

ALASKA LEGISLATIVE COMMITTEES 1900-1900 00/2

3846 SCRA LOCAL BOUNDARY COMM. REPORT, 14TH LEG. / 2ND SESSION 222

there exists no need or demand for municipal services, except for the possibility of extending planning authority.

12. The petitioner has made no claim that the welfare or safety of residents of Unalaska is endangered by any current or prospective condition in the territory proposed for annexation. However, at the Commission's hearing on January 4, 1986, residents did testify to the need for control of dumping of bilge water and garbage in the bays in proximity to the City. It is reasonable to conclude the City will need to impose some degree of control over this activity in those bays just outside its jurisdiction, such as Captains Bay and Unalaska Bay.
13. The petitioner claims that the potential for the development of geothermal energy resources exists twelve miles west of Unalaska at the base of Mt. Makushin. Available evidence indicates that this resource holds potential for development into a feasible utility that could meet a substantial portion of the community's power requirements. However, a formal feasibility study of the potential development has not yet been completed. Development of this resource would require the creation of a transmission corridor between the source and the community. It is likely that the City will play a role in the development of these energy resources, perhaps in the form of a utility enterprise. However, it would not be necessary for the area containing the geothermal resources to be annexed in order for the City to participate in such development of the resources.

Testimony received by the Commission at its January 4, 1985 hearing indicated that the geothermal project will not be operable for some time. Therefore, if the territory in the vicinity of the Makushin Volcano is not annexed at this time, the City of Unalaska retains the option of developing another petition to annex the Makushin Volcano area at a later date.

14. The petitioner has acknowledged that it does not routinely provide services, other than search and rescue and emergency medical response, on an extraterritorial basis. Considering that only four individuals reside within the vast territory proposed for annexation, it is not reasonable to conclude that these four individuals expect to receive City services. Further, it is questionable whether the City will be able to provide services to the four residents in the territory. Even though all cities generally have the function of providing an array of public services and facilities to the resident population of that City, there is a "threshold population" or minimum population size necessary to provide the demand that justifies that function. It is more likely that the City will provide services to areas just outside the present City limits such as Captains Bay, Broad Bay, Wide Bay, and

the Makushin Valley. Although these areas may be restricted to receiving emergency services for the near future due to the cost of providing such other services as water, sewer, and roads.

#### CONCLUSIONS OF LAW

1. That the standards established in State Statutes and Administration Regulations are met by part, but not all, of the territory requested in the original petition.
2. The territory immediately adjacent to the present boundaries of the City, the wetland around Nateekin Bay, Tabletop Mountain, a portion of the Makushin Valley and areas in and around Captains Bay and Unalaska Bay meet the standards for annexation to a sufficient degree to warrant inclusion within the boundaries of the City. This territory comprises approximately 189 square miles.

#### STATEMENT OF DECISION

Based upon the Findings of Fact and Conclusions of Law stated above, IT IS ORDERED:

The annexation of approximately 189 square miles of territory to the City of Unalaska, as described in the amended petition of the City of Unalaska, is hereby approved by the Local Boundary Commission. However, in recognition of the historical and current use of the territory proposed for annexation for subsistence hunting purposes, the Commission recommends or suggests that the City of Unalaska not extend the prohibition on the use of firearms to this area.

That upon tacit approval of the Second Session of the Fourteenth Legislature, in accordance with the provisions of Article X, Section 12 of the State Constitution, the municipal boundaries of the City of Unalaska shall be as follows:

Beginning at the intersection of the west boundary of T71S, R117W, Seward Meridian (S.M.) and the mean high tide line of the Bering Sea; thence south to the protracted NE corner of T72S, R118W, S.M.; thence west to the NW corner of T72S, R118W, S.M.; thence south to the SW corner of T72S, R118W, S.M.; thence east to the NW corner of Section 1, T73S, R119W, S.M.; thence south to the SW corner of Section 13, T73S, R119W, S.M.; thence east to the SE corner of Section 13, T73S, R119W, S.M.; thence south to the SW corner of T73S, R118W, S.M.; thence east to the SE corner of the W1/2 of Section 31, T73S, R117W, S.M.; thence in a northeasterly direction to the SE corner of the W1/2 of Section 35, T72S, R116W, S.M.; thence north to the intersection of the east border of the W1/2 of Section 23, T71S, R116W, S.M.; thence continuing north a distance of 3 nautical miles; thence

west to a point 3 nautical miles north of the intersection of the west boundary of T71S, R117W, S.M.; thence south 3 nautical miles to the point of beginning.

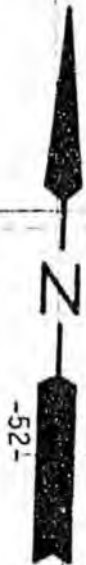
Containing 115.84 Sq. miles of land, more or less, and 98.56 sq. miles of water, more or less for a total combined area of 214.4 sq. miles, more or less.

The Local Boundary Commission hereby respectfully submits its recommendation to the Second Session of the Fourteenth Legislature for the annexation of the territory included in the above description and shown on the attached map.

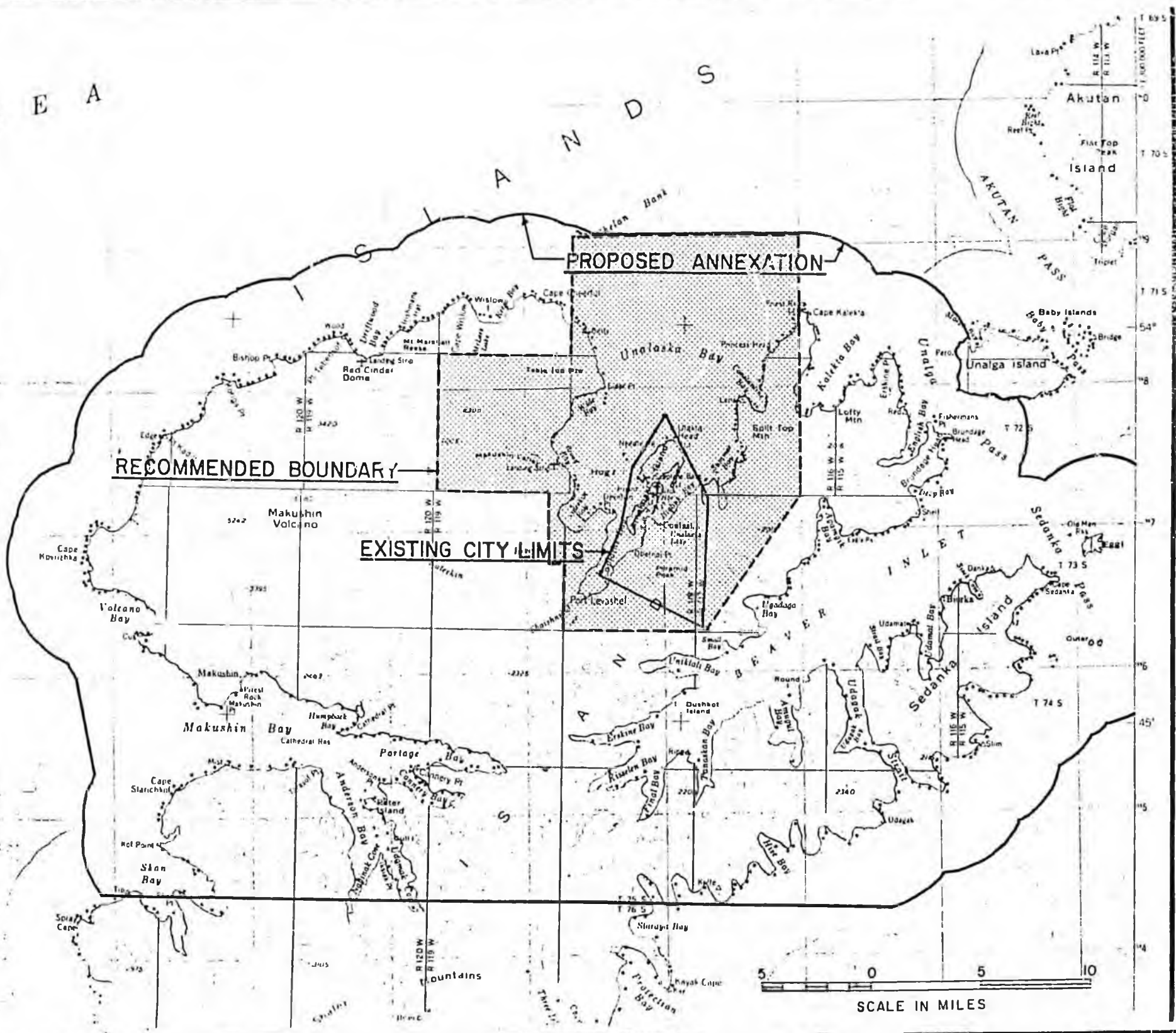
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PROPOSED ANNEXATION

RECOMMENDED BOUNDARY

EXISTING CITY LIMITS



SCALE IN MILES

XII. RECOMMENDATION FOR THE DETACHMENT OF TERRITORY FROM THE  
NORTH SLOPE BOROUGH

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

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Included in this Report and incorporated in this recommendation by reference is a copy of the Commission's formal Statement of Decision regarding the detachment of territory from the North Slope Borough, along with the Appendixes to that Statement of Decision which consist of a written summary of the Commission's evaluation of each of the 15 factors considered in this matter (labeled as "Appendix A") and a transcript of that portion of the Commission's decisional session when those factors were evaluated and the conclusions of the Commission were made (labeled as "Appendix B"). Because of the voluminous nature of this material it is included in the back of this Report as Section XIV, the Appendix.

The Local Boundary Commission hereby respectfully submits its recommendation to the Second Session of the Fourteenth Legislature for the detachment of the territory from the North Slope Borough which is described in the November 22, 1965 Petition of the Commissioner of the Department of Community and Regional Affairs and which is shown on the attached map.



### XIII. ISSUES TO BE BROUGHT TO THE ATTENTION OF THE LEGISLATURE

There are two issues which the Local Boundary Commission wishes to bring to the attention of the Legislature. The first relates to the desire of certain residents of the State to dissolve their municipal governments in favor of Native governments. The second issue concerns the impacts of the Federal Voting Rights Act upon the State and its political subdivisions on matters relating to Local Boundary Commission proceedings.

#### Dissolution of Municipal Governments

As was discussed in Section III of this Report, last year the Local Boundary Commission denied a petition of residents of the City of Akiachak for the dissolution of their municipal government. It has been reported that residents of a number of other communities are also contemplating attempts to dissolve their municipal governments.

While the Commission denied the petition for dissolution of the City of Akiachak, it was sympathetic to the desire of the residents of Akiachak for self-determination in that matter. It was amply demonstrated to the Commission that dissolution of the City of Akiachak and the vesting of all local government powers in the Akiachak IRA Council was strongly desired by many of the residents of the community.

The petition was denied simply because the present structure of State law concerning this matter would not permit the dissolution of the City under the current circumstances. The Commission suspects that residents of Akiachak may now simply ignore their municipal government.

The Commission believes that this circumstance poses several significant public policy questions which encompass matters which are far beyond the responsibilities of the Local Boundary Commission. The Commission does not advocate any particular position in this matter, rather it believes that the matter should be considered carefully by the Governor and the Legislature.

Policy questions relating to this matter include the following:

- ° impacts of dissolution on both the State and the community;
- ° equitable delivery of public services to unincorporated communities;
- ° civil rights of citizens of Alaska;
- ° distribution of assets and liabilities of a municipal government in the event of dissolution; and
- ° standards and procedures for dissolution.

