

ALASKA LEGISLATURE COMMITTEE FILES 1987 - 1988 8672

4884 HRES ANSWR: PROXY STATEMENTS, LEGAL (MOBILE/TEA), PRESS 456

### OTHER BUSINESS

As of the date of this proxy statement, management knows of no business which will be presented for action at the meeting other than the election of directors. If any other business requiring a vote of shareholders should come before the meeting, the persons designated as your proxies will vote or refrain from voting, in accordance with their best judgment.

### SOLICITATION OF PROXIES

The proxy accompanying this proxy statement is solicited by the Board of Directors of Koniag. Proxies may be solicited on behalf of the Board of Directors by officers, directors and employees of Koniag and by certain paid part-time shareholder coordinators. Solicitations of proxies may be made personally, or by mail, telephone, telegraph or messenger. All of the costs of solicitation of proxies by the Board of Directors will be paid by Koniag. The Company does not expect the expense incidental to the solicitation of the proxies by the Board of Directors to exceed \$100,000.

October 8, 1987

KONIAG, INC.

By: Michael Pagano  
Michael Pagano,  
Secretary/Treasurer



Aquatic Terra Consultants, Inc.  
11411 Jordan Lane  
Great Falls, Virginia 22066  
(703) 524-3091

September 24, 1986

Board of Directors  
Koniag, Inc.

This letter is in response to your request that we examine the fairness and reasonableness of an offer from a consortium of energy producing companies for subsurface interests to be obtained by Koniag in the Arctic National Wildlife Refuge. These interests are to be obtained by Koniag from the Department of Interior (DOI) for surface inholdings owned by Koniag within the boundary of Kodiak National Wildlife Refuge.

We have previously provided to Koniag an estimate of public interest value associated with lands proposed for exchange to DOI. That report was submitted August 5, 1986, on approximately 125,661 acres proposed for exchange. Our estimate of a conservative public interest value for these lands, in addition to the U.S. Fish and Wildlife Service ("FWS") MAI appraisal of approximately \$20,000,000, was \$51,830,648. The public interest value was derived from projections of values of natural resources taken from or produced on the subject lands that directly impact the regional and state economy. Our estimate plus the FWS appraisal using standard MAI appraisal techniques led us to the opinion that the 125,661 acres should be valued conservatively at approximately \$72,000,000. No attempt was made to review the MAI appraisal provided by the FWS nor did we attempt to place a value on the 22(g) provision in ANCSA which would have related to the value to some extent. That aspect was an unknown factor to be negotiated by Koniag in discussion with DOI.

Recent information provided to us by Koniag indicates that an agreement has been reached between Koniag and DOI for exchange of approximately 112,000 acres with an attributed value of \$77,000,000. This is about 13,660 acres less than we considered in our report. Furthermore, we understand that a private energy development consortium has proposed to acquire the subsurface rights in ANWR covered by the Koniag/DOI exchange for approximately \$58,300,000 plus a 20% royalty for any energy extraction resulting from those rights. We have reviewed our appraisal report and the subsequent information provided by Koniag and have made the following assumptions:

1. Based on our 1986 evaluation of about \$573/acre the reduced acreage would be valued at approximately \$64,176,000 (\$573 x 112,000).
2. The private offer of \$58,300,000 is approximately 91 per cent of our attributed value. We did not assume any value for the 20% royalty. However, given the current information on energy potential beneath ANWR, we believe this should be viewed positively in the decision process of accepting or rejecting the private offer.
3. We have made the assumption that the attributed value of \$77,000,000 between Koniag and DOI included intangible benefits to the public such as scenic beauty, wilderness, preservation of habitat, and economy of management. These are values that should be rightfully considered by a governmental entity acquiring land for the public good.
4. Tangible and intangible public interest values as above are not necessarily persuasive to private buyers in the marketplace. One would hope not, but should not necessarily expect so. Consequently, the \$77,000,000 attributed value does not necessarily reflect the price that a private buyer would be willing to pay for the Koniag lands.

We also considered the retention of access rights for subsistence purposes by Koniag. Additionally, a subsequent, independent review of the FWS MAI appraisal by Dirksen Appraisal Company suggests a 40 to 45 percent overstatement of value by FWS appraisers, initially. If we accepted a 40% overstatement on the initial FWS appraisal the real estate value would be \$14,300,000 for the original 125,661 acres or \$12,745,000 for the 112,000 acres. Our 1986 public interest value of \$412.50/acre applied to the 112,000 acres yields \$46,196,000. The sum of adjusted real estate value (per Dirksen) and public interest value applied to the current acreage figure (112,000) yields an approximate value of \$58,941,000. This is approximately equal to the current offered price with no consideration of royalty values.

Based upon the foregoing comparisons and assumptions, it is our opinion that the current offer of \$58.3 million is fair and reasonable to Koniag and its shareholders.

Sincerely yours,

AQUA/TERRA CONSULTING, LTD.

