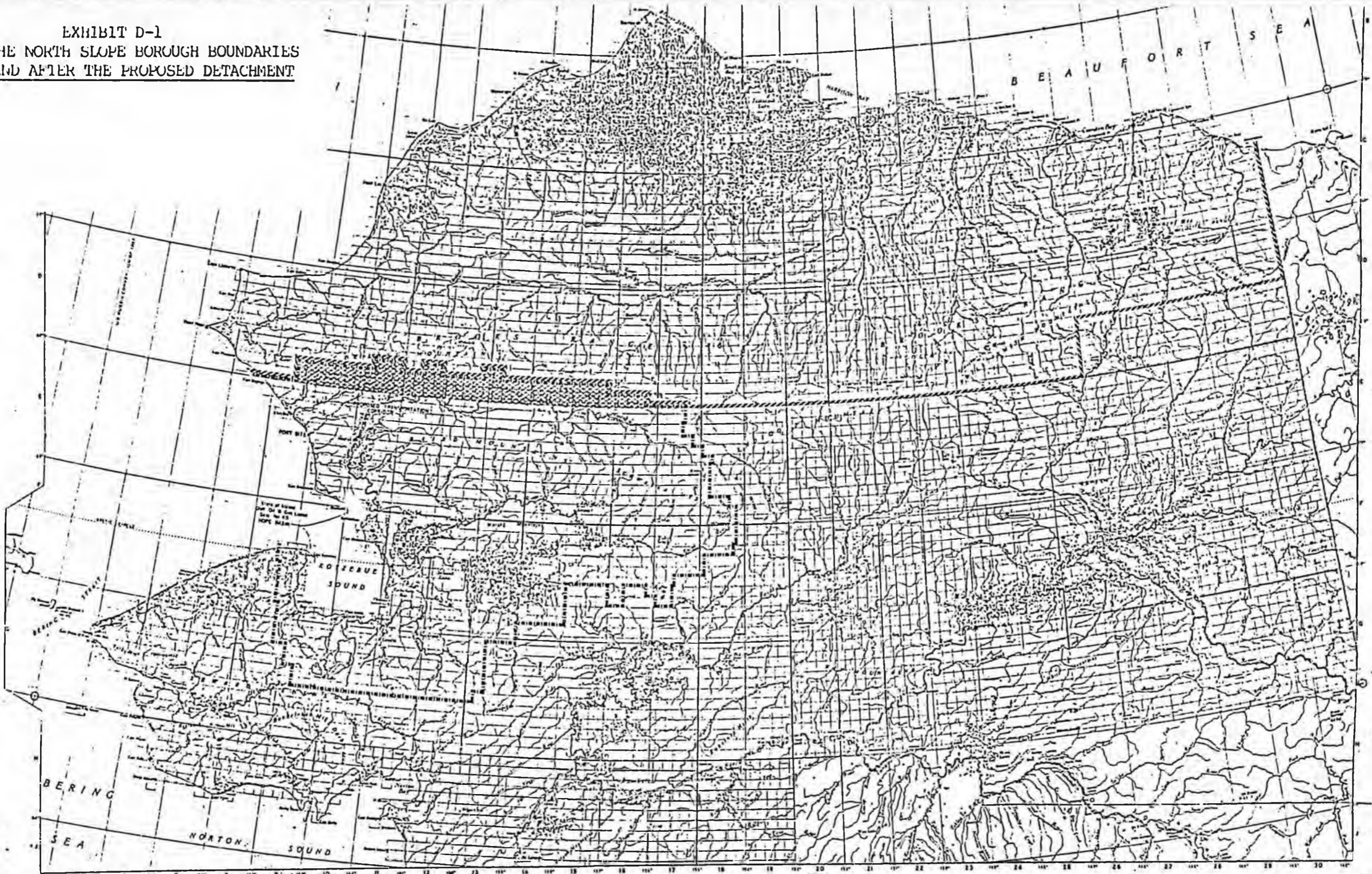
CHANGES IN LONG-TERM DEBT (Continued)