#### Federal Voting Rights Act

The impact of the Federal Voting Rights Act upon matters brought before the Local Boundary Commission is of particular

concern to the Commission, to municipalities proposing boundary changes and petitioners for municipal incorporation. The Federal Voting Rights Act requires that any change which affects or has the potential to affect voting rights must be precleared by the U.S. Department of Justice. The ramifications of this requirement, as it relates to matters concerning the Local Boundary Commission, are significant. Under provisions of the Act, any and all municipal incorporations, dissolutions, boundary changes, mergers and consolidations are subject to preclearance. Some of the matters requiring preclearance might not be immediately identifiable as affecting voting rights, such as the annexation of uninhabited territory contiguous to a municipality.

The Act provides that the Department of Justice has 60 days after receipt of a request for preclearance to object to the proposed change. Significantly, during the 60-day period, the change may not be enforced. It is also not uncommon for the Department of Justice to notify a submitting authority on or near the 60th day subsequent to receipt of a request for preclearance that additional information is required to enable the Department of Justice to make a final determination whether to grant preclearance. This is especially likely in the case of major changes such as controversial annexations or municipal incorporations. If the Department of Justice requests additional information, or if the petitioning municipality submits supplemental information, a new 60-day review period begins on the day the Department of Justice receives the information.

Adherence to the requirements of the Voting Rights Act can thus place extreme demands upon municipalities and others proposing virtually any action properly brought before the Commission. The Commission makes no specific recommendations to the Legislature in this regard, but has determined that the Legislature should be aware of the issue.

XIV. APPENDIX

LOCAL BOUNDARY COMMISSION

STATE OF ALASKA

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

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

BY THE COMMISSION:

I. PROCEDURAL MATTERS

AS 44.47.567 mandates that the Local Boundary Commission "shall . . . consider a local government boundary change requested of it by . . . the commissioner of community and regional affairs. . . ." AS 44.47.567(a)(3). The statute empowers the Commission to "conduct meetings and hearings to consider local government boundary changes and other matters related to local government boundary changes. . ." and to "present to the legislature during the first 10 days of a regular session proposed local government boundary changes. . . ." AS 44.47.567(b)(1) and (2).

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

On November 22, 1985, the Commissioner of the Alaska

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

The procedures for boundary changes requiring legislative review are set forth in Article 13 of the Commission's regulations. 19 AAC 10.450 -- 19 AAC 10.620. For the reasons set forth below, the Commission is satisfied that its procedures have been complied with and that a complete and adequate record has been developed to support a decision in response to this petition.

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

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

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

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

(3) a legal boundary description;

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

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

(6) the number of residents in the territory;

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

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

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

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

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

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

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

(1) a map or maps showing

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

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

(2) an affidavit of the petitioner, or

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

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

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

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

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

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

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

Actual notice of the petition materials has been given to the North Slope Borough (NSB) and to the Northwest Alaska Native Association Regional Corporation (NANA), the two entities (see 19 AAC 10.550(a)) most proximate to the territory. As discussed more fully in the body of this decision, both NSB and NANA have actively participated before the Commission in this proceeding. Furthermore, numerous public hearings have been convened and extensive public testimony taken from residents of both NSB and NANA. Based on these facts, the Commission determines that the service requirements of 19 AAC 10.510(a) and (b) have been substantially complied with. To the extent that strict, technical compliance with sec. 510 may not have been effectuated, the Commission determines that substantial rights of interested parties have not been prejudiced and notes that no party has raised an objection. Accordingly, any defects in service are waived. 19 AAC 10.590.

Section 530 obligates the Petitioner to cause notice of the filing of the petition to be published in a newspaper of

general circulation in the territory in the form specified by the Commission. 19 AAC 10.530(a). The Petitioner shall furnish proof of compliance with the notice requirement. 19 AAC 10.530(b). The Petitioner has submitted publishers' affidavits from the Anchorage Daily News, the Alaska Administrative Journal, and the Tundra Times. Based upon these publishers' affidavits, the Commission determines that the notice requirement has been satisfied.

Section 540 provides for the Commission to establish a time and place for a hearing concerning the proposed boundary change "which shall be held in or near the territory." 19 AAC 10.540, first sentence. Compare AS 44.47.581. Hearings on the petition were held in Anchorage, Noatak, Kotzebue, Point Hope and Barrow on January 8, 9, and 10. The Commission also received testimony by teleconference from residents of other villages in the NANA region and the North Slope Borough at Kotzebue and Barrow, respectively. In light of these extensive hearings in the two areas which geographically overlap the territory in question, the Commission determines that the hearing requirement has been satisfied.

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

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

Two other briefs have been filed with the Commission by NANA. The first, submitted on December 18, 1985, supported the petition. The second, submitted on December 23, 1985, responded to NSB's answering brief. Nothing in the Commission's regulations expressly authorizes or prohibits interested persons from filing briefs supporting a petition or replying to an answering brief. Inasmuch as the clear purpose of AS 44.47.581, which mandates hearings "in or near the vicinity of the area affected by the change," is to allow interested persons and entities to place their views on the record before the Commission, the Commission sees no reason to disallow or ignore NANA's briefs. Accordingly, the NANA briefs have been incorporated into the record for the purpose of assisting the Commission in rendering an informed and responsive decision.

Section 570 obligates the Department of Community and Regional Affairs to prepare and file a report with the Commission prior to the hearing summarizing the issues raised in the petition and briefs and containing recommendations to the Commission. Inasmuch as the Commissioner of Community and Regional Affairs was the petitioner in this proceeding, to avoid any appearance of impropriety or conflict of interest, he unconditionally delegated to the State of Alaska Office of Management and Budget (OMB) the

responsibility for acting as staff to the Commission with respect to the instant petition. On January 3, 1986, OMB filed with the Commission the report required by sec. 570. It should go without saying that this report is merely advisory to the Commission, and has in no way bound, qualified or prejudiced our decision.

There can be little doubt that this is the most important boundary matter to be presented to the Commission in the last decade. Therefore, the Commissioners have individually examined, reviewed, analyzed, and reflected on the record so that they may bring their most informed, best judgment to bear on this crucial decision. As a result of these extensive individual efforts, the Commission has placed relatively little reliance on the sec. 570 staff report prepared by OMB contrasted with the more substantial reliance we would place upon the staff report in a more routine matter.

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

On January 11, 1986, the Commission convened its initial decisional meeting at Fairbanks. Given the size of the record and the importance and complexity of the issues presented, it was not possible for the Commission to render a decision at that time. Accordingly, on January 18 and 19, 1986, the

Commission reconvened its decisional meeting at Juneau, Alaska, within 90 days of the public hearings, as required by 19 AAC 10.430(a). During this decisional meeting, the Commission has examined all aspects of the written and oral testimony before it, has considered other relevant and reliable information available to it, and herewith enters its decision.

## II. THE DETACHMENT AREA

The area that is the subject of this petition (the detachment area) is all land within the boundaries of the NANA Region that lies north of the southwestern boundary of the Borough, plus the adjacent submerged lands seaward to a distance of three nautical miles. The detachment area extends from the Chukchi Sea on the west to the Gates of the Arctic National Park on the east. It contains approximately 3,298 square miles (2.1 million acres).

The detachment area is generally bounded by the Delong Mountain Range on the west, north and northeast, and by the Howard Hills on the east, forming a natural bowl emptying into the Kotzebue basin. Seven major river systems flow across the area either into the Chukchi Sea or into the Noatak River which meanders through the southern reaches of the detachment area. These rivers are the Kivalina, Wulik, Kelly, Kugururok, Nimiuktuk, Anisak and Aniuk. The detachment area is uninhabited.

## III. FACTORS

Pursuant to 19 AAC 10.230(a), the Commission must make determinations with respect to the best interest standards set forth in that section after considering appropriate pertinent

factors. The regulation requires the Commission to consider three specific factors, and it reserves the authority for the Commission to consider other factors which the Commission determines to be pertinent.

In accordance with the Commission's directions, counsel to the Commission identified a total of fifteen factors which had been suggested in the briefs filed by the petitioner, the respondent North Slope Borough, NANA; in the staff report filed with the Commission pursuant to 19 AAC 10.570; and in the public hearings.

For each proposed consideration, the staff prepared a summary sheet setting forth the pertinent pages in the various briefs filed with the Commission in which each proposed consideration was addressed. The fifteen summary sheets are attached to this decision as Appendix A and are incorporated herein. The Commission determined it would consider fourteen of the fifteen proposed factors. The Commission rejected Factor 14 (equitable distribution of resources), which was suggested in the staff report, because it was not addressed by any of the entities who filed briefs and because it could be used to support detachments that might harm an existing borough in the name of equitable resource redistribution.

The Commission then carefully considered each factor on the record with reference to the briefs and all the written and oral material in the record. The findings and conclusions of the Commission with regard to the fourteen factors considered are

contained in the taped transcript of the Commission's proceedings of January 18, 1986. Synopses of these findings and conclusions are set forth in the section captioned "SUMMARY" on the Appendix A sheets pertinent to each factor. Those portions of the transcript reflecting the Commission's specific consideration of each of the fourteen factors are hereby incorporated into this decision. Staff to the Commission is directed to expeditiously prepare a written transcript of those deliberations and attach them as Appendix B to this Decision.

#### IV. BEST INTEREST STANDARDS

As noted above, following the Commission's consideration of the fourteen factors described above, the staff prepared a summary of the findings and conclusions of the Commission with respect to each of the fourteen factors. These summaries are contained in Appendix A at the bottom of the page pertaining to each of the factors considered.

After reviewing these summaries, the Commission proceeded to apply best interest standards in light of its findings and conclusions with respect to these fourteen factors.

a. Best Interests of the State. The Commission finds and concludes that the proposed detachment would be in the best interests of the state. Specifically, the Commission finds and concludes that the factors of practicality, efficiency, promotion of local self-government, and self-determination of the people who use the territory and who will be most directly affected by its imminent development all weigh heavily in favor of the

detachment. The Commission also finds and concludes that the factors of protecting subsistence resources and perfection of boundaries lends additional, albeit minor, support to this determination.

b. Best Interests of the Territory to be Detached.

The Commission finds and concludes that the proposed detachment would be in the best interests of the territory to be detached. Specifically, the Commission finds and concludes that the factors of practicality, efficiency, promotion of local self-government, and facilitating control over development and management of social and economic change by the people most affected thereby weigh heavily in favor of the detachment. The Commission also finds and concludes that the factors of protecting subsistence resources and perfection of boundaries lends additional, if minor, support to this determination.

c. Best Interests of the North Slope Borough. The Commission is unable to find that the detachment would be in the best interests of the North Slope Borough. Conversely, the Commission is also unable to find that the detachment would necessarily be significantly adverse to the best interests of the North Slope Borough. The voice of the North Slope Borough people expressed by their votes, their testimony and their petition all register strong and eloquent opposition to the detachment. However, the loss of a small portion of the tax base may be substantially if not totally neutralized by the avoided costs of being relieved from the obligation to provide extensive services in and

to the detached territory.

The Commission is satisfied that if the detachment is adverse to the best interests of the North Slope Borough, then at worst it is just barely so. Any injury which the borough may suffer would be barely a flesh wound. Under no circumstances will the borough suffer a loss of limb.

d. The Best Interests Determination. There is not a clear showing that the best interests of each of the three pertinent entities -- the state, the territory which would be detached, and the North Slope Borough -- would be advanced by the detachment. However, there is no doubt that, overall, the best interests of the public as a whole would be served by this proposed detachment. Given this result, the Commission must determine whether or not 19 AAC 10.230(a) precludes the detachment because each individual best interest is not served or whether this regulation can be interpreted in a manner that the overall best interests of the public can be served.

Based upon the advice provided us concerning the Constitutional purpose for which the Local Boundary Commission was established -- namely that well-intentioned, parochial, local interests should not frustrate the overall public interests in the establishment of local government boundaries -- we conclude that 19 AAC 10.230(a) should be interpreted to permit a detachment where the overall public interests would best be served by the detachment.

