

ALASKA LEGISLATURE COMMITTEE FILES 1900-1900 00/2

3844 SCRA NORTH SLOPE OPPOSITION BRIEF

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

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

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


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

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

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

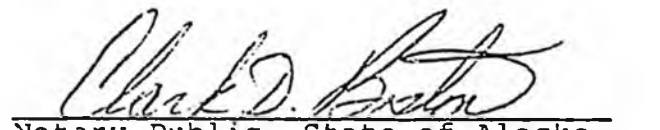
purposes is provided from the "Official Statement Relating to the Original Issuance of \$148,400,000 North Slope Borough, Alaska General Obligation Refunding Bonds of 1985 Series E dated May 30, 1985". The size of the North Slope Borough is based upon information contained in the Certificate of Incorporation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

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


Ms. Marty Rutherford, Director
Municipal and Regional
Assistance Division



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


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

BEFORE THE LOCAL BOUNDARY COMMISSION OF THE STATE OF ALASKA

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

EXHIBIT F
AFFIDAVIT OF SERVICE

STATE OF ALASKA)
: ss.
THIRD JUDICIAL DISTRICT)

MARTY RUTHERFORD, being first sworn, deposes and says:

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

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

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

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

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

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

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Mayor
North Slope Borough
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The Honorable Edna DeVries
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Ms. Marty Rutherford, Director
Municipal and Regional
Assistance Division



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


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

BEFORE THE LOCAL BOUNDARY COMMISSION OF THE STATE OF ALASKA

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

BRIEF IN SUPPORT OF PETITION FOR DETACHMENT

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INTRODUCTION

In accordance with the provisions of 19 AAC 10.500, this brief is submitted to support the petition for the detachment of approximately 3,298 square miles of territory from the jurisdiction of the North Slope Borough. The territory proposed for detachment is located in the southwestern portion of the North Slope Borough.

This boundary change is proposed to facilitate the establishment of a borough in the NANA Region, an area of the State in which unprecedented growth and change is anticipated

through the development of the Red Dog mineral deposit and other natural resources of the Region. Indeed, as proposed, the detachment petition takes effect only upon the creation of a borough in the NANA region.

A petition to incorporate a borough in the NANA region, including the territory proposed for detachment through this petition, is now being circulated for signature in the NANA region. It is likely that the petition for the incorporation of that borough will be filed with the Local Boundary Commission in January, 1986 (see November 12, 1985, letter from the Maniilaq Association to Mr. Robert Eder, Chairman of the Local Boundary Commission, included as Attachment 1; see also, letter from NANA Regional Corporation dated November 20, 1985, to Emil Notti, Commissioner of the Alaska Department of Community and Regional Affairs, included as Attachment 2).

As examined in greater detail later in this brief, detachment is critical to the development and viability of a borough government for the NANA region. With the prospect of intensive resource development in this region over the next several years, the opportunity for responsive, planned growth and development is best answered through coordinated local government control. Development of the mineral resources in this area of the state poses questions regarding the effect of development on traditional lifestyles and values, as well as on the land itself.

The history of development in other rural areas, such as the North Slope Borough, vividly illustrates the need for effective local governmental control prior to the actual occurrence of significant development. For these reasons, the Commissioner of the Alaska Department of Community and Regional Affairs urges the Local Boundary Commission to review and approve the petition, and to present a recommendation for the proposed boundary change to the Fourteenth Legislature.

I. HISTORICAL AND PROCEDURAL BACKGROUND

Questions concerning the boundary of that portion of the North Slope Borough affected by this detachment petition can be traced to the debate surrounding the North Slope Borough incorporation petition. With the proposed incorporation of a borough in the NANA Region, the detachment of NANA lands from the North Slope Borough is an issue which has generated extensive public review and consideration over the past several years. This section briefly reviews the unique historical and procedural consideration which has led the Commissioner of the Alaska Department of Community and Regional Affairs to file this detachment petition.

A. INCORPORATION OF THE NORTH SLOPE BOROUGH

On April 4, 1971, the petition to incorporate the North Slope Borough as a first class borough was submitted to the Local Affairs Agency (the predecessor of the Alaska Department of Community and Regional Affairs) by the Arctic Slope Native Association (ASNA).

The petition was approved on May 10, 1972, by the Local Boundary Commission without modification of the boundaries of the territory proposed for incorporation (see "Report to the Local Boundary Commission on the proposal for incorporation of a first class borough", included as Attachment 3; and "Statement of Findings and Conclusions on the Petition Proposing Incorporation of a First Class North Slope Borough", included as Attachment 4). The North Slope Borough was formally incorporated on July 1, 1972.

The record of the Local Boundary Commission's consideration of the North Slope Borough incorporation petition contains only a passing reference to a dispute concerning the southwestern boundary of the proposed borough. In a letter to the Director of the Local Affairs Agency, Mr. Robert Newlin, then President of the Northwest Alaska Native

Association Board of Directors, expressed opposition to the inclusion of land in the "established Northwest Alaska Native Association region" (see letter from Robert Newlin, included as Attachment 5).

Little consideration or response to Mr. Newlin's concerns is evident in the record. At the time, there was little anticipation of the formation of the NANA Borough in the immediate future and, as a result, the question of how to draw the boundary between the proposed North Slope Borough and a prospective borough in the NANA region was apparently not a significant concern to the Local Boundary Commission.

To the extent that the issue was addressed, a review of the proceedings before the Local Boundary Commission in consideration of the petition to incorporate the North Slope Borough suggests that the boundaries may well have been drawn in an attempt to conform to the boundaries of the Arctic Slope Native Association.

At the December 2, 1971, public hearing on the incorporation petition, materials were presented to the Local Boundary Commission to demonstrate that the boundaries of the Arctic Slope Native Association and the boundaries of the proposed borough were one and the same (see "Transcript of Public Hearing of the Local Boundary Commission Regarding the Creation of a First Class North Slope Borough, December 2, 1971", included as Attachment 6). Fred Paul, legal counsel to the petitioner's representative, submitted the articles of incorporation and bylaws of ASNA as exhibits and noted:

"...membership and geographic boundaries in the Arctic Slope Native Association include the same boundaries as the borough application." (Attachment 6 - page 3)

Later in that same meeting, Mr. Paul called attention to the people and area represented by ASNA when he stated:

"they describe themselves as the people living north of the 68th meridian."
[Attachment 6 - page 36] Note: Mr. Paul's

intent was to identify the 68th degree north latitude.

Similarly, testimony before the Local Boundary Commission also suggested that the proposed boundaries of the North Slope Borough would be coincident with those of the impending Arctic Slope Regional Corporation, which was to be formed under the provisions of the Alaska Native Claims Settlement Act (ANCSA).

At the close of that hearing, the following exchange took place between Byron Mallott, Director of the Local Affairs Agency, and Mr. John Hedland, Chairman of the Local Boundary Commission concerning Mr. Newlin's letter:

"MR. MALLOTT: Mr. Chairman, I would like to remark for the record that on November 24, 1971, the Local Affairs Agency received a letter from Robert Newlin, President of the Northwest Alaska Native Association, which protests certain portions of the boundary of the proposed North Slope borough while stating strongly that the Northwest Alaska Native Association is greatly supportive of the over all application of the Arctic Slope Native Association for the proposed borough. I would like to ask the Arctic Slope Native Association to obtain a copy, if they do not already have one with the attached map, and to comment on it to the Local Boundary Commission within the time period allowed for testimony, December 23, twenty days from tonight.