<p>\$100,000,000 1984 Series T of which \$81,908,000 is for retirement of Bond Anticipation Notes, Series A, \$18,092,000 for industrial park facilities, due in annual installments of \$24,200,000 to \$49,400,000 through June 30, 1989; interest at 7.6 percent</p>	<p>\$ 100,000,000</p>
<p>\$108,470,000 1984 Series U of which \$33,092,000 is for retirement of Bond Anticipation Notes, Series A, \$34,555,000 for school facilities, \$2,447,000 for roads, \$74,000 for public housing, \$1,000 for water facilities, \$31,000 for sewage treatment facilities, \$10,048,000 for airport facilities, \$27,000 for light, heat and power, \$30,000 for public safety facilities, \$26,401,000 for sanitary facilities, \$46,000 for communication facilities, \$58,000 for health facilities, \$1,659,000 for library and cultural facilities, \$1,000 for administration facilities, due in annual installments of \$26,500,000 to \$55,000,000 through June 30, 1988; interest at 7.1 to 7.5 percent</p>	<p>108,470,000</p>
<p>\$214,500,000 1983 Refunding Bonds, Series A, due in annual installments of \$4,700,000 to \$19,900,000 through June 30, 2006; interest at 9.5 to 12.25 percent</p>	<p>214,500,000</p>
<p>\$90,800,000 1983 Refunding Bonds, Series B, due in annual installments of \$15,900,000 to \$31,200,000 through June 30, 1990; interest at 8.75 to 13.1 percent</p>	<p>90,800,000</p>
<p>\$213,800,000 1984 Refunding Bonds, Series C, due in annual installments of \$14,000,000 to \$59,200,000 through June 30, 1996; interest at 9.5 to 10.5 percent</p>	<p><u>213,800,000</u></p>
	<p><u>\$ 1,049,495,000</u></p>

Bond anticipation notes payable at June 30, 1984 were comprised of the following individual issue:

<p>\$153,945,000 1984 Bond Anticipation Notes, Series B, of which \$10,983,000 is for school facilities, \$33,387,000 for roads, \$22,961,000 for water facilities, \$28,113,000 for sewage treatment, \$28,130,000 for light, heat and power, \$4,300,000 for communication facilities, \$26,071,000 for administration facilities, due on April 12, 1985; interest at 7.875 percent</p>	<p><u>\$ 153,945,000</u></p>
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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
 [Cross-hatch symbol] PROPOSED NORTH SLOPE BOROUGH BOUNDARY
 [Dashed line symbol] AREA PROPOSED FOR DETACHMENT FROM EXISTING NORTH SLOPE BOROUGH