Accordingly, the Commission finds and concludes that

its regulation, 19 AAC 10.230(a), requires that the overall best interests of the public must be determined. Further, the Commission finds and concludes that the proposed detachment is in the overall best interests of the public.

#### V. DISTRIBUTION OF ASSETS AND LIABILITIES

Pursuant to 19 AAC 10.250(b), the Commission is required to determine the manner in which the assets and liabilities of the North Slope Borough are to be distributed between the North Slope Borough and the State of Alaska (or derivative of the proposed Northwest Arctic Borough).

Because there are no public facilities financed by the North Slope Borough within the detached area, because the proportion of the North Slope Borough's tax base in the detached area is de minimus, and because the Borough's credit worthiness is clearly based upon the other portions of its tax base, the Commission determines that no assets and no liabilities shall be distributed to the state pursuant to 19 AAC 10.250(b).

#### VI. ORDER

Based upon the findings and conclusions set forth in this decision, IT IS ORDERED:

1. The detachment from the North Slope Borough of the area described in the petition of the Commissioner of Community and Regional Affairs is approved. This approval is conditioned upon voter approval of the incorporation of a borough containing the territory generally within the boundaries of the NANA region, including the area detached from the North Slope Borough in this

proceeding.

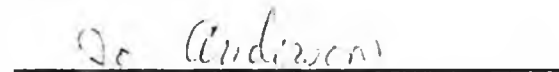
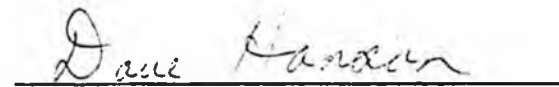
2. There shall be no distribution of assets or liabilities from the North Slope Borough to the State of Alaska in connection with this detachment.

DATED this 19th day of January, 1986.

LOCAL BOUNDARY COMMISSION



Charles Bettisworth  
Acting Chairman

  
Jo Anderson  
Dave Hanson

APPENDIX A

FACTOR

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

Subissues

Source in This Proceeding

19 AAC 10.230(a)(1)

Proposed Interpretation or Definition

"Population" is interpreted to mean the people who use the uninhabited territory.

Addressed by Petitioner

-- Brief in Support of Petition..... pp. 21-24

-- Reply to North Slope Borough Brief in Opposition..... pp. 7-12

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

NANA Briefs

-- Comments Supporting Petition..... pp. 2-3

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

Pertinent Facts Summary

The people who use the proposed detached territory are mainly from Kivalina and Noatak. People from Point Hope also make use of the territory, although to a significantly lesser extent.

The work force for the proposed Red Dog Mine development will tend to reflect this usage pattern. Approximately eighty percent (80%) of the local Alaskan component of the work force will be from the NANA region.

There are some distinct cultural and social differences between the people from the NANA region and the people from the North Slope Borough.

The entire proceeding demonstrates a potential for the development of conflicts between NANA and NSB people. The fact of this potential conflict is inconclusive on the resolution of the best interest determinations the Commission must make.

FACTOR

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

Subissues

Source in This Proceeding

19 AAC 10.230(a)(2)

Proposed Interpretation or Definition

"Impractical" is interpreted to mean unwise or imprudent to put into effect. This factor is interpreted to favor detachment if the provision of borough services is either precluded or unwise or imprudent to effectuate.

Addressed by Petitioner

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

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

NANA Briefs

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

Pertinent Facts Summary

The proposed detachment territory is separated from the rest of the NSB by the Brooks Range. It is physically located a long way from Barrow. It is physically located much closer to Kivalina, Noatak, and Kotzebue.

State and federal governmental services presently provided to the area of the proposed detachment territory tend to come principally from Kotzebue, northward. However, some services are being delivered from the NSB.

The geography of the Brooks Range and the great distance from Barrow do not preclude the provision of borough services from the NSB. Based on the evidence before it, the Commission finds it impractical to serve the proposed detached territory from Barrow relative to service from Kotzebue. The provision of extensive state and federal services to the detached territory is presumably based on efficiency and economy considerations. The record reflects no real debate that it is more efficient to serve the territory from Kotzebue rather than from Barrow. The NSB's arguments on practicability are unpersuasive in light of the record as a whole.

FACTOR

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

Subissues

Source in This Proceeding

19 AAC 10.230(a)(3)

Proposed Interpretation or Definition

"Responsive" is interpreted to mean quick to react, sympathetic to immediate needs. "Integrated" is interpreted to mean taken all together, taken as a whole.

Addressed by Petitioner

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

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

NANA Briefs

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

Pertinent Facts Summary

There is presently air service into the proposed detachment territory. The territory is no further from Barrow than some other areas that are presently being adequately served by the NSB. In contrast with its "practicability" findings under Factor 2, the Commission does not find a "preclusion" under Factor 3.

However, since the people who use the territory are outside the NSB boundaries, they are not integrated into the NSB as a whole.

FACTOR

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

Subissues

Source in This Proceeding

Petitioner's Brief in Support of Petition

Proposed Interpretation or Definition

The Commission observes that this factor derives from Article X of the State Constitution. The constitutional history stresses the need for objective analysis at the statewide level for boundary-setting determinations.

The Commission interprets "local self-government to include the viability of a Northwest Arctic Borough."

Addressed by Petitioner

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

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

NANA Briefs

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

Pertinent Facts Summary

The Commission believes that the key questions pertinent to this factor are:

(1) Is detachment necessary for a Northwest Arctic Borough (NWAB) centered in Kotzebue?

(2) How would detachment affect the self-government of the NSB?

(3) How would detachment affect borough government across the state in general?

These latter two subissues are considered more fully under factors 7 and 8.

The Commission finds that detachment is necessary for the viability of a NWAB. As Revenue Commissioner Nordale's letter of November 19, 1985 makes clear, without the Red Dog development, the NWAB would have a smaller tax base than Haines. Conversely, the NWAB would find it more expensive to provide services than it is in Haines, and it is probable that more services would be needed there than are needed/provided in Haines.

The Commission observes preamble language in the NSB Resolution of August 26, 1985 to the effect that the proposed detachment territory is "critical" to the economic viability of a NWAB. Based on this language, the Commission believes that the NSB is in conceptual agreement with this Commission finding.

The NSB's arguments about alternative tax bases for the NWAB, as for example the Port and the road, do not support a finding that the NWAB would be viable without the proposed detachment. The Commission's staff reports that under the proposed AIDA financing, payments in lieu of taxation (PILOT) have never been discussed and are not presently contemplated. Only user fees have been discussed between Cominco and NANA. State payments to the NANA Regional Corporation will be for gravel and right-of-way.

Finally, if the NWAB were to depend for "in lieu of tax" payments upon the road while the NSB continued to tax the mine site itself, the enterprise would have to carry the full weight of the taxation of both boroughs. It is at least possible that this would make the mine uneconomic and hence there would be no tax base at all.

The Commission finds that detachment will maximize local self-government for the people of Noatak and Kivalina who are the users of the territory and whose watershed will be most impacted by the Red Dog development. The Commission further finds that the self-determination interests of Noatak, Kivalina and Kotzebue outweigh the self-determination interests of Barrow and the NSB in this context.

Considering the record as a whole, the Commission finds that the factor of promoting or maximizing local self-government favors the detachment.

FACTOR

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

Subissues

Source in This Proceeding

Petitioner's Brief in Support of Petition

Proposed Interpretation or Definition

Addressed by Petitioner

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

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

NANA Briefs

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

Pertinent Facts Summary

The Commission finds no substantial evidence of record to support the proposition that the Red Dog development depends upon or requires detachment.

The Commission believes that resource development will occur whether or not detachment is approved. Detachment might tend to "facilitate" this development as a convenience factor.

In light of the record as a whole, the Commission believes this factor is inconclusive as to the required best interest determinations.

FACTOR

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

Subissues

Source in This Proceeding

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

Proposed Interpretation or Definition

Addressed by Petitioner

-- Brief in Support of Petition..... pp. 31-32

-- Reply to North Slope Borough Brief in  
Opposit. ..... pp. 16-18

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

NANA Briefs

-- Comments Supporting Petition..... pp. 6-7

-- Comments in Reply to Brief in Opposition.... pp. 4-5

Pertinent Facts Summary

As discussed above under Factor 2, numerous considerations of efficiency favor the detachment. Based on the record as a whole, the evidence on efficiency is overwhelming in favor of the detachment.

The only counterbalance is the transition argument raised by NSB and considered under Factor 15. However, the Commission's judgment is that this is a short-term, transitory consideration which is vastly outweighed by long-term efficiency considerations.

\* This issue was addressed by the North Slope Borough as a legal issue at pp. 4-7 of a Memorandum of Law filed with the Commission in Barrow on January 10, 1986.

FACTOR

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

Subissues

Source in This Proceeding

Petitioner's Brief in Support of Petition

Proposed Interpretation or Definition

Addressed by Petitioner

-- Brief in Support of Petition..... pp. 32-33

-- Reply to North Slope Borough Brief in  
Opposition..... pp. 16-18

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

NANA Briefs

-- Comments Supporting Petition..... p. 7

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

Pertinent Facts Summary

The Commission recalls the testimony of James Sharp, NSB Administrator of Finance, to the effect that existing, outstanding NSB bonds will be paid off by 1996 regardless of whether the detachment takes place. Sharp also testified that new oil developments on the North Slope could add to the NSB tax base.

The Commission also recalls the December 30, 1985 Legislative Digest extract attached to the testimony of Willie Hensley to the effect that some \$10 billion of industrial investments are projected to occur in the NSB during the next 10 years.

Commissioner Nordale's letter also recited the expectation of other sources of oil revenue for the NSB.

The Commission finds that the projected Red Dog development represents a very small part of the NSB's tax base and financial structure -- approximately 1.27% of NSB tax base and 1.26% of NSB revenues.

With respect to the sub-issue of NSB's fear of other detachments, the Commission finds from Mr. Sharp's testimony that the NSB's real concern is not with the instant proposed detachment. Rather, the concern is that additional, other areas might be proposed for detachment "which are economically more meaningful" to the NSB.

The Commission finds that the best way to deal with the legitimate NSB concern is for the Commission to use sensitivity and to adopt sound criteria for rendering detachment decisions and to avoid irresponsible action on proposed detachments. The Commission believes that the current proceeding is an example of sensitive and responsible decision-making.

The Commission observes that counterbalancing any loss of revenue to the NSB which might be occasioned by the detachment, there will be a savings in the form of avoided costs for services that the NSB would not be required to incur in the detached territory. The Commission was not able to come to a conclusion with respect to what the magnitude of the loss would be.

FACTOR

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

Subissues

Source in This Proceeding

Respondent North Slope Borough's Brief in Opposition

Proposed Interpretation or Definition

Addressed by Petitioner

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

NANA Briefs

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

Pertinent Facts Summary

The Commission is sympathetic to this concern and has given serious consideration to it, but observes that there is no substantial evidence of record to support a finding that the proposed detachment will have the adverse state-wide effect posited.

In order to develop a record on this issue, the Commission directed staff to give widespread notice to local governmental entities of its hearing in Anchorage. During the Anchorage hearing, there was not testimony on this issue. Limited correspondence was subsequently received from the Kenai Peninsula Borough, the Kodiak Island Borough, the Cordova City Council, and the Mayor of Anchorage. None of this correspondence indicated that this factor was a matter of pressing concern.

The Commission believes that there is no substantial evidence of record to support a finding that the state has a reckless attitude toward detachments. The Commission further finds that so long as it uses reasonable factors, bases its decisions upon adequate information, and approaches all detachment matters carefully and responsibly, the concern which underlies this factor will be satisfactorily remedied.