MR. HEDLAND: The record will remain open for 20 days after tonight and anyone wishing to make comments or any kind of a presentation whatsoever on this may make them to the Local Affairs Agency in Juneau, Alaska.

MR. PAUL: I have a comment with respect to the Northwest Letter, if I may. I understand that part of the Northwest's apprehension is that there was a feeling that the boundary line was sort of a fence, and with the explanation that it is not a fence and with the explanation that the zoning would protect the subsistence living to the people in that area, that it's actually to the benefit of those people, after that message has gone back to Kotzebue through the Pt. Hope people, there would be an easing of the tension.

MR. HEDLAND: Is there anything further? Then this hearing is adjourned." (see Attachment 6 - pages 45 and 46).

Other than the assurances offered by Mr. Paul, the record offers no other indication that the concerns of Mr. Newlin were addressed.

At the February 23 - 25, 1972 meetings of the Local Boundary Commission, the Commission Chairman John Hedland again discussed the question of the southwestern boundaries of the proposed borough with an unidentified witness (see "Transcript of Meeting of the Local Boundary Commission Regarding North Slope Borough Incorporation, February 23, 1972", included as Attachment 7):

"MR. HEDLAND: The Land Claims Corporation that was set up in Barrow won't include Point Hope?"

Mr. Oh, it will.

MR. HEDLAND: As part of the Arctic Slope?

Mr. It's in the proposed findings there, I described it.

Mr. The Native corporation boundaries for that regional corporation will be almost identical, if not identical, to the proposed borough." [Exhibit 6 - page 34].

Later in that same meeting, Chairman Hedland was again advised that the proposed borough boundaries would be coincident to the boundaries of the Arctic Slope Regional Corporation:

"MR. HEDLAND: The boundaries of the Arctic Slope Land Claims Corporation are what?

Mr. STRANDBERG: They're as is proposed for the borough here." [Exhibit 6 - page 36]

The Alaska Native Claims Settlement Act was adopted by the 92nd Congress on December 18, 1971, at the same time that the Local Boundary Commission was considering the petition for the incorporation of the North Slope Borough. The law required the Secretary of the U.S. Department of the Interior to draw boundaries for the twelve in-state regional corporations provided under the Act. Boundaries were to be drawn "with each region composed as far as practicable of

Natives having a common heritage and sharing common interests" [ANCSA, Section 7 (a)].

On December 11, 1972, the Secretary of the U.S. Department of the Interior informed the President of the Arctic Slope Regional Corporation of the boundaries which he had set for the Corporation. It is significant to note that the established boundaries of the Arctic Slope Regional Corporation were not, "almost identical, if not identical, to the proposed borough" as the Local Boundary Commission had been advised at the North Slope Borough incorporation hearings. In fact, the boundaries set by the Secretary "detached" from the boundaries described to the Local Boundary Commission, virtually the same area which the State now seeks to detach from the North Slope Borough. The Secretary's action was taken on the basis of a standard essentially identical to that required for incorporation of a borough.¹

It is important to note that the action of the Secretary of the Interior was taken nearly six months after the North Slope Borough had been incorporated. Presumably, the Secretary was aware of the boundaries of the Borough when he made his determination of the boundaries of the Arctic Slope Regional Corporation. It is equally important to note that there is no record of any challenge to the Secretary's decision by the Arctic Slope Regional Corporation, the North Slope Borough or others.

In addition to social and cultural factors, it is evident that little consideration was paid during the 1971 - 1972 hearings to the significant geographic features which

¹ Section 7(a) of ANCSA provided that the boundaries of the regional corporations would be developed "with each region composed as far as practicable of Natives having a common heritage and sharing common interests". With respect to the proposed incorporation of a borough, AS 07.10.030(1) provided that, "The population of the area proposed for incorporation shall be inter-related and integrated as to its social, cultural and economic activities."

distinguish the territory currently proposed for detachment from the remainder of the North Slope Borough. This issue is addressed in substance in Sections II and III of this brief.

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

B. RECENT DETACHMENT PROCEEDINGS

The need for borough government in the NANA region has been increasingly recognized at the local level over the past several years. For at least the past three years discussions have taken place between representatives of the NANA region and the North Slope Borough regarding the detachment of a portion of the territory included in the current petition (see Attachments 1 and 2). During 1983, various meetings and worksessions occurred between North Slope Borough and NANA officials in Barrow and Kotzebue. In November of that year "a formal request to the North Slope Borough Assembly to detach lands in the southwest corner of the borough was made...". In January, 1984, the NANA Region followed that detachment request with a formal request to the North Slope Borough Planning Commission to redraw the Borough lines in the area of proposed detachment (see Attachment 2).

More recently, the detachment of territory included in this proposal has been the subject of an extensive number of public meetings involving officials of the North Slope Borough and the NANA Region. The topic was addressed at seven meetings of the North Slope Borough Planning Commission from February, 1985 through August, 1985 (see November 5, 1985, Memorandum from Ronald D. Brower, included as Attachment 8). North Slope Borough Mayor George Ahmaogak has also acknowledged the extent of recent public meetings regarding

this matter in his October 10, 1985, letter to Commissioner Emil Notti (included as Attachment 9):

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

The Alaska Department of Community and Regional Affairs has also been involved in occasional discussions with representatives of the NANA region regarding the proposed detachment beginning in 1982 (see letter of May 4, 1982, from James C. Sanders, included as Attachment 10).

Following the substantial public review and consideration of the proposed detachment, representatives of the NANA region and the North Slope Borough reached an understanding through which the North Slope Borough would initiate a proposal for the detachment of an estimated 433,000 acres from its boundaries. That understanding, represented by "North Slope Borough Ordinance Serial Number 85-15 Substitute" and the "Memorandum of Understanding" referenced in the Ordinance is included in this brief as Attachment 11. Two earlier versions of the North Slope Borough Ordinance relating to this matter are included as Attachments 12 and 13. The version included as Attachment 13 was one which the North Slope Borough Assembly was considering during a July 22, 1985 worksession which it held in Kotzebue.

Throughout its negotiations with representatives of the NANA region, officials of the North Slope Borough insisted that the terms of any agreement provide, among other things, that the voters of the North Slope Borough must approve an advisory question concerning the proposed detachment (see Attachment 9). Provisions for such an election are not a requirement of the State laws and regulations governing

municipal boundary changes. An advisory proposition regarding the proposed detachment was placed on the October 1, 1985 municipal ballot. The voters of the North Slope Borough defeated the advisory proposition by a margin of 184 (467 to 651 - see Memorandum of October 10, 1985 from Rebecha Miller, included as Attachment 14). Shortly thereafter, Mayor Ahmaogak advised Commissioner Notti that the North Slope Borough would oppose any detachment (see Attachment 9).

C. FILING OF PETITION BY COMMISSIONER OF DCRA

The administrative regulations governing boundary changes such as the one proposed here, provide that in this instance the boundary change may be initiated by the North Slope Borough Assembly, the Commissioner of the Alaska Department of Community and Regional Affairs or registered voters residing within the territory proposed for detachment (see 19 AAC 10.470). In this particular instance, there are no registered voters residing within the territory proposed for detachment. Therefore, the decision of the North Slope Borough not to proceed with the proposed detachment left two alternatives; initiation of the boundary change directly by the State or no action at all.

The alternatives presented no easy choice for the State. It was recognized from the beginning that any decision to initiate the detachment at the State level would be controversial. However, it was also evident that the NANA region would soon undergo unprecedented growth and development and that the interests of the region would best be protected and served through the establishment of coordinated local government control. This circumstance was recognized at the local level when representatives of the region expressed to the State their intention to initiate the creation of a borough in the NANA region.