Scale 1:100,000
 Adams (and other) Projection

FOR SALE BY THE GEOLOGICAL SURVEY
 WASHINGTON, D.C. 20541
 MAPS AND INFORMATION SERVICE
 (800) 354-7437

EXHIBIT D-3
MAP OF THE TRANSPORTATION ROUTES AND FACILITIES
OF THE NORTH SLOPE BOROUGH

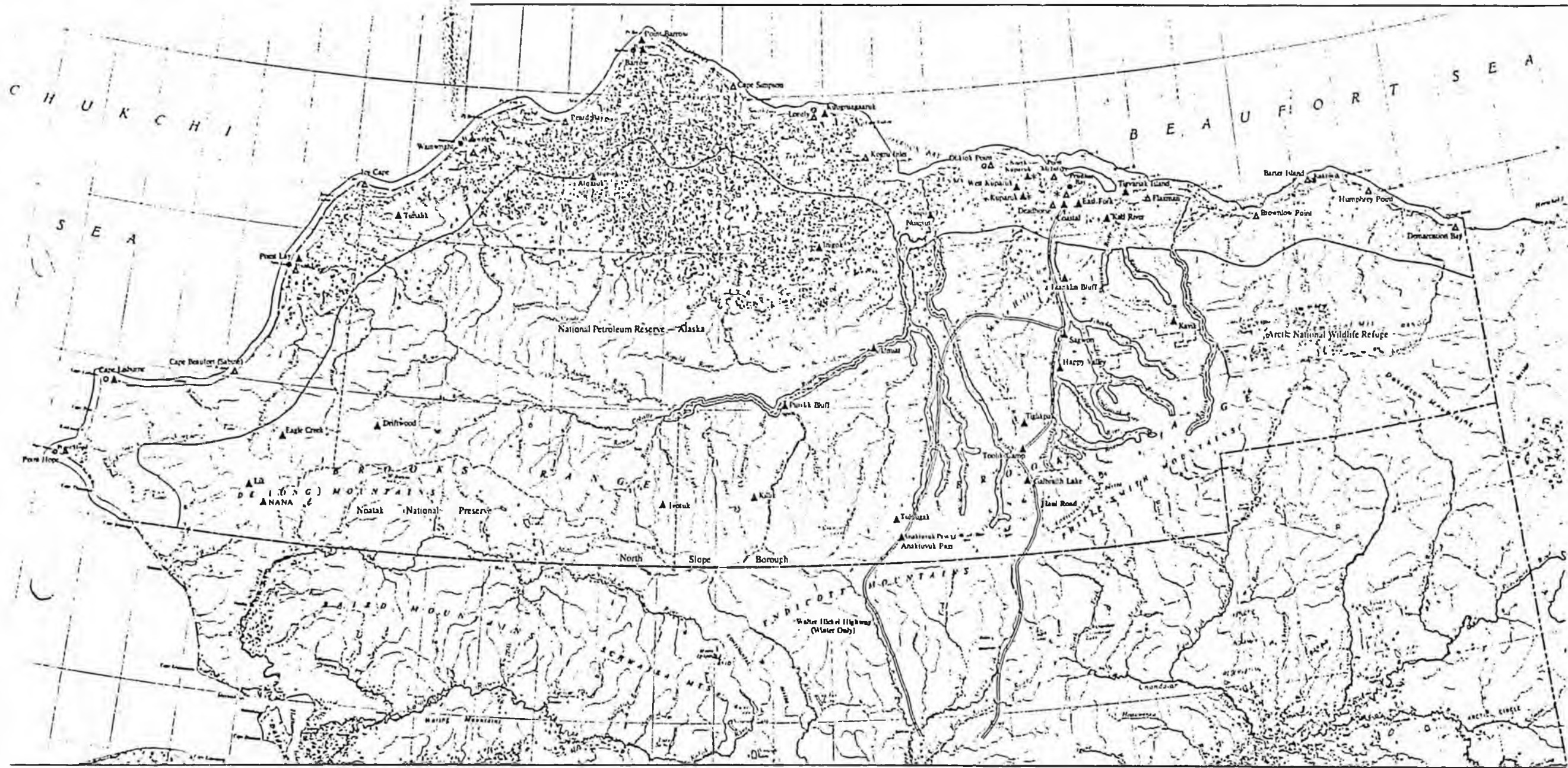
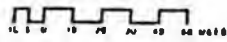
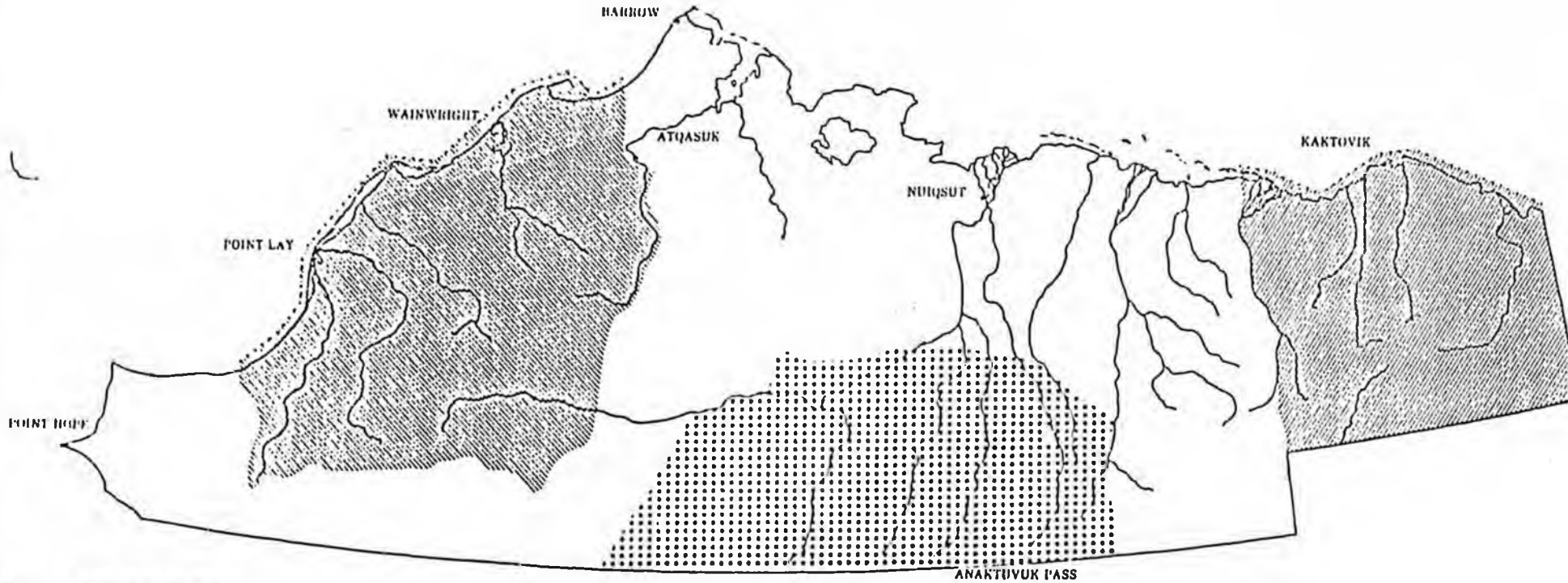