FACTOR

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

Subissues

Source in This Proceeding

Respondent North Slope Borough's Brief in Opposition

Proposed Interpretation or Definition

Addressed by Petitioner

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

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

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

NANA Briefs

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

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

Pertinent Facts Summary

Most of the evidence to come before the Commission on this issue came in the form of public testimony during the hearing in Noatak and Kotzebue. The weight of that evidence was that the proposed NWAB would be capable of protecting the concerns of the users of the territory, the people of the Noatak, Kivalina, Kotzebue and the NANA region.

The Commission specifically recalls Mr. Schaeffer's testimony to the effect the NWAB regulations would be at least as stringent as existing NSB regulations.

The Commission finds that the weight of the evidence on this issue tends to favor the proposed detachment.

FACTOR

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

Subissues

Source in This Proceeding

Petitioner's Brief in Support of Petition

Proposed Interpretation or Definition

Addressed by Petitioner

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

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

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

NANA Briefs

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

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

Pertinent Facts Summary

As Commissioner Anderson observed, in most if not all boundary changes there are very strong feelings on both sides of the question at the time a change is made, yet over time passions cool and both sides learn to live with and adapt to the change. Based on the public testimony, the Commission finds that there will probably be hard feelings for a while, whatever decision is reached on the proposed detachment. Overall, this factor is inconclusive on the resolution of the best interest determinations which the Commission must make.

FACTOR

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

Subissues

Source in This Proceeding

Respondent North Slope Borough's Brief in Opposition

Proposed Interpretation or Definition

Addressed by Petitioner

- Brief in Support of Petition..... None
- Reply to North Slope Borough Brief in Opposition..... pp. 14-15

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

NANA Briefs

- Comments Supporting Petition..... pp. 8-9
- Comments in Reply to Brief in Opposition.... None

Pertinent Facts Summary

The weight of the public testimony in Kotzebue and Noatak was an almost unanimous desire for detachment.

The weight of the public testimony in Point Hope and Barrow was an almost unanimous opposition to detachment.

Public comment on both sides articulated strong self-determination concerns.

The Commission further finds that this balance of local sentiment, pro and con, underscores the Commission's responsibility to carefully, deliberately and impartially evaluate the various substantive issues which have been raised and to render its decision based upon the record taken as a whole.

FACTOR

12. Will the proposed detachment aid in perfecting the boundaries of the North Slope Borough and the proposed Northwest Arctic Borough according to existing economic, historical and cultural use areas and geography? Text of factor stated as amended by LBC during session of January 18, 1986.

Subissues

Source in This Proceeding

Petitioner's Brief in Support of Petition

Proposed Interpretation or Definition

Addressed by Petitioner

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

Respondent North Slope Borough Brief in Opposition.. p. 10-14

NANA Briefs

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

Pertinent Facts Summary

The Commission observes that its original understanding dating back some 13 years was that the NSB boundary was to be set to reflect the rationale that the NANA and Arctic Slope Regional Corporation boundaries were to be co-terminous. The proposed detachment would correct what might be characterized as an anomaly of an overlapping boundary. The Commission finds that this is a unique situation in the state. Therefore, procedures which might be invoked to correct this boundary situation could not necessarily be considered as precedent with regard to any other area in the state.

With regard to the physical geography of the territory, the Commission observes and finds that the 68° parallel does not

describe any geographical or topographical feature of the land. Public testimony from Kivalina suggested that a more geographically-oriented boundary (which also would have cultural and historical significance) would be the crest of the Brooks Range. The proposed detachment would tend to move the boundary in this direction.

Finally, the Commission finds one further unique fact pertinent to this discussion, namely that the NANA region is regarded both by the people who live within and generally throughout the state as a single economic unit.

Overall, this factor tends to support the proposed detachment, but the sense of the Commission is that it is entitled to less weight than other factors.

FACTOR

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

Subissues

Source in This Proceeding

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

Proposed Interpretation or Definition

Addressed by Petitioner

-- <u>Brief in Support of Petition</u> .....	None
-- <u>Reply to North Slope Borough Brief in Opposition</u> .....	None
<u>Respondent North Slope Borough Brief in Opposition</u> ..	None

NANA Briefs

-- <u>Comments Supporting Petition</u> .....	pp. 7-9 12
-- <u>Comments in Reply to Brief in Opposition</u> ....	None

Pertinent Facts Summary

With regard to the management of rapid social and economic change, the proposed detachment will definitely help the people of the Kivalina, Noatak, Kotzebue area, who (the Commission has previously noted) will be most affected by the impacts of the Red Dog development.

Detachment will also provide the financial resources in the form of a tax base whereby local control can be implemented.

As will be discussed under Factor 15, there are short term efficiencies to be gained by taking advantage of the existing NSB infrastructure. Overall, however, these short term efficiencies are outweighed by longer term considerations.

The public testimony did bring one additional issue to light which the Commission wishes to note. The Point Hope people perceive that the Red Dog development will have significant impacts on them. They expressed concern over caribou, air quality and water quality. On this last point, the Commission observes that the Red Dog will drain southerly into the Kotzebue area rather than northerly into the Point Hope area. The important point is the need for coordination and communication between the NANA people and the Point Hope people with regard to the regulation and local governmental control over development in the detached area and the provision of local employment opportunities.

The Commission observes that many, if not all, of these issues can and should be addressed during proceedings (yet to be completed) for the rezoning of areas within the detachment territory. The Commission notes, for example, that the Red Dog development must still secure re-zoned status.

FACTOR

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

Subissues

Source in This Proceeding

Section 19 AAC 10.570 Staff Report

Proposed Interpretation or Definition

Addressed by Petitioner

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

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

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

NANA Briefs

-- Comments Supporting Petition ..... None

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

Pertinent Facts Summary

Rejected.

FACTOR

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

Subissues

Source in This Proceeding

Respondent North Slope Borough's Brief in Opposition

Proposed Interpretation or Definition

Addressed by Petitioner

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

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

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

NANA Briefs

-- Comments Supporting Petition..... None

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

Pertinent Facts Summary

The Commission finds the transition issue to be a matter of legitimate concern. The Commission is aware that it is a long step from the incorporation of a NWAB to "on-the-ground" implementation of local governmental regulatory and planning powers.

Nevertheless, the Commission finds that uncontrolled development is not likely to occur before a NWAB could implement its powers. NSB witnesses have indicated that the NSB permit issue for the Red Dog development was only one of the twelve required permits.

The evidence on record is voluminous that everyone wants to control the Red Dog development to ensure that it proceeds safely and responsibly.

The Commission will consider this concern again when it reviews the formation of any borough that may be created.

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LOCAL BOUNDARY COMMISSION

STATE OF ALASKA

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

PROCEEDINGS OF COMMISSION DECISION IN RESPONSE TO  
PETITION FOR LOCAL GOVERNMENT BOUNDARY CHANGE  
APPENDIX B

APPEARANCES:

- CHARLES BETTISWORTH  
Acting Chairman
  
- JO ANDERSON  
Commissioner
  
- DAVE HANSON  
Commissioner
  
- WILSON CONDON  
Special Counsel
  
- GORDON HARRISON  
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P R O C E E D I N G S

1  
2 CHAIRMAN BETTISWORTH: We will reconvene this decisional  
3 meeting of the Local Boundary Commission. When we took a  
4 break, we had just completed review of each of the factors,  
5 and made a determination of which of those would be included.  
6 I guess with that, we can begin with item number seven,  
7 discussion by Commission of each factor with reference to the  
8 pertinent briefs, public comments and record, and to develop  
9 the guidelines for Staff to prepare proposed findings of fact.  
10 I guess with that, then we would start with number one, and  
11 Mr. Condon, is it your intention that we should actually get  
12 into these -- like for instance go to each of the briefs that  
13 are mentioned and sort of discuss the issues noted in the pages  
14 cited and make sure that those are in the record as part of  
15 our consideration, and have whatever discussion is appropriate  
16 to each one of those as we work our way through this?

17 SPECIAL COUNSEL CONDON: I think that that's a good idea.  
18 I know that it's time consuming, but I think that's the --  
19 probably the best way that you could fairly consider what  
20 facts may be important, and what people have to say about  
21 them. And so I think it's worth taking the time to just sit  
22 for a minute and read through the briefs about -- the brief  
23 sections that I have cited, and see what the parties have to  
24 say, think about the facts that they allege have been found,  
25 and then discuss the matter after you've had a chance to go

1 through it.

2 CHAIRMAN BETTISWORTH: Okay. On factor number one -- I  
3 guess as we work our way through this, then also there's the  
4 other items that we would see and note as we work our way  
5 through this. Mr. Hanson?

6 COMMISSIONER HANSON: Before we go directly to briefs, we  
7 could just talk about the factor itself for a moment. It  
8 refers to characteristics of the population of the territory  
9 proposed to be detached, and as our record shows, there is not  
10 a resident population in the territory. And at the last meet-  
11 ing of our decisional meeting a week ago, I had suggested we  
12 interpret this to refer to people who use the territory to be  
13 detached. Is that an acceptable interpretation and definition?

14 COMMISSIONER ANDERSON: I think we probably agreed to it  
15 last week, didn't we?

16 COMMISSIONER HANSON: Okay. So, then what we're really  
17 saying is we're not talking -- let me see. What we're really  
18 saying is -- I guess we've really not gotten (indiscernible)  
19 in the factor .....

20 CHAIRMAN BETTISWORTH: No.

21 COMMISSIONER HANSON: ..... this is where I'm going to  
22 amend that, but basically when you say population, you're  
23 referring to those people who use the area?

24 CHAIRMAN BETTISWORTH: Uh-huh. Right. Mr. Condon, do  
25 you see that as a problem?

1           SPECIAL COUNSEL CONDON: Excuse me for -- well, I'm not  
2 going to say, no, it's no problem. I think that your inter-  
3 preting it in this manner is reasonable, and that that is the  
4 most defensible thing to do under the circumstances -- the  
5 most defensible interpretation, but .....

6           CHAIRMAN BETTISWORTH: It seems to me our only option  
7 would be to not consider the factor at all, and I think it's  
8 more important to consider the factor for those people that  
9 use it, than to not consider it because there is no resident  
10 population.

11          SPECIAL COUNSEL CONDON: I certainly think that's the  
12 most defensible judgment.

13          CHAIRMAN BETTISWORTH: Yeah. And I think -- I agree.  
14 Okay. Then that would be sort of the circumstances under  
15 which we would -- we look at this. Is there anything else  
16 with respect to the terminology of the factor that we need to  
17 look at with respect to interpretation and definition? The  
18 terms that we've talked about I think in the past are sub-  
19 stantially different or in conflict with, and I remember that's  
20 been raised not only by ourselves, but also by each of the  
21 Petitioners in their briefs, or each of the Petitioners and  
22 Respondents. Is there any comment? Or should we just go to  
23 the briefs, and maybe .....

24          COMMISSIONER HANSON: I guess I'd like to hold comment  
25 on that, except that I think we have to look at those two

1 terms in relationship to social, cultural, and economic concerns  
2 and characteristics as it states. In other words, there may  
3 be a conflict that just is oriented around economic character-  
4 istics, for example, and I feel that should be noted if there  
5 is.

6 COMMISSIONER ANDERSON: I would agree.

7 CHAIRMAN BETTISWORTH: Okay. With that, the first  
8 citation is a brief in support of the petition, pages 21 and  
9 24. We'll take a minute so each of us can read those. Any  
10 comments on that from the Commissioners?

11 COMMISSIONER HANSON: It seems to me, in dealing with  
12 this one -- I'm wondering how to go about this, whether we  
13 should try to read through all of these page numbers and then  
14 discuss it in general, or discuss it after each one. And my  
15 second comment is one of the first things we need to do is  
16 before we can answer the question posed, is identify based  
17 upon the information we have been given who we consider to be  
18 the people that use the area. And obviously this brief gives  
19 us the Petitioner's interpretation, and some good information  
20 on the people that use the area.