It was felt by both the representatives of the region

and the State that a borough in the NANA region would not be feasible without the Red Dog mine site. After carefully considering this matter, the overriding public interest associated with this issue compelled Emil Notti, Commissioner of the Alaska Department of Community and Regional Affairs, to chose to initiate the petition directly. On November 1, Commissioner Notti instructed Ms. Marty Rutherford, Director of the Municipal and Regional Assistance Division, to prepare a petition for the detachment.

D. ACTION IS NECESSARY AT THIS TIME

As discussed earlier, residents of the NANA region are currently circulating a petition for incorporation of a borough government. The principal impetus for borough incorporation in that region is, of course, the pending significant social and economic change which will occur with the development of natural resources in the region.

Currently, the most prominent of the sites to be developed is the Red Dog zinc mine. However, there are a number of other resource sites which are also expected to be developed. These include the Lik zinc deposit, as well as oil and gas deposits in Kotzebue Sound and the Outer Continental Shelf in the Chuckchi Sea and Hope Basin.

In addition to resource development issues, the NANA region is also faced with the development of management strategies for the substantial federal holdings within the region. The National Park Service has recently completed a draft General Management Plan/Environmental Assessment for the Noatak National Preserve. Copies of the draft are not yet available, but are expected to be released for public review on December 9, 1985. The National Park Service is also developing a plan for the management of the Cape Krusenstern National Monument. Similarly, the U.S. Fish and Wildlife Service has also begun to prepare its Comprehensive

Conservation Plan for the Selawik National Wildlife Refuge in the NANA region.

Again, of all the developments to impact this region, the Red Dog mine project is the most significant. Development associated with the mine is expected to begin in the immediate future. Such development will include the construction of a road from the mine to a seaport facility to be constructed in support of the shipment of ore. The seaport facility and nearly all of the road are outside the boundaries of the North Slope Borough. The location of the mineral deposit, as well as the planned road and seaport facility, are shown on the map included in the petition for detachment as Exhibit C.

Over the past four summers, a total of 159 people have held summer jobs at the Red Dog mine site. Of these, 104 were NANA shareholders (see Attachment 18).

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. During the development of the project over the period from 1986 to 1990, there will be approximately 500 construction jobs available (see Attachment 18). One estimate has projected an annual gross payroll of \$8.8 million per year for the period 1986 to 1988 alone (see Red Dog Project Analysis, A Report to Governor Bill Sheffield, February, 1984, included as Attachment 15).

Actual mining of ore may begin as early as 1989 and reach full production by 1994. In terms of ore extraction, the mine is expected to be the largest zinc mining operation in the world (see Attachment 18).

Direct employment resulting from the operation of the mine is projected 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 (see Attachment 15 - page V-47).

Of course, such tremendous development will bring significant social and economic change to Northwest Alaska. The impact of those changes will be felt to the greatest extent within the NANA region. It has been agreed between the NANA Regional Corporation (the owner of the Red Dog mine site) and Cominco Alaska, the developer, that the majority of persons employed in the operation of the mine will be residents of the NANA region and shareholders of the NANA Regional Corporation (see Attachment 2).

To plan and otherwise prepare for such changes at the local level, representatives of the NANA region believe that it is critical that a borough be formed at the earliest opportunity. The State concurs.

Therefore, it is essential that action be taken on this petition in time for possible consideration of the proposed boundary change by the Second Session of the Fourteenth Legislature. Undue delays will only postpone the formation of a borough in the NANA region by at least one year. Given the imminent nature of the very substantial development which will occur in the NANA region, it is essential that a borough be created now which can plan for and control the impacts of such development. Further, the State believes that it would be more fair to the residents of the NANA region for the issue concerning the proposed detachment to be resolved prior to any election on the incorporation of a borough. Representatives of the NANA Region contend that, "to ask them (the voters) to make this choice without first knowing whether additional tax base will be available, would be unfair" (see Attachment 2). At the very least, it would certainly be proper to settle the issue prior to voter

consideration of borough incorporation.

The North Slope Borough has attempted to convince the Local Boundary Commission that this matter could not be properly considered within the timeframe sought by the State. However, on November 20, 1985, the Commission agreed to attempt to deal with this matter in a fashion which would enable the Commission to make a recommendation concerning the proposed detachment to the Second Session of the Fourteenth Legislature. The schedule set by the Commission consisted of the following:

11/22/85 - anticipated date of receipt of petition for detachment from the Commissioner of the Alaska Department of Community and Regional Affairs;

12/09/85 - the Commission will establish the location, dates and times for hearings on the petition for detachment;

12/18/85 - in order for material to be considered for inclusion in the Report and Recommendation to the Commission on this matter, written comments and answering briefs relating to the proposed detachment must be received by Ms. Marty Rutherford, Director of the Municipal and Regional Assistance Division, 949 East 36th Avenue, Anchorage, Alaska 99501 (telephone 561-8586);

12/23/85 - in order to be considered for inclusion in the Report and Recommendation to the Commission on this matter, rebuttals from the Department of Community and Regional Affairs to all written comments and answering brief must be completed;

01/06/86 - a report and recommendation to the Local Boundary Commission regarding this matter is to be completed by the State of Alaska Office of Management and Budget/Mr. Gordon Harrison, Associate Director.

E. DETACHMENT IS CRITICAL TO THE VIABILITY OF THE PROPOSED NANA BOROUGH

The State believes that a borough in the NANA region cannot be formed without the tax base which would be assured through this proposed detachment. An adequate tax base is critical to a local government for two principal reasons. First, a tax base provides the means to support the operating costs associated with local government. Second, a tax base permits the government to access long-term financial markets to fund major capital improvements.

Absent the availability of some source of unusually large revenue other than property taxes, the key indicator of the economic viability of a borough is the value of taxable property in relation to the number of residents served by the the borough (i.e. per capita value). Since none of the municipalities in the NANA region levy property taxes, it is not possible to provide actual assessed value information regarding the region. Nonetheless, projections of the per capita value of taxable property in the NANA Region can be made. Such projections can be developed using estimates of the full and true value of taxable property prepared by the State Assessor's Office (within the Department of Community and Regional Affairs). Based principally on these numbers, which are prepared for State Revenue Sharing purposes pursuant to AS 29.88.020(e)(3), the per capita value of taxable property within the NANA region (excluding the territory proposed for detachment) is projected to be \$30,993.²

However, such per capita property values are developed only for funding formula considerations for State Revenue Sharing purposes. As such, these numbers represent only a highly generalized estimate to be applied to any of a number of small municipalities throughout the state.

When asked to specifically estimate the value of taxable property within the NANA Region, the State Assessor

² Based upon: 1) a value of \$93,245,100 (pop 2,981) for Kotzebue developed from data collected by the State Assessor's Office (within the Department of Community and Regional Affairs) in 1983 and subsequently updated; 2) plus the following estimates of the full and true value of taxable property and population developed by the State Assessor's Office pursuant to AS 29.88.020(e)(3) for State Revenue Sharing purposes: Kivalina \$8,344,960, pop 272; Noorvik \$6,136,000, pop 200; Kiana \$11,136,840, pop 363; Ambler \$8,621,080, pop 281; Kobuk \$2,638,480, pop 86; Shungnak \$8,958,560, pop 292; Selawik \$18,408,000, pop 600; Buckland \$6,718,920, pop 219; Deering \$4,847,440, pop 158; plus 3) an estimated value of \$8,007,480 for Noatak (the only unincorporated community in the region) using the formula of \$30,680 per capita for a population of 261 (source NANA CZM draft plan 9/84).

concluded that, "All things considered, we estimated a reasonable per capita valuation for the subject communities (the ten communities in the NANA Region excluding Kotzebue) to be \$22,500" (see Memorandum of November 21 from Mike Worley, State Assessor to Dan Bockhorst, Local Government Specialist V, included as Attachment 16). Including Kotzebue, the value of the taxable property within the NANA Region is estimated to be \$162,680,100 or \$28,475 per capita.