EXHIBIT D-4
MAP OF THE VILLAGE AREAS OF INFLUENCE
WITHIN THE NORTH SLOPE BOROUGH



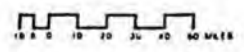
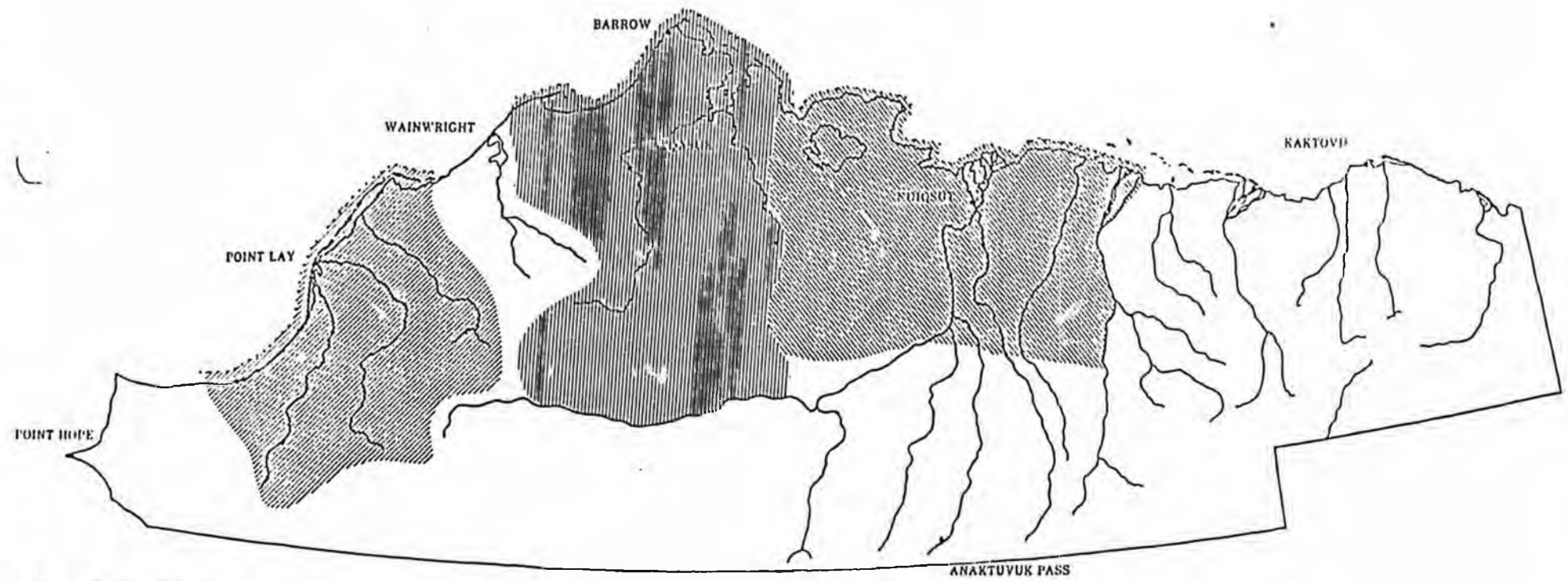
LEGEND

-  WAINWRIGHT
-  ANAKTUVUK
-  KAKTOVIK
-  2-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

ARCTIC
OCEAN

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

CHUKCHI SEA

KOTZEBUE
SOUND



ALASKA
COASTAL MANAGEMENT
PROGRAM

LEGEND
HABITAT/VEGETATION SELECTION
● 400 ACRES OR LESS
⊙ 401 - 1000 ACRES
⊛ 1001 ACRES OR MORE
A ALASKA HERITAGE RESOURCE INVENTORY SITE

Product of NANA
Coastal Management Program

Source: The NANA Region Environment & Planning
Study, NANA Regional Office, 1979. Source
Program, Cooperative Studies, Bethel, Alaska, 1980.

Note: This map shows general locations
of sites. It is not a detailed map and does
not show the exact location of the sites.

ARCHAEOLOGICAL AND HISTORICAL RESOURCES

PREPARED BY DARBYSHIRE & 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 Smith
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
- P.O. BOX 348
BETHEL, ALASKA 99559
PHONE: (907) 543-3475
- P.O. BOX 41
NOME, ALASKA 99762
PHONE: (907) 443-5457
- P.O. BOX 280
KOTZEBUE, ALASKA 99752
PHONE: (907) 442-3675
- 1514 CUSHMAN STREET, ROOM 201
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-7126
- P.O. 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