21 CHAIRMAN BETTISWORTH: I don't particularly -- can you  
22 be clear .....

23 COMMISSIONER HANSON: Okay. My first question is should  
24 we read all the briefs and discuss this across the board  
25 generally, or should we try to discuss it after we just

1 re-review each brief?

2 SPECIAL COUNSEL CONDON: I think you ought to read it  
3 all -- all the briefs. It won't take very long.

4 (Indiscernible - simultaneous speech)

5 SPECIAL COUNSEL CONDON: Just read all the briefs from  
6 end to end, but the way it's broken up, I think you've just  
7 got a fair -- a picture of -- by reading what everybody says  
8 before you start to evaluate. There are some people here who  
9 would like to have copies of the briefs to read. As you're  
10 going through them, I'd be happy to go get some more copies  
11 made if I knew how many to get made.

12 CHAIRMAN BETTISWORTH: How many of the people here would  
13 like to have copies of the briefs? Okay. Say a dozen?

14 SPECIAL COUNSEL CONDON: Okay. I'll do that. I'll be  
15 gone for about a half an hour, or so, but if you don't need  
16 me to .....

17 CHAIRMAN BETTISWORTH: Good. While we're reading through  
18 these things, I would declare a five minute recess.

19 (Off record)

20 CHAIRMAN BETTISWORTH: We'll reconvene this decision meet-  
21 ing again. We're working on factor number one. The Commission  
22 has taken several minutes to go through each one of the briefs  
23 that are cited, and through their notes. I guess I'd like to  
24 make one comment -- is that I made a quick calculation, and  
25 if we were to take fifteen minutes for each one of these

1 fifteen factors, we're going to be here 3.75 hours, which  
2 means -- well, let's say four hours. We'll be out of here by  
3 8:00 o'clock. I would -- I think we should do -- to do the  
4 work that is necessary, we need to be expeditious about it.  
5 We've all read these briefs, so I think we can go through,  
6 and -- and we're familiar enough with them, with the citations,  
7 to quickly pick up on those significant points that we find,  
8 and again, these first two or three -- three or four probably  
9 are going to be more slower than the rest. So, I guess my  
10 urging is -- to the Commission would be as expeditious as  
11 possible. And again, at each time we come to a new factor and  
12 it's time to sort of review our notes, I'll call a short break,  
13 and then we can proceed. All right. With that, what -- what  
14 are the comments of the Commissioners with respect to the  
15 citations?

16 COMMISSIONER HANSON: Mr. Chairman, do you want .....

17 CHAIRMAN BETTISWORTH: Go ahead.

18 COMMISSIONER HANSON: Me first for a change?

19 CHAIRMAN BETTISWORTH: Yes.

20 COMMISSIONER HANSON: Okay. I guess -- under the first  
21 citation, reading the petition itself -- basically what the  
22 citation there is, is in the summary on page 24 there's the  
23 issue of traditional use -- let me just read it. It says,  
24 in summary, the people of the NANA region have traditionally  
25 used, and still rely upon the area to be detached for

1 the residents of the North Slope Borough, have little if  
2 any past or present reliance on resources in this area.  
3 To help protect the resources, the municipal planning powers  
4 and the Coastal Zone Management Program are important for  
5 these resources to fall within the jurisdiction of the NANA  
6 region. I guess that, and this is sort of by way of adding  
7 support to that, I think in the hearings the Minecwook (pn)  
8 presentation and also submission of a paper by Mr. Biron  
9 discussed to a very great degree this issue and the fact that  
10 really the people in the NANA region are the ones who really  
11 are the people who are using it, using the area. The reply  
12 brief, the -- I guess what it wanted to do is -- let me go  
13 to what the brief's opposition says on this issue. And  
14 basically their argument is that what is described as use  
15 of the land does not really represent a substantial dif-  
16 ference in cultural-social characteristics and, in fact, they  
17 point out there's a substantial similarity and a lack of con-  
18 flict between the two areas. To counter that argument, then,  
19 in the reply brief from the petitioner, they note that they  
20 agree that there's no substantial difference or that the  
21 areas are not necessarily in conflict but that, in fact, they  
22 are distinctive and can be distinguished from one another.  
23 And I guess this gets into the issue of interpretation about  
24 substantially different or in conflict and now we want to  
25 view that, those two comments. The NANA brief, there's

1 actually two citations that I would like to note. Just a  
2 second here. In the brief itself, the point that NANA makes  
3 is that, in fact, the Alaska Native Claims Settlement Act  
4 defines this boundary of use and the distinct differences  
5 between Arctic Slope region and NANA region and their  
6 ruling was based upon what the Secretary of Interior certi-  
7 fied when he certified Alaska Native Claims Settlement Act  
8 and the regional boundaries. And I think that's the same  
9 argument again that they make in their reply to the opposi-  
10 tion brief on page 12. The -- and, in fact, they go through  
11 a lengthy discussion of the whole issue of how the borough  
12 boundary got to be formed and the interpretation that it  
13 seemed like the Boundary Commission had the impression that  
14 the two boundaries were going to be (indiscernible). That  
15 doesn't necessarily deal with the issue of whether they're  
16 culturally or substantially different, in conflict, they just  
17 note that -- basically what they're talking about here is  
18 the error that could have been made at the time that the  
19 borough boundary was formed. And I guess that even that  
20 citation is more appropriately dealt with in this issue per-  
21 fecting boundaries. I guess that's basically my findings.  
22 I guess.....

23 COMMISSIONER HANSON: Mr. Chairman.

24 CHAIRMAN BETTISWORTH: Yes.

25 COMMISSIONER HANSON: Maybe we should throw in a few

1 things before we go.....

2 \* \* \*

3 CHAIRMAN BETTISWORTH: Well, I -- yes, I don't consider  
4 this to be the end of the discussion.

5 COMMISSIONER ANDERSON: Yes, I have something I'd like  
6 to add. This is from the briefs in support of the petition  
7 for detachment. On page 23, I'm just reading a bit of this:  
8 Once again, the 1950-1960 Seasonal Use (Indiscernible) docu-  
9 ment Alaska Natives and the Land demonstrated absence of use  
10 by the residents of the North Slope Borough. Only the  
11 village of Point Hope demonstrated a marginal interest in  
12 the area during that period. And it goes on to say the same  
13 things that you've just said. And it says further down in  
14 the paragraph: Additionally, transportation routes to the  
15 area of detachment are virtually nonexistent for the North  
16 Slope residents. That's all I really have.

17 COMMISSIONER HANSON: Mr. Chairman, I might just make  
18 a correction. I believe when you mentioned about the bound-  
19 aries being determined by the Native Claims Act -- were you  
20 referring to the work that was done in implementing the  
21 Claims Act, set up regional boundaries, and that those follow  
22 boundaries set forth in documents such as Alaska Natives and  
23 the Land.

24 CHAIRMAN BETTISWORTH: Correct. Uh-huh.

25 COMMISSIONER HANSON: And on page 21 of the

1 petitioner's brief it states document titled Alaska Natives  
2 and the Land included as Attachment 25 unequivocally  
3 establishes the NANA region is, for the most part, dis-  
4 tinguished from the North Slope region in its physiographic  
5 characteristics, cultural composition, societal structure,  
6 political organization and economic exchange, and it refers  
7 to the page numbers. Interestingly, when dividing the state  
8 into 15 regions which offer to us the greatest degree of  
9 homogeneity and physiography, ethnography, biotic provinces,  
10 natural resource patterns and an aggregate potential for  
11 meaningful economic analysis, this document identified the  
12 region generally prescribed by the NANA Regional Corporation  
13 boundaries as a distinct unit. I've looked at the document,  
14 Alaska Natives and the Land, and I found this to be true,  
15 but I have several -- the whole situation is a little more  
16 complex than that, as we all learned in the hearings and in  
17 looking at these briefs. And I'd like to just make a few  
18 comments, if that's okay.....

19 CHAIRMAN BETTISWORTH: Go ahead.

20 COMMISSIONER HANSON: .....generally. First, it does  
21 seem to me that the main people that use this area, and  
22 that the data shows it, are the people of Noatak and Kivalina  
23 Villages and generally the people of the NANA region who work  
24 with the Red Dog Mine, people of Noatak and Kivalina just  
25 in their normal use of the area for subsistence and other

1 purposes as we heard in the hearings, and a great deal of  
2 testimony was given on that on several sources I've mentioned.  
3 But as we've also heard, it isn't a clean slate, this is an  
4 area that's used -- been used historically at times for  
5 trade routes and also there's been interaction with Point  
6 Hope, for example, that the record brings out. But we've  
7 got a predominant use area for the people of the NANA area.  
8 And looking at it just real quickly, some pros and cons, the  
9 separate regions we mentioned were based upon social and  
10 cultural characteristics. In Point Hope, the NANA people  
11 were referred to as the shallow water people versus the deep  
12 water people of the North Slope. This was in the Point Hope  
13 hearing. NANA residents socially, looking at social dif-  
14 ferences, live in the unorganized borough where the North  
15 Slope residents have been in a borough for thirteen years,  
16 and on the other side of it they are all Inupiat and sub-  
17 sistence is important in both areas. And, as the North  
18 Slope Borough petitions have pointed out, Kivalina also comes  
19 up to get some whales at Point Hope and there is some  
20 exchange, as Mr. Hall points out, some bartering and exchange  
21 of goods that goes on in the area. And culturally, in an  
22 archeological sense, I think the predominance of the evidence  
23 shows that, from what we've heard in the hearings and so  
24 forth, the sites are identified as being mainly NANA sites  
25 as part of the NANA region, part of the 14-H sites and so

1 forth. And also the range of areas are based on watershed,  
2 definitely follow the -- going south, for Kivalina and for  
3 Noatak, Point Hope goes to the northwest; different Fish and  
4 Game districts following the crest of the Brooks Range.  
5 Basically, it's NANA territory, and they have a strong  
6 historic claim. Though, in looking at this question, you  
7 still can argue that you've got the same -- some of the same  
8 basic culture. You've got ranger-herders on both regions,  
9 for example. Then you go to economic characteristics, and  
10 the North Slope Borough is much more affluent as far as  
11 public wealth: \$1.5 million per capita, and 15 times larger  
12 than the \$28,745.00 per capita that the record mentions for  
13 the NANA area. And I guess I'm going now to the question  
14 of economics a little bit in relation to this question, but  
15 the North Slope Borough resistance to detachment due to the  
16 Red Dog Mine is part of an economic base they see for them-  
17 selves, and yet for NANA it's the only economic base they  
18 see and it's not yet developed. And we'll deal with that  
19 later more. NANA residents are economically and politically  
20 definitely affiliated with the NANA region, where the North  
21 Slope Borough residents seem to be affiliated the other way.  
22 But if you went into anybody's homes, probably if you did  
23 anywhere in Bush Alaska just about, you'd find generally the  
24 same kind of lifestyle when you went into a home in a village  
25 in NANA versus in the North Slope, but I think that's

1 probably true across the state so that may not be relevant  
2 to this consideration. So I've gone on all that is, I see  
3 two or three things here that really focus it in. I see a  
4 little bit of a distinction between which ethnographer --  
5 I mean, Hull obviously doesn't think there's as much dis-  
6 tinction as someone like Birn does. What we heard in the  
7 hearings was quite a bit of distinction on use area, and  
8 there's no debate that the use area is definite, no -- there  
9 are no fences, so obviously NANA goes in the North Slope  
10 Borough at times and certain people, especially Point Hope,  
11 is to some extent interrelated. On the work force, both  
12 petitioner and the respondent brought up the big work force  
13 item. And I think it is pointed out that petitioner -- the  
14 respondent pointed out that the work forces aren't that  
15 different. I mean, if you work for a money economy, you work  
16 for a money economy. NANA points out that 80 percent of the  
17 people at Red Dog, of course, if that work force is developed,  
18 would be with -- you know, would be from NANA. I guess what  
19 I find is this is a definite use area. There are definitely  
20 some distinctions and differences. I think, though, this  
21 factor and the way it's laid out is more trying to determine  
22 if there is -- there should be a detachment because of such  
23 a substantial difference, or a conflict between two popula-  
24 tions. I guess I'll stop right there and see what your  
25 reactions are. That's about where I am right now.