By comparison, the per capita value of the projected full and true value of taxable property in all 11 existing boroughs and unified municipalities in the state ranges from a high of \$999,667 in the North Slope Borough to a low of \$48,123 in the Haines Borough. The North Slope Borough valuation is more than 35 times the value of the NANA region, while the Haines Borough valuation (the lowest in the state) is more than 1.7 times the value of the NANA region (source: Alaska Taxable, January, 1985, included as Attachment 17).

The per capita values of each of these municipalities as stated in the 1985 edition of Alaska Taxable is listed below:

<u>Name</u>	<u>Full Value</u>	<u>Population</u>	<u>Per Capita Value</u>
Municipality of Anchorage	\$13,199,355,800	244,030	\$54,089
Bristol Bay Borough	112,215,200	1,271	88,289
Fairbanks North Star Borough	3,627,908,630	69,633	52,100
Haines Borough	88,882,900	1,847	48,123
City and Borough of Juneau	1,493,919,200	28,941	51,619
Kenai Peninsula Borough	3,102,640,000	38,919	79,720
Ketchikan Gateway Borough	711,341,600	14,314	49,696
Kodiak Island Borough	651,444,700	13,479	48,330
Matanuska-Susitna Borough	1,773,384,960	34,030	52,112
North Slope Borough	12,354,883,600	12,359	999,667
City and Borough of Sitka	<u>756,351,400</u>	<u>8,221</u>	<u>92,002</u>
TOTAL	\$37,872,327,990	467,044	81,089

The present value of taxable property in the NANA region would likely offer only marginal economic feasibility for a borough. However, by adding the projected \$250 million in taxable improvements associated with the Red Dog mine development (see letter dated November 21, 1985, from Cominco Alaska to Emil Notti, included as Attachment 18), the value of taxable property within the NANA region would increase from the current estimate of \$162,680,100 to \$427,062,860. Based on the present population, the per capita value of taxable property would be raised to \$74,753.

The importance of the requested detachment to the economic viability of the proposed NANA borough is discussed in further detail in the November 19, 1985, letter from the Commissioner of the Alaska Department of Revenue (see Attachment 19). The matter is also discussed in detail in the November 20, 1985, letter from Government Finance Associates, Incorporated, which is the financial advisor to the State of Alaska Bond Committee (see Attachment 20). The borough cost and revenue analysis included in Attachment 2 provides additional information concerning the financial feasibility for creation of a borough in the NANA Region.

In addition to an adequate tax base, an area proposing to incorporate as a borough must have a cash economy to support government operations. A 1983 job availability study performed for the NANA region by Darbyshire & Associates found that there were approximately 1,200 full-time-equivalent jobs in the NANA region (see Job Availability and Market Relations for the NANA Region, 1982 - 1990, Darbyshire and Associates, 1983, Attachment 21). As noted earlier, the Red Dog mine is expected to create between 350 and 400 jobs directly and an estimated 78 to 135 secondary and indirect jobs within the region. As such, the Red Dog mine project would result in a relative increase over the 1983 employment in the region by as much as 44%.

Perhaps equally important, is the fact that the Red Dog mine project will provide the first major source of private sector employment in the region. It has been estimated that approximately 90 percent of all income in the region is directly or indirectly derived from governmental expenditures (see The NANA Regional Economy, Present and Future, Darbyshire and Associates, 1982, Attachment 22). The reliance of the regional economy on government dollars as "basic industry" leaves this region in a highly vulnerable condition, given the combined prospects for declining State oil revenues and the tightening of the Federal budget.

Even the North Slope Borough, which strongly opposes this proposed detachment has recognized through the Borough Assembly the fact that the inclusion of the Red Dog mine site is critical to the economic viability of a borough in the NANA region. North Slope Borough Ordinance Serial Number 85-15 Substitute" (Attachment 11 - page 1) states:

"...that territory [the area west of the Noatak National Preserve within the NANA Regional Corporation's boundaries which also lies within the boundaries of the North Slope Borough, containing approximately 433,000 acres] is critical to the economic viability of the proposed NANA Region borough government..."

II. DESCRIPTION OF TERRITORY PROPOSED FOR DETACHMENT

A. PHYSICAL CHARACTERISTICS OF THE AREA

The territory proposed for detachment is generally bounded by the Delong Mountain Range on the west, north and northeast and also by the Howard Hills on the east, forming a natural bowl emptying into the northern Kotzebue Basin. Moderately sloping foothills, broad stream valleys and coastal lowland lagoon systems tie the area to wetlands on the extreme west and the south. Elevations range from sea level to 4,220 feet at Rough Mountain Peak.

Seven major river systems flow across the area to either drain into the Chuckchi Sea or to feed into the Noatak River which meanders through the southern reaches of the territory. These rivers are the Kivalina, Wulik, Kelly, Kugururok, Nimiuktuk, Anisak and Aniuk. All are fed by various creeks originating in the Delong Mountains and Howard Hills and comprise the southern watershed of the Delong Mountain Range.

Much of the area is within the borders of the Noatak National Preserve. The Gates of the Arctic National Park and Preserve crosses the territory at its southeastern boundary. Both are Federally controlled conservation areas. Additionally, the area is in close proximity to the remainder of the Noatak National Preserve, Cape Krusenstern National Monument, Selawik National Wildlife Refuge, the Kobuk Valley National Park and the Bering Land Bridge National Monument. These latter areas are located within the territory proposed for incorporation as the NANA Borough.

B. MINERAL DEPOSITS

Located within the area of proposed detachment is the Red Dog site. It is approximately 55 miles from the Chuckchi Sea, east-northeast of Kivalina and 82 miles north of Kotzebue. (see Final Environmental Impact Statement, Red Dog Mine)

Project, Northwest Alaska, included as Attachment 23 - pg. IV - 4). The ore deposit defining the mine is located on Red Dog Creek lying at the western base of Deadlock Mountain. The Creek is a tributary of Ikalukrok Creek which is a major tributary of the Wulik River. The deposit is estimated to contain at least 85 million tons of ore which consists of a minimum of 5.0 percent lead, 17.1 percent zinc, 2.4 oz/ton silver and measurable levels of barite. The project has an expected life of at least 40 years under projected production rates, with the possibility of extension if additional ore is found (see Attachment 15).

The Red Dog deposit is but one manifestation of a highly mineralized geologic formation which sweeps northwest from Red Dog Valley. Located approximately twelve miles northwest of the Red Dog mine is a major zinc deposit known as the Lik site. Two additional sites are contained in this find (NANA Coastal Resource Service Area (CRSA) Coastal Management Program, Attachment 24). All deposits appear to be rich in zinc, lead and silver.

Still within the area of proposed detachment is another vein of mineral deposits. Two sites, one containing chromium and another holding zinc and lead, are located east of the Kugururok River channel (see Attachment 24).

It appears that oil and gas reserves are absent from the area of proposed detachment.

IV. REGULATORY FACTORS TO BE CONSIDERED

The administrative regulations governing detachments from an organized borough provide that certain standards must be met in the judgment of the Local Boundary Commission. This section of the brief examines the bulk of these standards; a separate section is used to examine the standards relating to the interests of the entities affected by the proposed boundary change.