By: /s/ ..... ROBERT A. JANTZEN .....  
Robert A. Jantzen

**DIRKSEN APPRAISAL COMPANY**

PAUL P. DIRKSEN, SRPA - MAI

6250 Tuttle Place • Anchorage

1987 • 1997 • 562 774

September 24, 1987

Mr. Uwe L. Gross  
Executive Vice President  
and Chief Executive Officer  
Koniag, Inc.  
4300 B Street, Suite 407  
Anchorage, Alaska 99503

Reference: Valuation of Larsen Bay  
and Karluk Properties.

Dear Mr. Gross:

- At your request, we have performed a limited analysis of the Fish and Wildlife appraisal, using the assumptions and methodology of the their appraisers. As reports, certain portions of the FWS appraisals overstate value. The magnitude of on cabin sites is on the order of 100%. Values of land characterized as interior on the order of 50% or more.

service (FWS) used in those overstatement is overstated

In addition, the potential negative impact of 22G on the lands to be traded may the degree of control that can be exercised under 22G has yet to be determined. value reduction ranging from a low of 10% to a high of 90%. Regardless of if ultimately adopted, it is likely to have a large negative impact on value attribut

large. While could cause a interpretation habitat.

In summary, I believe that the FWS appraisal overstates value on the order of 45%. I have not, however, performed a full appraisal. Only a full appraisal would permit me to value.

45%. I have to a specific

Under the circumstances, if one accepts the assumptions in the FWS appraisal modified, any sale or exchange at a price equal to or exceeding the FWS stated to be within reason.

their value as would tend

Sincerely,

/s/ PAUL P. DIRKSEN  
Paul P. Dirksen  
MAI-SRPA  
President

/mg

*call wife?*

PROXY STATEMENT

ANNUAL MEETING OF SHAREHOLDERS  
OF  
OLD HARBOR NATIVE CORPORATION

Date of Annual Meeting: September 23, 1987

Date of Proxy Statement: August 28, 1987

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION.....	1
PROPOSED LAND TRADE AND TEXACO AGREEMENTS.....	3
Summary.....	3
Introduction.....	3
Risk.....	4
Summary of Proposed Land Trade.....	4
Summary of the Terms of the Texaco Agreements.....	6
Litigation.....	8
Tax Matters.....	8
Extent of Summary.....	8
Risk Factors.....	8
Old Harbor Will be Relinquishing Title to its Native Lands.....	8
Negotiated Value of Native Lands.....	9
DOI Valuation of ANWR Rights.....	9
Completing the Land Trade without a Pre-Arranged Oil Company Lease.....	10
Speculative Nature of Oil and Gas Exploration Activities; Market Factors; Operating Hazards.....	10
No Experience in the Oil and Gas Business.....	11
Legal and Political Resistance.....	11
Tax Risks.....	12
Background to Proposed Land Trade.....	12
Proposed Land Trade.....	14
Conveyance of Old Harbor Lands and Retainment of Easement.....	15
Receipt of Oil and Gas Rights.....	15
Tract Selection Process.....	16
Valuation of Old Harbor Lands.....	17
Termination of Land Exchange Agreement.....	19
Miscellaneous.....	19

	<u>Page</u>
Texaco Agreements.....	20
Preliminary Obligations of Old Harbor.....	20
Preliminary Obligations of Texaco.....	20
Termination of Texaco Agreements.....	20
Election to Lease by Texaco.....	21
Terms of the Texaco Lease.....	21
Payments by Texaco.....	21
Employment of Old Harbor Residents; Scholarship Funds.....	23
Fairness of Consideration Offered by Texaco; Valuation of ANWR Rights.....	23
Use of Texaco Proceeds.....	24
Texaco Bankruptcy.....	24
Miscellaneous.....	25
Litigation Affecting the Land Trade.....	25
Income Tax Considerations.....	27
Introduction.....	27
Tax-Deferred Exchange.....	28
Texaco Payments.....	29
State of Alaska Income Taxation.....	29
Possible Legislation.....	29
AMENDING BY-LAWS TO INCREASE AUTHORIZED NUMBER OF DIRECTORS AND TO STAGGER ELECTION OF DIRECTORS.....	30
ELECTION OF DIRECTORS.....	31
BOARD AND COMMITTEE MEETINGS.....	35
OFFICERS.....	36
REMUNERATION OF OFFICERS AND DIRECTORS.....	36
TRANSACTIONS WITH OTHER CORPORATIONS IN WHICH DIRECTORS OR OFFICERS OR THEIR FAMILIES HAVE AN INTEREST.....	36
AMENDING ARTICLES OF INCORPORATION TO INCREASE AUTHORIZED AMOUNT OF CAPITAL STOCK.....	37
AMENDING ARTICLES OF INCORPORATION TO CHANGE OLD HARBOR'S REGISTERED AGENT AND REGISTERED OFFICE.....	38