1           CHAIRMAN BETTISWORTH: Commissioner Anderson, you have  
2 something?

3           COMMISSIONER ANDERSON: Yes. I'll just -- I will say  
4 of interest to me are the public hearings. In Point Hope  
5 we did realize that there was a lot of intermarriage that  
6 was going on in relationships there, but that is the only  
7 place in the borough that we heard that type of testimony.  
8 As we went to the other places, I mean, it just doesn't come  
9 out, but there apparently is a lot of interrelated families  
10 between Point Hope and the NANA area. Of course, they're  
11 very close.

12           COMMISSIONER HANSON: I don't think -- you know, like  
13 it's not debatable, especially the fact that they even had  
14 a boundary dispute over whether Point Hope should be part  
15 of NANA or part of the North Slope, that the NANA -- that  
16 the Point Hope area definitely has some interrelational ties.

17           CHAIRMAN BETTISWORTH: Our role, in our considerations  
18 right now, is not actually to come to a decision but to at  
19 least list those things which we have considered.

20           COMMISSIONER HANSON: It's also one that we can go  
21 on forever on.

22           CHAIRMAN BETTISWORTH: Well, I'll make a summary state-  
23 ment that I think there's -- predominantly, it's a use area  
24 for the NANA people. That's not to the exclusion of every-  
25 one. There are some distinctions between the North Slope

1 people and the NANA people, culturally and socially.  
2 Perhaps the biggest one is public wealth economically.

3 CHAIRMAN BETTISWORTH: Do you find that there's an  
4 exhibition of conflict between the two regions, between these  
5 distinctive groups?

6 COMMISSIONER HANSON: There definitely has been in  
7 regard to the detachment issue and the Red Dog Mine. Whether  
8 there is in everyday life, excluding the Red Dog Mine,  
9 existence, I think is a pretty tough question that I don't  
10 think I have the data to say there's a substantial conflict.

11 CHAIRMAN BETTISWORTH: I guess from my point of view --  
12 or it could be seen that exclusive of -- well, Red Dog Mine  
13 is one resource development area within what is described as  
14 the NANA region. It's probably one resource area of several  
15 that is within the detachment area, which means in the NANA  
16 region but yet in the borough, in the North Slope Borough.  
17 While there may not be conflicts right now over those  
18 resources and the development of those resources, it seems  
19 like that conflict is -- has a potential for developing.  
20 And then what we're talking about is what the potential is,  
21 rather than whether they currently exist. And I think that  
22 the whole proceedings is, in fact, a demonstration of  
23 potentiality of the conflict.

24 COMMISSIONER HANSON: Well, and the existence of an  
25 immediate conflict and what to do about the revenues from

1 that mine.

2 CHAIRMAN BETTISWORTH: Are there any other comments  
3 with respect to this factor?

4 COMMISSIONER ANDERSON: I have none.

5 CHAIRMAN BETTISWORTH: Mr. Hanson? I guess the other  
6 thing we want to make sure that our staff understands is that  
7 when we go through these today and we get to take a look at  
8 the (indiscernible) tomorrow, I believe we'd expect that  
9 we'd make revisions or reinterpretations or at least addi-  
10 tions to -- small additions to each of these as we look at  
11 them and review them tomorrow.

12 COMMISSIONER ANDERSON: If necessary.

13 COMMISSIONER HANSON: Maybe the one thing that,  
14 further stated, we had some discussion about people from  
15 Anatuviik Pass using this area. That again seemed to be more  
16 of a minor use than the strong present-day use, but I did  
17 look at the source document put out on the Anatuviik Pass  
18 Village and noticed that their maps where people were born  
19 over the years just overwhelmingly oriented toward the North  
20 Slope. There were three or four indications from 1900 on  
21 or something where individuals were born in the NANA region  
22 then. But I think a distinction should be the question of  
23 how much use.

24 CHAIRMAN BETTISWORTH: Any other comments with respect  
25 to Factor 1? Okay. With that, we'll go on to Factor 2 and

1 we'll take a five-minute recess to review these citations.

2 (Off record)

3 CHAIRMAN BETTISWORTH: We'll reconvene. We're now  
4 dealing with Factor No. 2. The commissioners, after a short  
5 recess, have reviewed the citations.

6 CHAIRMAN BETTISWORTH: Mr. Hanson, would you wish that  
7 I begin?

8 COMMISSIONER HANSON: Yes.

9 CHAIRMAN BETTISWORTH: Okay. In the brief in support  
10 of the petition, this factor: Does the geographic location  
11 or configuration of the territory proposed to be detached  
12 preclude the provision of those services provided other areas  
13 of the detaching borough or make the provision of borough  
14 services impractical. I think before we get into these  
15 citations I think we might come here to look at the proposed  
16 interpretations and definitions. There were questions raised  
17 at our last meeting last Saturday in Fairbanks regarding the  
18 terms "preclude" and then "impractical." And maybe, Mr.  
19 Hanson, you might refresh our memories. You're the one  
20 who made these comments.

21 COMMISSIONER HANSON: I had read the definitions in  
22 the record last week and the main substance of them was that  
23 impractical, for example, refers to be unwise to put into  
24 effect or keep in practice or effect or to be incapable of  
25 dealing sensibly or prudently with practical matters. The

1 reason I thought it was important was I think in looking at  
2 impractical or the wisdom of a practice, whether it's a  
3 prudent practice, I think there are two key considerations  
4 we're talking about.

5 CHAIRMAN BETTISWORTH: Basically, what the factor is  
6 dealing with is two issues. One is preclusion.

7 COMMISSIONER HANSON: Right.

8 CHAIRMAN BETTISWORTH: And the other one is practi-  
9 cality, the issue of practicality. And we can -- the term  
10 is "or." Is it precluded or is it impractical. So then,  
11 with that, are there any other comments on this issue of  
12 definitions, interpretation?

13 COMMISSIONER HANSON: Well, I think we all understand  
14 what preclusion means.

15 CHAIRMAN BETTISWORTH: Okay, with respect to citations  
16 in the brief in support, pages 24 through 27, the petitioner  
17 dealt specifically with those issues. Basically, the  
18 position of the petitioner is that it's more practical to  
19 deliver services to this detached area from a future NANA  
20 borough than it would be -- or NANA region borough than it  
21 is to deliver services from the North Slope Borough centered  
22 in Barrow. The -- in the reply to the borough's brief in  
23 opposition, pages 12 and 13, they -- no, in the petitioner's  
24 reply, on pages 12 and 13, they go back to the term  
25 impractical, impracticality, and really do not address the

1 issue of preclusion of services, kind of restating what they  
2 said in the original petition. The brief in opposition, on  
3 34 and 35, the petitioner used the other side, which is that  
4 services -- the provision of services are not precluded by  
5 the geography, and they go on to cite all the areas within  
6 the borough that they provided services to and then the fact  
7 that even some of those are a further distance than the Red  
8 Dog Mine site. Again, the citation is: Present lack of  
9 overland and marine transportation links between Barrow and  
10 other communities does not prevent effective conduct of  
11 borough business. Borough officials on public business  
12 customarily travel by air to various communities, not by  
13 ship or highway. And, again, their summary is: Thus, no  
14 reasonable basis to -- there is no reasonable basis to  
15 conclude that the geography or the configuration of the  
16 territory proposed for detachment precludes or makes  
17 impractical provision of services to them by the North Slope  
18 Borough. NANA's brief, wherein the comments -- actually,  
19 I have a little trouble with the citation on page 1 because  
20 I really can't find what they're looking for. out on page  
21 6 they note that the detachment area will be serviced by a road  
22 and port that is being developed as part of the DeLong  
23 Mountain transportation system. I guess it's worthwhile  
24 pointing out, however, that that road and port system does  
25 not connect the Red Dog Mine site to Kotzebue. It only

1 connects it to the ocean.

2 COMMISSIONER ANDERSON: It does mention that the port  
3 and 80 percent of the road will be in NANA territory, however,  
4 not in the North Slope Borough territory. One more comment:  
5 You pointed out everything that I had looked at.

6 CHAIRMAN BETTISWORTH: Mr. Hanson.

7 COMMISSIONER HANSON: I have -- as you probably sur-  
8 mised, I spent quite a bit of time this week in looking at  
9 the first three factors, and so I did write down some con-  
10 siderations. If you'll bear with me a few minutes I would  
11 like to go over them. I'll try to be succinct. First of  
12 all, just looking at the situation of facts, where is it  
13 located, and we've already gone over that, related to the  
14 rest of the borough, it's separated by the Brooks Range from  
15 the rest of the North Slope Borough. It's also a large part  
16 of the -- probably the eastern two-thirds to three-quarters  
17 of it is National Noatak Preserve and Arctic Park, which is  
18 sort of a dividing line of sorts along the Brooks Range  
19 between the two areas, the two regions, though both regions  
20 include part of it and above. All the drainages in the  
21 detached area flow toward NANA villages and are non-North  
22 Slope Borough rivers and watersheds, from the standpoint that  
23 they're flowing south and not north toward the majority of  
24 the borough. It's a great distance from Barrow; it's close  
25 to Noatak and Kivalina. It's -- as we mentioned before,

1 it's Fish and Game district -- rangers use the crest of the  
2 mountains; the regional corporation boundary uses the north  
3 side of the detached areas, attempting to follow the crest  
4 of the mountains in a negotiated fashion. And services such  
5 as mail, emergency medical services, Fish and Game, land  
6 planning on federal and private lands come from Kotzebue,  
7 and except for the borough's planning essentially everything  
8 is coming out of Kotzebue to the north. The -- just with  
9 these in mind, I think first of all obviously the geography  
10 of the Brooks Range separating this from the rest of the  
11 borough doesn't preclude the provision of rural services.  
12 And the petitioner's representative mentioned in the hearing  
13 the North Slope Borough has adequate resources to deliver  
14 services just about anywhere in the state. And the North  
15 Slope Borough has already been delivering them, planning and  
16 zoning and permitting services to this area. That goes for  
17 specs. But I think there is something about it being  
18 impractical. Though now it's just planning and zoning and  
19 permits, in the future it could be a whole range of borough  
20 services. And I guess I feel it is impractical, and that the  
21 geographic situation is in a large part responsible for that  
22 impracticality. It costs more to fly there and then to fly  
23 to Kotzebue, it's physically separated. Users are from a  
24 different area and borough and so to get the users' input  
25 you have to actually go outside the North Slope Borough to

1 get their input, and that's a factor of geography and con-  
2 figuration. There wasn't a public hearing in the last 13  
3 years, we heard in testimony; there is going to be one Janu-  
4 ary 20th and they're going to have to go to Kivalina and  
5 Noatak, outside the borough, to get comments on the users  
6 of the Red Dog and the detachment area, though we both so in-  
7 dicated that Point Hope to some extent, to a minor extent,  
8 was a user area. I think the fact that the state and federal  
9 governments already have their services coming out of  
10 Kotzebue and not Barrow is a very strong indication on the  
11 question of is it impractical to provide services from  
12 Barrow, because they could provide them from either place  
13 and are doing this pretty much on efficiency and monetary  
14 considerations, I'd imagine. And I think you can't get away  
15 from a comparative element when you're trying to determine  
16 whether a policy or a situation is prudent or wise. You have  
17 to look at the way others do it and you have to look at the  
18 geographic configuration of one service area as opposed to  
19 another. And there's no real debate that it's more efficient  
20 from Kotzebue. Now, I recognize that the respondent, the North  
21 Slope Borough, does not agree with the interpretation in  
22 making it impractical. They do not feel that the fact that  
23 it's easier from Kotzebue versus the North Slope is an  
24 adequate response. Well, I guess I just have to say on the  
25 record I disagree with them. I think if we're going to use

1 the word impractical anywhere in the state that this is  
2 definitely a very -- could be called almost a model situa-  
3 tion. Because you can -- if somebody wants to bad enough,  
4 they could give services anywhere in the state, if they want  
5 to. So I find it impractical, and it's because, to a great  
6 extent, of the separation by geography. I guess that's the  
7 extent of my comment.