A. SOCIAL, CULTURAL AND ECONOMIC CHARACTERISTICS

The regulatory standards governing detachment (19 AAC 10.230) provide that the Local Boundary Commission shall consider whether 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 Native inhabitants of the NANA Region and the North Slope Borough probably share the same ancestral beginnings. Both areas are home to Inupiat Eskimos who evidence similar language and cultural traditions. However, the indigenous peoples of the two areas are distinctive in the manner discussed below.

The document titled Alaska Natives and the Land, included as Attachment 25, unequivocally establishes that the NANA region is, for the most part, distinguished from the North Slope Region in its physiographic characteristics, cultural composition, societal structure, political organization and economic exchange (pp 99 - 103 and 129 - 170). Interestingly, when dividing the state into fifteen regions which, "offer to us the greatest degree of homogeneity in physiography, ethnography, biotic provinces, natural resource patterns and aggregate potential for meaningful economic analysis" (p. 99), this document identified the region generally prescribed by the

NANA Regional Corporation boundaries as a distinct unit.³

In contrast, the study identified the current North Slope Borough region as a separate area. The document further established a southwestern boundary of this region which excluded the area of proposed detachment from the North Slope Borough region. The area of proposed detachment was included in the NANA Region. (see Attachment 25).

Today the pursuit of subsistence activities continues to provide the foundation for the traditional cultural values, social structures and economic fabrics of each region. The subsistence way of life predominates and is inseparable from the land, the water and the resources they support.

These very ties to each region's natural resources lend further support to the proposal to detach the designated area from the North Slope Borough. Residents of the NANA region, particularly the Villages of Kivalina and Noatak, have commonly used the land and rivers in the area of proposed detachment for harvesting subsistence resources. Seasonal use patterns which occurred during the period 1950-1960 establish this fact (see Attachment 25). Current use patterns confirm continued reliance upon the area of proposed detachment by NANA residents (see Attachments 26 and 27 consisting of Minerals Management Service Technical Reports #101 and #74). Further, seven of the Intensive Resource Use Areas identified in the NANA CRSA Coastal Management Program fall within the area of proposed detachment (see Map of the Intensive Resource Use Areas in the NANA Region, included as Attachment 28 (source NANA Coastal Management Plan). They are:
North Kivalina Coast Upper Kivalina River

³ The southwestern boundary of the NANA Regional Corporation deviates from the boundary established by this document. However, since this boundary is not under present consideration, discussion beyond this point is unnecessary.

Middle Noatak River

Narvakrak Lake

Upper Noatak River
Drainage

Upper Noatak River
Trapping Area

Feniak Lake

In contrast, little if any of the area has been or is being used by residents of the North Slope Borough. Once again, the 1950-1960 seasonal use maps from the document Alaska Natives and the Land demonstrate an absence of use by residents of the North Slope Borough. Only the Village of Point Hope demonstrated a marginal interest in the area during that period. However, the area of proposed detachment shows no actual use by Point Hope residents. Not surprisingly, the Delong Mountains appear to form a natural barrier for western access to the region. Current day absence of land use by North Slope residents is confirmed by the North Slope Borough Comprehensive Plan, included as Attachment 29. It fails to identify use of the area proposed for detachment by North Slope residents. Further, when discussing conflicts between NANA Coastal Resource Service Area boundaries and North Slope Borough coastal boundaries, the North Slope Borough has stated, "Borough residents do not utilize these fish (in the rivers within the territory proposed for detachment) for subsistence or commercial purposes" (see Attachment 30 letter from Karla Kolash to Amy Kyle, February 8, 1985). Additionally, transportation routes to the area of detachment are virtually nonexistent for North Slope residents. Without adequate access routes to the area, use is difficult (see Map of Transportation Routes and Facilities of the North Slope Borough, included as Attachment 31).

Without doubt, the river systems which traverse the area, particularly, the Wulik, Kivalina, and Noatak, are the major sources of subsistence resources for NANA region residents. Any impacts to the water quality of these river systems would seriously affect the subsistence resources upon

which the NANA region is dependent. The importance of these riverine systems and the NANA region's desire to protect them is confirmed by the inclusion of these areas within the NANA CRSA Coastal Management Program's coastal boundaries. These boundaries extend to the area of proposed detachment and terminate at the point of political jurisdiction by the North Slope Borough. These coastal boundaries are artificially constrained by jurisdictional claims. Absent the North Slope Borough boundary running the 68° 00' N Latitude, the boundaries of the NANA Region's coastal area would extend to include the riverine systems in the area of proposed detachment.

This present day use and ancestral dependence upon resources in the area is further documented by the existence of archeological and historical sites located there. The NANA Regional Corporation has identified fourteen sites under the provisions of Section 14(h)(1) of the Alaska Native Claims Settlement Act and the Alaska Heritage Resource Inventory has identified 41 major sites within the area of proposed detachment and attributed to the residents of the NANA region (see Archeological and Historical map, included as Attachment 32). In contrast, the North Slope Borough Coastal Management Program and Comprehensive Plan have identified no historical or archeological sites in the same area.

In summary, the people of the NANA region have traditionally used and still rely upon the area to be detached, while the residents of the North Slope Borough have little, if any, past or present reliance on resources in this area. To help protect the resources through municipal planning powers and the coastal management program, it is important for these resources to fall within the jurisdiction of the NANA region.

B. GEOGRAPHIC AND TRANSPORTATION CONSIDERATIONS

The regulatory standards governing detachment further provide that the Local Boundary Commission shall consider

whether the geographic location or configuration of the territory precludes the provision of borough services provided other areas of the borough or make the provision of borough services impractical; and whether the lack of transportation facilities precludes the communication and exchange necessary for responsive and integrated local government.

The geographic location and configuration of the area proposed for detachment suggests that it be included in the proposed NANA borough for the express purpose of service delivery. The area proposed for detachment is clearly related to the Kotzebue Basin by natural geographic corridors following the southern riverine systems. The mountains encircling the area on the west, north and east, isolate it from all other areas. The transportation infrastructure being developed for the Red Dog mine accesses these routes.

At present, the North Slope Borough delivers a variety of services (e.g. planning, sewer, waters, solid waste disposal, health and education) to the communities in the Borough. Most of the services are delivered from Barrow, the seat of borough government. Although the North Slope Borough provides services to communities as distant as 250 miles, it is far more practical to deliver services to the area of proposed detachment from the NANA region. Physical proximity alone would dictate manageable service delivery through the region lying directly south of the area. Access by the region to the north is impeded by the mountains surrounding the area.

The modes of transportation to the area of proposed detachment support the proposal to detach the lands for incorporation in the NANA Borough, particularly for purposes of service delivery. Available transportation also makes it far more practical to deliver services from the proposed NANA Borough. Road, marine and air access will be available to the detached area from the NANA region. The only mode of transportation to the area of detachment from the North Slope Borough is

aircraft, and it is generally more difficult and more lengthy to reach the area from Barrow than from Kotzebue, the presumed seat of NANA Borough government.

The length of time to travel by air from Kotzebue to the Red Dog mine site is less than half the time required to travel from Barrow to the Red Dog mine site. That is, it takes approximately 0.6 to 0.7 hours air time to travel one way from Kotzebue to the Red Dog site. From Barrow, it takes 1.9 to 2 hours to travel one way to the same site. Also, a greater variety of aircraft can be used to fly from Kotzebue because of its closer proximity to the area (absence of refueling), and the flight can be completed successfully more often because of the lesser distance to travel.

The cost of air travel from Kotzebue to the Red Dog site and the greater portion of the area of proposed detachment is considerably less than from Barrow. For example, one way charter costs from Kotzebue to the Red Dog site via a Twin Otter are approximately \$700, and were estimated to be \$80 per seat by Bakers Aviation (Kotzebue air carrier, conversation with Wayne Marshall, Planner, DCRA, 11/13/85). The costs for one way Twin Otter charter from Barrow to the Red Dog site are approximately \$1,900 and were estimated to be \$210 per seat by Cape Smyth Air (Barrow air taxi operator, conversation with Wayne Marshall, Planner, DCRA on 11/13/85). This sampling of air fare comparisons is reflective of costs to access the area from the actual and anticipated seats of either borough government.

The NANA Borough will also have the distinct advantage of delivering services via two modes of transportation that are not available from Barrow. These are marine and road. Development of the Red Dog mine entails construction of a marine port south of Kivalina and an access road to the Red Dog site from the port on the coast. The marine port and road may reduce the costs and increase the dependability of delivering

bulk goods to the area. The North Slope Borough presently has no plans to construct a port and/or road access to the area. In addition, the Noatak River is presently used to barge goods as far inland as Noatak, and might be used to barge goods to the area of proposed detachment. The North Slope Borough does not have a similar inland marine transport system.

In summary, the NANA region is in a much better position to deliver borough services to the area proposed for detachment. There are at least three modes of access from the NANA region, while there is only one from the North Slope Borough. In addition, since the main users of the area of proposed detachment will be residents of the NANA region, they will be responsive in the delivery of Borough services. This will not be the case for the North Slope Borough. It is more reasonable for service delivery to originate from the NANA Borough. Services are offered more easily from Kotzebue as the regional center because of closer geographical proximity.

C. SERVICE DELIVERY AFTER DETACHMENT

19 AAC 10.240 provides that the Local Boundary Commission will not approve a detachment unless the petitioner demonstrates to the satisfaction of the Commission that the service requirements of the territory will be met following the detachment.

This standard would be met by the Commission's approval of the condition upon which the State seeks this detachment, i.e., that the detachment occur simultaneously with the inclusion of such territory within the boundaries of a borough to be created within the NANA region. The NANA borough would, upon incorporation, assume the service responsibilities for education, planning and tax assessment, which are mandatory under the provisions of State law. Other services would be made available to the region as the demand for those services arose.

D. DISTRIBUTION OF ASSETS AND LIABILITIES

According to 19 AAC 10.250, the Local Boundary Commission shall determine the manner in which the assets and liabilities of the municipality from which detachment is sought shall be distributed.

There are no assets of the North Slope Borough within the territory proposed to be detached. 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. Finally, the territory proposed for detachment has virtually no current taxable value (less than five one-thousandths of one percent of the North Slope Borough's 1984 total assessed valuation). Therefore, it is the State's contention that it is unnecessary and inappropriate for any liabilities of the North Slope Borough to be "distributed" to the State or any other current or future entity as a result of the proposed detachment.

V. APPLICATION OF THE BEST INTERESTS STANDARD

A. ROLE OF THE LOCAL BOUNDARY COMMISSION

The State Constitution and laws provide that the establishment and change of borough boundaries should primarily be the responsibility of the State. As is noted in the publication "Borough Government in Alaska" by Thomas A. Morehouse and Victor Fischer (pages 51-52), this was done because the framers of the Constitution concluded:

"first, the delineation of boroughs required a statewide analysis of pertinent considerations; second, the state had a direct interest, since the borough was to serve not only as a local government but also as a unit for the provision of state services; third, it was generally believed that an objective analysis of relationships between adjacent local units could only be made at a higher level and fourth was the belief that strictly local political decisions do not usually create proper boundaries".

The Local Boundary Commission was created as the mechanism to carry out this State interest. As is discussed below, the State truly believes that the proposed detachment is in the best interests of the State, the territory to be detached and the North Slope Borough.

B. BEST INTERESTS OF THE STATE OF ALASKA

In order to approve the boundary change, 19 AAC 10.230 requires that the Local Boundary Commission determine that the proposed detachment is in the best interests of the State.

The State has two major interests that will be served by the proposed detachment. First, the detachment will promote local self-government in the NANA region. Second, the detachment will promote resource development and employment in northwest Alaska. The proposed detachment involves no significant detriment to any State interest.

The greatest interest of the State regarding this

proposed boundary change is in maximizing local self-government in the NANA region. It is the State's goal, expressed in Article X § 1 of the Alaska Constitution, "to provide for maximum local self-government." This goal will be best served by formation of a borough in the NANA region.

As was indicated earlier, residents of the NANA region are presently circulating a petition for the creation of a borough in their region. Formation of a borough for this area has long been a goal of a number of the principal institutions in the region such as the NANA Regional Corporation, the Maniilaq Association and the Northwest Arctic School District and others. As was also indicated earlier, the area proposed for detachment is an indispensable part of a new borough for the NANA region. Hence, the proposed detachment is an essential and vital prerequisite to providing maximum local self-government to northwest Alaska and the NANA region.

Only 26 percent of the state of Alaska is within the jurisdiction of an organized borough or unified municipality. During the past seventeen years, only one borough government has been formed in this state. No borough government has been created in Alaska for more than thirteen years. The State of Alaska now has an opportunity to assist in the creation of a new borough.

Apart from promoting local self-government, the State believes that the proposed detachment and subsequent formation of a borough in the NANA region will promote resource development and employment in the region. The proposed Red Dog Mine will be served by the State-financed Delong Mountain Transportation system, consisting of a road and port facility for the export of ore from the mine. The port facility and the road will be located within the NANA region.

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 substantially reduce the regulatory burden of the State in the development of these projects. It also will better serve the public interest by providing comprehensive and consistent planning and regulation for the entire region.

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, especially as it relates to the Red Dog and other nearby mineral developments.

C. BEST INTERESTS OF THE TERRITORY TO BE DETACHED

In addition to being in the best interests of the State, 19 AAC 10. 230 requires that the Local Boundary Commission also determine that the proposed detachment is in the best interests of the territory to be detached.

As development of the Red Dog mine proceeds, the territory proposed for detachment will be occupied on a rotating basis by persons employed in mining-related construction, operations, or support services. The majority of these individuals will be residents of the NANA region, as will individuals employed at the Lik mine site (see letters from GCO Minerals Company and Noranda Exploration, Incorporated, to Emil Notti, included as Attachments 33 and 34). The association of these persons with communities in the NANA region, rather than with communities in the North Slope

Borough, indicates that a borough serving the NANA region will be more closely aligned with the social, economic and cultural characteristics of the inhabitants of the territory to be detached than would the North Slope Borough.

It would be more practical to provide municipal services to the territory proposed for detachment from a borough serving the NANA region than from the North Slope Borough. The regional transportation center for the territory to be detached will be Kotzebue, also the likely headquarters for borough government in the NANA region. Development of the Lik mine site anticipates use of Kotzebue as the main service center (see Attachment 34).

Two villages that would be part of a NANA region borough, Kivalina and Noatak, are in very close proximity to the territory proposed to be detached. Their presence will assure the delivery of borough services to the vicinity of the detached area.

In contrast, the North Slope Borough is headquartered in Barrow, hundreds of miles from the territory to be detached. Moreover, the new borough serving the NANA region can execute its mandatory planning power effectively only if this major area of regional employment can be included within its boundaries.