8 CHAIRMAN BETTISWORTH: I guess what I was about to do  
9 was check the record of the hearings and see what kinds of  
10 comments we had during the hearings on this issue, and there  
11 were some briefs that were filed by the respondents and  
12 petitioners, and my recollection is that I can't think of  
13 any on this issue.

14 COMMISSIONER HANSON: Well, several of my comments  
15 came from the hearings. In Kotzebue we learned about  
16 services being provided by different government entities.  
17 We also learned in Barrow about the willingness of Barrow  
18 to at this point hold hearings outside the borough in that  
19 area, and their willingness to deal with planning and zoning  
20 concerns in the area. So -- and there were a few others.  
21 Many of my concerns were already.....

22 COMMISSIONER ANDERSON: There are planning and zoning  
23 in the area, and a permit.

24 COMMISSIONER HANSON: That's right, and there is one  
25 permit as for the Red Dog Mine that comes from the North

1 Slope Borough, that's one out of 28.

2 CHAIRMAN BETTISWORTH: Is there any other comment with  
3 respect to Factor 2?

4 COMMISSIONER HANSON: No.

5 CHAIRMAN BETTISWORTH: All right, then, we would move  
6 along, then, to Factor No. 3, and we'll take five minutes  
7 to review the citations.

8 (Off record)

9 CHAIRMAN BETTISWORTH: We would like to reconvene.  
10 We were on consideration of Factor No. 3. Are there comments  
11 of the commissioners? Mr. Hanson.

12 COMMISSIONER HANSON: If I may, I would like to make  
13 two other -- one a technical point and one a substantive  
14 point on Number 2, just for the record.

15 CHAIRMAN BETTISWORTH: Okay.

16 COMMISSIONER HANSON: On the technical point, as in  
17 Number 1, we were defining the affected population as being  
18 the users of the area. I believe that's still applied, and  
19 in Number 1, and that applied in Number 2.

20 CHAIRMAN BETTISWORTH: What you're saying is it also  
21 applied to 1 and 2.

22 COMMISSIONER HANSON: Yes.

23 CHAIRMAN BETTISWORTH: Okay.

24 COMMISSIONER HANSON: The second point I want to make  
25 is.....

1           CHAIRMAN BETTISWORTH: Is that a substantial, or is  
2 it technical?

3           COMMISSIONER HANSON: That's the technical one. The  
4 substantial is the Coastal Zone Management Program, and it  
5 was talked about in several pieces of information in the  
6 record. Coastal Zone Management Program, really due to  
7 geography and use area, but to the greatest extent due to  
8 geography, the North Slope Borough Coastal Management Pro-  
9 gram omits the detached area as far as providing zoning for  
10 them. I could double check to make sure that's not an over-  
11 statement, but it doesn't provide stipulations for that area.

12           CHAIRMAN BETTISWORTH: I think -- you're talking about  
13 the North Slope Borough's Planning and Zoning?

14           COMMISSIONER HANSON: Yes. They -- what it really  
15 does is it doesn't deal with the issue of the fisheries and  
16 the rivers.

17           CHAIRMAN BETTISWORTH: Okay.

18           COMMISSIONER HANSON: It says that there'll be sub-  
19 sistence uses and the drainages and Kotzebue Sound, and it  
20 doesn't deal with those issues.

21           COMMISSIONER HANSON: So from a standpoint of the  
22 fisheries and the river, it would show that the geographical  
23 configuration did affect the coastal management services  
24 because it didn't deal with those.

25           CHAIRMAN BETTISWORTH: But then to Number 3, Mr. Hanson,

1 would you like to proceed? I think this is a real difficult  
2 one, because I think you've got -- I guess we should probably  
3 restate it. Does the lack of transportation facilities pre-  
4 clude communication exchange necessary for responsive and  
5 integrated local self government. I guess we need to deal  
6 again with terms, responsive and integrated.

7 COMMISSIONER HANSON: Right. I guess first trying to  
8 define what would be precluded then why it's precluded, if  
9 it is. But responsive, first, respond, to react sympathetic-  
10 ally, or some few words from the dictionary. Integrate, form  
11 it into a whole, unite, and then segregate, being in common  
12 and equal membership. The assumption, I think, in this one  
13 is that communication and exchange refers to between the  
14 North Slope Borough and the users of the detachment area,  
15 Noatak, Kivalina, Kotzebue and NANA generally, and, as we  
16 said, to a limited extent, Point Hope, though it's transient.  
17 Am I overstating Point Hope, in your opinion, Mr. Bettis-  
18 worth?

19 CHAIRMAN BETTISWORTH: No, I didn't -- I can't figure  
20 where Point Hope fits in the gist that.....

21 COMMISSIONER HANSON: From time to time they are a  
22 user of the area.

23 CHAIRMAN BETTISWORTH: Oh, I see.

24 COMMISSIONER HANSON: And I guess the transportation  
25 services would be from Barrow. Looking at it, is there

1 communication and exchange right now necessary for  
2 responsive and integrated government, and to some extent  
3 it's been lacking for the users of the area in that the  
4 Noatak and Kivalina people weren't even sure or aware of  
5 where the boundary line was, and there was a lack of hearings.  
6 But, on the other hand, there's definitely been work on the  
7 Red Dog Mine with the NANA Borough and I think it's hard to  
8 come to a historic conclusion based on the information we  
9 have that there has not been -- I don't think there's -- I  
10 think we might be able to say that the users, not the  
11 residents of the borough in this case, don't have equal  
12 status or rights and aren't integrated into the borough as  
13 a whole. They perhaps aren't getting as much respon --  
14 communication and exchange as somebody else in other parts  
15 of the borough would be since they're outside the borough  
16 boundaries, but whether they have been getting no communica-  
17 tion or exchange of services, I think, is a difficult ques-  
18 tion. And if they have -- if they haven't been getting any,  
19 transportation at best is only one of many factors which  
20 preclude them getting services.

21 CHAIRMAN BETTISWORTH: You're talking about people who  
22 live in Kivalina and Noatak, correct?

23 COMMISSIONER HANSON: Right.

24 CHAIRMAN BETTISWORTH: And maybe Kotzebue, who use the  
25 area, getting services from the North Slope Borough.

1           COMMISSIONER HANSON: Communication and exchange neces-  
2 sary for responsive and integrated local government. I  
3 guess this goes to the point of the definition. What you're  
4 assuming then is that -- and under 1, when we made a determin-  
5 ation the population was those people the area is used by,  
6 that that also applies under Factor 3. That's the assumption  
7 they're making. This factor really gives me problems,  
8 frankly. I mean, I'm not sure now.....

9           COMMISSIONER ANDERSON: We're talking about the areas  
10 to be detached and there are no people in there at the  
11 present time. And the transportation and the geographic  
12 location and so forth we went through in Factor 2, which I  
13 would feel rather relates to this question. But the transpor-  
14 tation, obviously the North Slope Borough can provide  
15 transportation and services as they do to some of their  
16 other areas, they probably could do it here also.

17           COMMISSIONER HANSON: The North Slope Borough provided  
18 it, sure, air mileage from Barrow, and Kivalina and Point  
19 Hope are not exactly the same air mileage from Barrow,  
20 according to the chart that was provided as one of the North  
21 Slope Borough attachments. The Red Dog Mine is -- I think  
22 it's right next to the line that says 265 miles, Point Hope  
23 is 315 miles. I think Noatak would also be within that  
24 range of 265 to 315 miles, without looking at this. I guess  
25 I -- looking at that and recognizing that that's the main

1 form of transportation to those areas, even though freight  
2 comes by ocean, I guess I have two -- on one hand, I have  
3 a problem saying that if they weren't getting respon -- if  
4 the users weren't getting responsive government I'm not sure  
5 transportation would be the factor, because Point Hope is  
6 certainly -- appear to be getting -- having responsive local  
7 government. And like you say, it depends on interpretation  
8 as far as how you define responsive local government. And  
9 this particular factor, as a consideration, talks about pre-  
10 clusion of -- the lack of transportation precludes it.

11 COMMISSIONER ANDERSON: Let me just -- local govern-  
12 ment. This is a long way from -- this area is a long way  
13 from being local to Point Barrow.

14 COMMISSIONER HANSON: Yes, but I think they're refer-  
15 ring to local borough.....

16 (Indiscernible - simultaneous speech)

17 COMMISSIONER HANSON: Point Hope has responsive  
18 borough government.

19 CHAIRMAN BETTISWORTH: Well, you know, under your  
20 definition of terms we talk about the term responsive and  
21 one of the modifiers of that is the term sympathy, is  
22 sympathetic to. And I guess given that we go back to the  
23 issue about distinct and distinguished from, the social-  
24 cultural characteristics, that it is reasonable to think  
25 that the government in Barrow on the North Slope Borough is

1 more or less responsive from a sympathetic point of view  
2 than, say, this is again a comparative analysis, than say  
3 a government in Kotzebue. You know, saying Kotzebue or a  
4 NANA based -- NANA borough.

5 COMMISSIONER HANSON: Well, I think it's definitely  
6 possible to expect a NANA borough or Kotzebue to be more  
7 sympathetic, but my problem is the way the statement's  
8 worded it's lack of transportation. It doesn't say.....

9 CHAIRMAN BETTISWORTH: And communication.

10 COMMISSIONER HANSON: Well, it just says does lack  
11 of transportation preclude communication and exchange.

12 CHAIRMAN BETTISWORTH: It says does the lack of  
13 transportation preclude the communication and exchange  
14 necessary.

15 COMMISSIONER HANSON: And I have trouble saying that  
16 the lack of transportation precludes it. I mean, another  
17 element may -- there may be a problem because of the dis-  
18 tinct culture, et cetera.

19 CHAIRMAN BETTISWORTH: So, in terms of facts, what do  
20 we find?

21 COMMISSIONER ANDERSON: Well, if we answer this  
22 exactly as it's written, I mean, we really can't find any-  
23 thing.

24 COMMISSIONER HANSON: We do not find that lack of  
25 transportation is causing a -- is precluding, underline

1 precluding.

2 CHAIRMAN BETTISWORTH: The facts are, is that there  
3 is air service to them, to the area? It's no farther than  
4 the villages within the North Slope Borough?

5 COMMISSIONER HANSON: That are receiving adequate  
6 service.

7 CHAIRMAN BETTISWORTH: That are receiving adequate  
8 services, then sympathetic services, responsive government.

9 COMMISSIONER ANDERSON: And they could provide the  
10 telecommunication also, if they wished.

11 COMMISSIONER HANSON: So, though there may be very  
12 valid points, under discussion it comes down to where we  
13 think.....

14 COMMISSIONER ANDERSON: The way it's worded, only as  
15 it's worded.

16 COMMISSIONER HANSON: Only with respect to that.

17 CHAIRMAN BETTISWORTH: I guess my concern is, is the  
18 fact when we discussed Factor 2 we.....

19 COMMISSIONER HANSON: We dealt with impracticality.  
20 We (indiscernible) precluded.

21 CHAIRMAN BETTISWORTH: Okay, I see.

22 COMMISSIONER HANSON: So there's a difference. There  
23 was an option.

24 CHAIRMAN BETTISWORTH: Any other comments about Factor  
25 3? Okay, with that, then, we would go on to Factor 4.

1 Restated: Will the detachment maximize or promote local self  
2 government. And we'll take five minutes to review the notes  
3 and citations.