As discussed in detail in Section IV-B of this brief, transportation capabilities between Kotzebue and the territory to be detached are better than from the North Slope Borough.

D. BEST INTERESTS OF THE NORTH SLOPE BOROUGH

Finally, 19 AAC 10.230 requires that the Local Boundary Commission determine that the proposed detachment is in the best interests of the North Slope Borough.

The North Slope Borough will lose little from the proposed detachment. The proposed shift of the jurisdictional boundaries of the North Slope Borough affects 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 (including \$11,732,896,800 in oil and gas properties) (see Attachment 17).

The North Slope Borough has alleged that the detachment would have a significant adverse impact upon the financial affairs of the North Slope Borough (see November 6, 1985, letter from E.F. Hutton to James P. Sharpe, Director of Administration and Finance for the North Slope Borough, included as Attachment 35). These allegations have been carefully examined by financial experts on behalf of the Petitioner. The conclusion of these experts was 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 letter of November 18, 1985, from the Commissioner of the Alaska Department of Revenue, included as Attachment 36; see also Attachment 20).

The only thing which the North Slope Borough stands to lose, is the prospect of increasing the value of taxable property within its boundaries. However, even as significant as the Red Dog mine development is to the NANA region, the value of that development would be of little consequence to the North Slope Borough. As was stated earlier, it is estimated that the capital improvements to the Red Dog mine would be valued at approximately \$250 million. That figure 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 (see Attachment 1). The detachment of the territory will preclude the exacerbation of the conflict currently brewing 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 State has shown through its petition and brief that the social, economic and geographical considerations which the Local Boundary Commission is required to examine in such circumstances support the proposed detachment.

The State has also shown that little consideration was paid to the social, cultural and geographic differences between the territory proposed for detachment and the remainder of the North Slope Borough during the 1971 - 1972 hearings of the Local Boundary Commission. Further, if the testimony provided to the Commission regarding the boundaries of the proposed Arctic Slope Regional Corporation had been correct, the Commission may have modified the boundaries of the proposed Borough to exclude the territory which the State now seeks to detach.

The State has also shown through its petition and brief that all standards for the detachment have been satisfied with respect to this proposed boundary change.

- ° The proposed detachment is in the best interests of the State in that it will promote local self-government as well as resource development and employment in the NANA region.
- ° The proposed detachment is in the best interests of the territory to be detached in that local government services to an area physically and culturally associated with the NANA region would be best served from that region.
- ° The proposed detachment is in the best interests of the North Slope Borough in that 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, the present threat to harmonious relations among the people within the area would be resolved through the detachment. The detachment would have little adverse impact upon the Borough.

The State has proven through its petition and brief that the service requirements of the territory proposed for detachment will be met following detachment. The State

proposes that the detachment occur simultaneously with the inclusion of such territory within the boundaries of a borough to be created within the NANA region.

The State has shown that the detachment will not result in the need to distribute any of the assets and/or liabilities of the North Slope Borough.

Therefore, the Commissioner of the Alaska Department of Community and Regional Affairs respectfully requests the Local Boundary Commission to 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.

Emil Notti

Emil Notti, Commissioner
Alaska Department of Community
and Regional Affairs

LIST OF ATTACHMENTS TO THE BRIEF

Attachment 1 - three page letter dated November 12, 1985, with two pages of attachments, from Suzy Erlich, Chairman of the Board of Directors of the Maniilaq Association to Robert Eder, Chairman of the Local Boundary Commission.

Attachment 2 - letter from NANA Regional Corporation dated November 20, 1985, to Emil Notti, Commissioner of the Alaska Department of Community and Regional Affairs

Attachment 3 - "Report to the Local Boundary Commission on the proposal for incorporation of a first class borough" prepared by the Local Affairs Agency on December 2, 1971.

Attachment 4 - "Statement of Findings and Conclusions on the Petition Proposing Incorporation of a First Class North Slope Borough", approved by the Local Boundary Commission on May 10, 1972.

Attachment 5 - letter from Robert Newlin to Byron Mallott, with one page attachment.

Attachment 6 - "Transcript of Public Hearing of the Local Boundary Commission Regarding the Creation of a First Class North Slope Borough, December 2, 1971".

Attachment 7 (a) and (b) - "Transcript of Meeting of the Local Boundary Commission Regarding North Slope Borough Incorporation, February 23, 1972" and "Volume II Local Boundary Commission North Slope Borough Petition".

Attachment 8 - November 5, 1985, Memorandum from Ronald D. Brower, to Earl Finkler.

Attachment 9 - October 10, 1985, letter from North Slope Borough Mayor George Ahmaogak to Commissioner Emil Notti.

Attachment 10 - May 4, 1982, letter from James C. Sanders, Staff Assistant to the Local Boundary Commission to Don Argetsinger.

Attachment 11 - Adopted "North Slope Borough Ordinance Serial Number 85-15 Substitute" and the "Memorandum of Understanding" referenced in the Ordinance.

Attachment 12 - Earlier version of "North Slope Borough Ordinance Serial Number 85-15" (not adopted).

Attachment 13 - Version of "North Slope Borough Ordinance Serial Number 85-15" under consideration at North Slope Borough Assembly workshop held in Kotzebue on July 22, 1985 (not adopted).

Attachment 14 - Memorandum of October 10, 1985 from Rebecha Miller to Dan Bockhorst.

Attachment 15 - "Red Dog Project Analysis, A Report to Governor Bill Sheffield, February, 1984".

Attachment 16 - Memorandum of November 21 from Mike Worley, State Assessor to Dan Bockhorst, Local Government Specialist V.

Attachment 17 - Alaska Taxable, January, 1985.

Attachment 18 - two letters dated November 21, 1985, from Cominco Alaska to Emil Notti.

Attachment 19 - November 19, 1985, letter from Mary Nordale, Commissioner of the Alaska Department of Revenue to Robert Eder, Chairman of the Local Boundary Commission.

Attachment 20 - November 20, 1985, letter from Government Finance Associates, Incorporated, (the financial advisor to the State of Alaska Bond Committee) to Emil Notti.

Attachment 21 - Job Availability and Market Relations for the NANA Region, 1982 - 1990, Darbyshire and Associates, 1983.

Attachment 22 - The NANA Regional Economy, Present and Future, Darbyshire and Associates, 1982.

Attachment 23 - Final Environmental Impact Statement, Red Dog Mine Project, Northwest Alaska, 1984.

Attachment 24 (a) and (b) - NANA Coastal Resource Service Area (CRSA) Coastal Management Program, 1984.

Attachment 25 - Alaska Natives and the Land, Federal Field Committee, 1961.

Attachment 26 - Minerals Management Service Technical Reports #101 Barrow Arch Socioeconomic and Sociocultural Description, 1984.

Attachment 27 - Technical Report #74, Chuckchi Sea Sociocultural Systems Baseline Analysis, 1983.

Attachment 28 - Map of the Intensive Resource Use Areas in the NANA Region (source NANA Coastal Management Plan).

Attachment 29 - North Slope Borough Comprehensive Plan, 1984.

Attachment 30 - letter dated February 8, 1985, from Karla Kolash to Amy Kyle, Office of the Governor, Division of Governmental Coordination.

Attachment 31 (a) and (b) - Map of Transportation Routes and Facilities of the North Slope Borough and North Slope Borough Coastal Management Program.

Attachment 32 - Map of the Archaeological and Historical Resources in the NANA Region (source NANA Coastal Management Plan).

Attachment 33 - letter dated November 19, 1985, from GCO Minerals Company to Emil Notti.

Attachment 34 - letter dated November 20, 1985, from Noranda Exploration, Incorporated, to Emil Notti.

Attachment 35 - letter dated November 6, 1985, from E.F. Hutton to James P. Sharpe, Director of Administration and Finance for the North Slope Borough.

Attachment 36 - letter of November 18, 1985, from the Commissioner of the Alaska Department of Revenue to Robert Eder, Chairman of the Local Boundary Commission.

Attachment 37 - U.S. Department of the Interior Geological Survey Map of the North Slope Borough, including the territory

proposed for detachment, and the NANA Region (1:1,000,000 scale).

Attachment 38 - NANA Regional Strategy updated 1984- 1985.

REPORT TO THE LOCAL BOUNDARY COMMISSION
ON THE PETITION TO DETACH CERTAIN LANDS
FROM THE NORTH SLOPE BOROUGH

Gordon S. Harrison
Office of Management and Budget
State of Alaska

January 3, 1986

Report To The Local Boundary Commission
On The Petition To Detach Certain Lands
From The North Slope Borough

I. Introduction

In a memorandum dated November 20, 1985 (Attachment 1), the Commissioner of the Department of Community and Regional Affairs (DCRA) delegated to me the responsibility of preparing a report to the Local Boundary Commission under 19 AAC 10.570 on the petition before the Commission regarding the detachment of certain lands from the North Slope Borough. This document is my report on the matter, in accordance with that delegated responsibility.

II. Summary and Background of Petition

The petition for detachment submitted to the Local Boundary Commission by DCRA seeks to detach approximately 3,298 square miles of territory from the North Slope Borough. The proposed detachment area includes the Red Dog Mine development site, several other known mineral deposit areas, and additional

lands. The petition asks that any decision in favor of detachment take effect only upon the incorporation of a borough within the Northwest Alaska Native Association (NANA) region, which borough shall include the proposed detachment territory.

The Red Dog Mine development site is the most noteworthy feature of the territory proposed for detachment. The mine site is located on land principally owned by NANA Regional Corporation, Inc., and is slated for joint development by NANA and Cominco Alaska, Inc. The mine site occupies approximately 1,336 acres (2.1 square miles) of a total 2.1 million acres (3,298 square miles) proposed for detachment. If developed, the mine is expected to create approximately three hundred and fifty to four hundred jobs and have a lifespan of approximately fifty years.

The territory proposed for detachment, particularly the Red Dog Mine development site, also bears directly on a separate proposal which may soon come before the Local Boundary Commission. This proposal is for the creation of a borough for the NANA region, to be called the Northwest Arctic Borough. NANA region representatives, who view the proposed detachment as essential for the proposed borough's viability, currently are preparing an incorporation petition for the proposed borough.

During the past three years, NANA region representatives and North Slope Borough representatives met on a number of occasions to discuss the possibility of detaching the Red Dog Mine site and additional lands from the North Slope Borough. Also, several public workshops and hearings on the matter were held in the Kotzebue and Barrow areas. (Details on the discussions and hearings involved can be found in the detachment petition, briefs, and attachments.) These discussions and meetings were not sufficient to resolve the question of detachment, however. On October 1, 1985, North Slope Borough residents voted against a proposition for detachment in a borough-wide advisory (non-binding) referendum. On November 22, 1985, DCRA submitted its petition for detachment to the Local Boundary Commission.

Ordinarily, DCRA reviews all petitions submitted to the Local Boundary Commission. Because DCRA is the Petitioner in the present case, however, the Office of Management and Budget, Division of Strategic Planning, was designated to serve as the reviewing agency.

Review requirements for Local Boundary Commission petitions encompass two levels of review. One is a compliance review (required under 19 AAC 10.520), to assure that the petition and accompanying brief submitted to the Commission are in the proper form and contain the factual information required by existing regulations (19 AAC 10.450-530). I fulfilled this

review requirement in my November 22, 1985, memorandum to the Petitioner, which held that the DCRA petition substantially complied with established form and content requirements (Attachment 2).

The second level of mandatory review is a report (required under 19 AAC 10.570) to the Local Boundary Commission on the boundary change proposed by the petition. The report must summarize the issues raised in the petition and briefs, comment on issues relevant to the proposed action, and contain recommendations to the Commission. The present report fulfills this requirement.

III. Discussion of Petition

I have carefully reviewed the DCRA petition, the brief supporting the petition and attachments thereto, the briefs and attachments submitted by the NANA Regional Corporation and the North Slope Borough, and the reply of the Petitioner to the opposing brief by the North Slope Borough. Further, I have independently researched certain issues raised in the petition, such as the designation of the southern boundary of the North Slope Borough and the potential public financial impact of detachment on the North Slope Borough.

There are two aspects to the detachment proposal: one is substantive, and the other is procedural. Careful consideration must be given to each aspect, as each conditions the recommendation made in this report.

A. Substantive Aspects

From a substantive point of view, I believe that a persuasive case exists for the proposed detachment. The case is based on considerations of equity, and is discussed below.

The North Slope Borough has access to public wealth that, when viewed in per capita terms, is staggering. The tax base of the North Slope Borough currently exceeds \$12 billion, for example, while the number of its permanent residents is less than 8,000. The magnitude of such wealth is indicated by the fact that the Borough's 1984 per capita assessed value exceeded the statewide average per capita assessed value by a factor of 12, and the per capita assessed value of the Anchorage Municipality by a factor of 18. Further, it is expected that the North Slope Borough tax base will continue to increase at least through the end of this decade, and may exceed \$16 billion by the early 1990's.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Procedural Aspects

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IV. Recommendation

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

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

FOOTNOTES

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

- /10 In FY 1986 the North Slope Borough expects to receive approximately \$328,700,000 as general fund revenue, or about \$41,000 for each permanent resident of the Borough. In contrast, the State of Alaska expects to receive about \$6,000 per capita. Alaska has the highest per capita general fund receipts among all the fifty states (State Policy Research, Inc., Arlington, Virginia).

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

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

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

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

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

ATTACHMENTS

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MEMORANDUM

State of Alaska

Community and Regional Affairs

TO: Gordon Harrison
Office of Management
and Budget

DATE: November 20, 1985

FILE NO: EM/IR/sj/00430

TELEPHONE NO: 465-4700

FROM: *Emil Notti*
Emil Notti
Commissioner

SUBJECT: Delegation

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

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

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

I certainly appreciate your willingness to assist in this matter.

OFFICE OF
MANAGEMENT & BUDGET

NOV 21 1985

STRATEGIC PLANNING

MEMORANDUM


State of Alaska

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

DATE: November 22, 1985

FILE NO:

TELEPHONE NO: 561-8586

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 8. STANDARDS FOR DETACHMENT FROM ORGANIZED BOROUGHS

Section

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

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

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

19 AAC 10.230. DETACHABLE TERRITORY.
(a) Territory which is a part of a borough may be detached from that borough if, in the determination of the commission, the detachment would be in the best interests of the state, the territory to be detached, and the borough affected by the detachment. In determining whether to approve a detachment, the commission will consider, but is not limited to, the following factors:

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 9. STANDARDS FOR DISSOLUTION OF ORGANIZED BOROUGHS

Section

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

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

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

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

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

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

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

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

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

(c) If the liabilities of a borough being dissolved

MEMORANDUM

State of Alaska

TO: The Honorable Hal Brown
Attorney General
Department of Law

DATE: December 6, 1985

FILE NO: 86F-391

TELEPHONE NO 465-3568

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

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

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

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

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

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

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

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

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

GSH/dmc