4 (Off record)

5 CHAIRMAN BETTISWORTH: Reconvene to continue with the  
6 consideration of Factor No. 4, will the proposed detachment  
7 maximize or promote local self government. Essentially, as  
8 we established in deciding to take up this factor, this is  
9 presented to us as a function of the state constitution.  
10 Ms. Anderson.

11 COMMISSIONER ANDERSON: Yes. Since this whole detach-  
12 ment issue is concerning the formation of a new borough, I  
13 would like to read from Article X of the Alaska Constitution.  
14 (Indiscernible) was submitted by the Committee on Local  
15 Government which shall research 31 hearings between November  
16 15th and November 19th, 1955. An examination of the record  
17 and minutes of those meetings shows clearly that the concept  
18 that was in mind when the local boundary commission section  
19 was being discussed that local political decisions do not  
20 usually create proper boundaries and that the boundaries  
21 should be established at the state level. The advantage of  
22 the method proposed, in the words of the committee, lies in  
23 placing the process at a level where areawide or statewide  
24 needs can be taken into account. By placing authority in  
25 this third party, arguments for and against boundary change

1 can be analyzed objectively. And then here's another point:  
2 The basic purpose for creating the boundary commission and  
3 conferring upon it the powers that it possesses was to  
4 alleviate the type of situation that existed here where  
5 there was a controversy over municipal boundaries -- and  
6 that, I assume, could be borough boundaries also -- which  
7 apparently could not be settled at the local level. As we  
8 pointed out in the Fairview case, the concept that was in  
9 mind when the local boundary commission section of the  
10 constitution was being considered by the constitutional con-  
11 vention was that local (indiscernible) decisions do not  
12 usually create proper boundaries and that the boundaries  
13 should be established at the state level. That's, again,  
14 repeating the same thing, but I think this is of interest  
15 on this particular question, or factor.

16 CHAIRMAN BETTISWORTH: Mr. Hanson.

17 COMMISSIONER HANSON: Well, I think there are, you  
18 know, a few ways this question has to be looked at. One is  
19 -- obviously, is detachment necessary for the formation of  
20 a Northwest area borough, or Northwest Alaska borough in and  
21 around Kotzebue. And we took -- that's one of the questions.  
22 Another one is how does it affect self government of the  
23 North Slope Borough. And then, of course, another question  
24 we'll deal with separately from local self government is how  
25 does it affect borough and municipal government across the

1 state generally. So I think the first two are relevant here.  
2 And also I think it's relevant now it affects whether or not  
3 another borough is formed, dealing with that first. We  
4 asked several people during the hearings, there's a great  
5 deal of testimony saying that if they didn't have the detach-  
6 ment, if they didn't have the Red Dog tax base, then they  
7 weren't going to form the borough. And that included the  
8 mayor of Kotzebue, native corporation leaders and just  
9 general people in the general public. There was quite a bit  
10 of information in the record that sets forth very clearly  
11 about the income, the tax base, of the NANA borough. And  
12 refer to -- I think it was set out real clearly in the  
13 Commissioner of Revenue's statement dated November 19th,  
14 1985, in which he talks about the per capita revenue and the  
15 fact that without Red Dog it's \$30,000.00 and Haines, the  
16 next largest -- the next -- the borough with the next lowest  
17 assessed value per capita was Haines, which was 48,000.  
18 yet if Red Dog is added the tax base increases 2.5 times and  
19 if we don't have it added it has a smaller tax base than  
20 Haines but a more expensive area and possibly more services  
21 needed when you look at the NANA area as opposed to Haines.  
22 But a point of information for the record, I'm trying to --  
23 my memory is being taxed today, is Haines the one-third  
24 class borough still?

25 CHAIRMAN BETTISWORTH: Yes.

1           COMMISSIONER HANSON: Yes. So its services are very  
2 limited as opposed to the NANA -- formation of a borough in  
3 the NANA area. So obviously without Red Dog it has a very  
4 small tax base and one that many people said is inadequate.  
5 I'd point out that the head of the Chamber of Commerce in  
6 Barrow further said that even with Red Dog the tax base  
7 wasn't going to be adequate, so obviously, using that logic,  
8 without it there's no chance. No chance. The -- there's  
9 so much information on that, I'll drop that at this point,  
10 but the record is full of information on the tax base ques-  
11 tion. One thing that was brought up by the respondent,  
12 however, is alternative tax bases, taxing the port, taxing  
13 the road, and we can discuss that more, but I think that was  
14 fairly adequately answered in the various responses that went  
15 back and forth between petitioner and respondents. We can  
16 discuss that more if it's felt necessary. The impact on the  
17 North Slope Borough, as far as maximizing local government,  
18 something we'll get into more detail on later, but obviously  
19 we were talking about a small fraction of their tax base at  
20 this time and I think we'll talk about that more, in greater  
21 detail. Go ahead.

22           CHAIRMAN BETTISWORTH: Do you have a -- now does the  
23 North Slope's tax base fit into the consideration of maxi-  
24 mize and promote local self government?

25           COMMISSIONER HANSON: Just from the standpoint that

1 if you remove that tax base that you're doing detriment to  
2 -- if you were doing significant detriment to the North  
3 Slope local government, that certainly would be a balancing  
4 factor on whether it is appropriate, perhaps, helping an-  
5 other self government. So it has that relevance.

6 COMMISSIONER ANDERSON: We have that coming up in  
7 Factor 7.

8 COMMISSIONER HANSON: There was another concern on  
9 maximizing local self government, and I think that's what  
10 we talked about under transportation and couldn't get a  
11 handle on under that particular factor. And that is that  
12 the people in the area want to have control over their own  
13 watershed, their own subsistence area, what happens to the  
14 Red Dog Mine, and want to have a responsive local government.  
15 They're outside the borough, they don't have a legal say as  
16 it is now, but detaching and including that area which is  
17 vital to them and part of their watershed in the borough,  
18 in a new borough, would definitely be maximizing local  
19 government for them in that respect. Another consideration  
20 is whether or not the transition period, in establishing a  
21 new government, and I think we're going to deal with that  
22 later, whether or not that transition period would leave  
23 the detached area without services or planning to the detri-  
24 ment of local government. I guess we'll be setting that  
25 aside and dealing with that later. I guess I'd also like

1 to make reference to the resolution passed by the North  
2 Slope Borough Assembly on August 26th, 1985. It's also men-  
3 tioned in the text here in some of the documents. It points  
4 out on the first page -- this is the one that was actually  
5 signed. There were several versions that seem to be in the  
6 record. This was signed July 2nd, 1985, adopted August  
7 6th (sic). It has a bunch of whereases. One is: Whereas,  
8 that territory -- referring to the territory of the proposed  
9 detachment -- is critical to the economic viability of the  
10 proposed NANA Region and borough government -- and though  
11 this petition was just setting up a vote on the issue of  
12 detachment and only referred to the 344,000 acres rather  
13 than to the 2.1 million, it does show a conceptual agree-  
14 ment to a certain extent by the North Slope Borough Assembly.  
15 The economic tax base provided by the Red Dog area is -- it  
16 is critical to the formation of the NANA area government,  
17 which agrees with what the leaders in the NANA area were  
18 telling us. There are many, many places in the record where  
19 this statement was made. Mr. Schaeffer (ph) makes the  
20 statement on April 23rd, 1985, in his letter to the mayor  
21 of the North Slope Borough, which is Attachment -- North  
22 Slope Borough Attachment SS: The development of a borough  
23 in the region has long been a goal of NANA but without the  
24 tax base provided by the Red Dog project that goal will be  
25 unattainable. I think if we look hard enough we'll find

1 just about every leader at one time or other making that  
2 assertion, and the facts seem to be -- tax base figures seem  
3 to definitely back that up. I guess I'd ask the commis-  
4 sioners if there's need for more discussion on the alterna-  
5 tive ways of providing a tax base.

6 COMMISSIONER ANDERSON: I don't think so, right at this  
7 particular question. Perhaps later.

8 CHAIRMAN BETTISWORTH: I guess with respect to the  
9 alternative pay, I've never quite understood the -- in lieu  
10 of taxes paid on this to be a financed road and port, and  
11 I wonder if -- Gordon, could you help us? Describe to me  
12 how that would work, if it did, and, if not, we can come  
13 back and maybe Wilson can help with it.

14 MR. HARRISON: Well, I can describe only generally the  
15 concept of payments in lieu of taxation, but I don't have  
16 any specific knowledge of the aid agreement and why it was  
17 excluded, anything like that. So I guess I can't really be  
18 much help.

19 CHAIRMAN BETTISWORTH: I think that -- Mr. Hanson, do  
20 you understand the concept? I mean, I understand the con-  
21 cept, but it seems to me the record -- in fact, Mr. Smith's  
22 testimony, indicated that that couldn't happen, given the  
23 way the agreement -- the contract with A.D.A. or the bonds  
24 with A.D.A. were set up. And I guess I have a problem with  
25 fully understanding just exactly how the (indiscernible).

1 This is nto tne kind of thing like, for instance, a private  
2 developer going down and getting an A.D.A. loan to build a  
3 building, it is then taxable by a local government entity.  
4 Maybe you can.....

5 COMMISSIONER HANSON: It isn't a private property, as  
6 I understand it; it's a public property, and a user pays a  
7 toll or a tax for its use. I guess it would be called a toll  
8 or a fee for its use, that goes directly to A.D.A., as I  
9 understand it, and thus -- I'm giving you generally my  
10 impression, and perhaps we can talk more about this tomorrow.  
11 We have the A.D.A. documents in the files that I have looked  
12 at once. But, as I understand it, thus it isn't available,  
13 because of the way it was set up and the way the legislature  
14 set it up, as a tax base. But maybe we should go with that  
15 and ask the staff to give us a report tomorrow on that and  
16 finalize our findings on this.

17 CHAIRMAN BETTISWORTH: Okay, I've made a note. I  
18 guess 40 -- actually there's a whole group of -- well, in  
19 any event, their argument is what to form this borough here  
20 would be at the detriment of the North Slope Borough and  
21 that, in fact, there's occasions where that's going to occur  
22 in several of the boroughs throughout -- communities through-  
23 out the state. And that -- it gets back to this later factor  
24 we're going to talk about, I think it's number 8, where this  
25 issue of whether the proposed tax will strengthen or weaken

1 long-term stability of all boroughs, and actually that's  
2 the argument on the part of the North Slope Borough here,  
3 is that, in fact, our action, rather than maximizing self  
4 government will actually be to the detriment of self govern-  
5 ment because it puts their boundaries at risk. The citation  
6 on page 45 goes on to point out that, in fact, there is local  
7 self government in the area being provided by the North Slope  
8 Borough. I guess the real critical definition here, then,  
9 gets to be what is self government. And I guess to the point  
10 that we have said people that inhabit the area are the folks  
11 who are the users, and those users are generally NANA region  
12 people from the areas of Noatak, Kivalina and Kotzebue, self  
13 government would then mean better able to be governed by  
14 those -- by that group of people. And I think that that  
15 really is the distinction here, is that the people that are  
16 really affected are the people in Noatak and Kivalina, and  
17 not the people in Point Hope and Barrow, for sure.

18 COMMISSIONER HANSON: Aside from the economic viability  
19 argument.

20 CHAIRMAN BETTISWORTH: Right.

21 COMMISSIONER HANSON: That's totally separate.

22 CHAIRMAN BETTISWORTH: Right. Right. Are there any  
23 other comments about Factor No. 4?

24 COMMISSIONER HANSON: Well, I'll just mention self  
25 determination. That's a funny one. I agree with your