	<u>Page</u>
RATIFICATION OF SELECTION OF INDEPENDENT PUBLIC ACCOUNTANTS.....	38
ANNUAL REPORT.....	39
OTHER MATTERS.....	39
APPENDICES	

OLD HARBOR NATIVE CORPORATION  
P.O. Box 71  
Old Harbor, Alaska 99643  
(907) 286-2204

PROXY STATEMENT

Old Harbor Native Corporation  
Annual Shareholders' Meeting  
September 23, 1987

INTRODUCTION

This Proxy Statement is furnished to you in connection with the solicitation of proxies for use at Old Harbor Native Corporation's annual shareholders' meeting to be held at the City Office at Old Harbor, Alaska on September 23, 1987, at 7:00 p.m. The solicitation of the Proxy accompanying this Proxy Statement is made on behalf of the Board of Directors of Old Harbor Native Corporation ("Old Harbor").

At the annual shareholders' meeting, the shareholders of Old Harbor will consider and vote on the election of directors, the ratification of the selection of independent public accountants and the amendment of certain provisions of the Articles of Incorporation and By-Laws. However, the main business of the meeting will be to consider and vote on a proposed trade of Old Harbor lands for oil rights in lands located in northern Alaska. All of the matters to be considered and voted on at the meeting are as follows:

(1) Approving the Trade of Old Harbor Lands for Oil and Gas Rights. Approving the trade of approximately 90,000 acres of Old Harbor's native lands for oil and gas exploration and production rights in Arctic National Wildlife Refuge lands, and approving the leasing of those rights to Texaco Inc. in exchange for the payment to Old Harbor of approximately \$45,700,000 and the right to receive royalties upon any oil and gas which is recovered from those lands.

(2) Amending the By-Laws to increase the authorized number of directors from seven (7) to nine (9) and to provide for a staggered election of directors so that three directors are elected at each annual meeting.

*These lands  
were evaluated  
at \$2.5M by  
USFWS.*

(3) Election of Directors. Electing nine (9) of the following fourteen (14) nominees to the Board of Directors:

Wilmer Andrewvitch	Walter Erickson
Ron Berntsen	Sven Haakanson
Ralph Capjohn	George Inga, Sr.
Bernandine Christiansen	Linda Lester
Carl Christiansen	Eugene Naumoff
Emil Christiansen, Sr.	Annie Pestrikoff
Harold Christiansen	Leona (Haakanson) Plummer

(4) Amending the Articles of Incorporation to increase the authorized amount of capital stock from 2,500 shares to 10,000 shares.

(5) Amending the Articles of Incorporation to change the registered agent and registered office of Old Harbor.

(6) Ratification of Independent Public Accountants. Ratifying the selection of Peat Marwick Main & Co. as Old Harbor's independent public accountants for the fiscal year ending December 31, 1987.

(7) Other Business. Transacting such other business as may properly come before the meeting.

The Proxy gives the persons named as proxy holders the right to vote your shares of stock as indicated on the Proxy, or as otherwise specified by you. Only shareholder of record on the books of Old Harbor on August 15, 1987 will be entitled to vote at the meeting. If the enclosed form of Proxy is dated, signed and delivered to Peat Marwick Main & Co., 601 W. 5th Avenue, Suite 700, Anchorage, Alaska 99501 by no later than 5:00 p.m. on September 21, 1987, it will be voted as marked by you, or, if you do not mark the Proxy, as indicated thereon (i.e., "FOR" all proposals, but not voted for the election of directors).

You may revoke your Proxy before it has been exercised by either a written notice revoking the Proxy or by a later, duly-executed Proxy, and by delivering the revocation notice, or the subsequent Proxy, to Peat Marwick Main & Co. at its above address before 5:00 p.m. on September 21, 1987. Your Proxy will also be revoked if you attend the meeting in person and tell the person registering shareholders on September 23, 1987 that you wish to vote in person, thereby revoking your Proxy. WE URGE YOU TO SIGN, DATE AND DELIVER THE ENCLOSED PROXY AS INDICATED ABOVE AS PROMPTLY AS POSSIBLE WHETHER OR NOT YOU PLAN TO ATTEND THE MEETING IN PERSON. Unless otherwise instructed, each valid Proxy returned which is not revoked will be voted as directed, and at the Proxy

holders' discretion on any other matters which may properly be brought before the meeting, except as otherwise provided by law or by the By-Laws of Old Harbor.

There are 3350 shares of \$1.00 par value common stock of Old Harbor presently outstanding of which 3,329.727 shares are entitled to vote at the meeting. Shareholders are entitled to one vote for each share of common stock, except that shareholders have the right to cumulate their votes in the election of directors. This means that you may either vote the number of shares owned by you for as many persons as there are directors to be elected, or you may cumulate your votes by giving one candidate as many votes as the number of directors to be elected multiplied by the number of your shares equals, or by distributing your votes on the same principle among any number of candidates.

## PROPOSED LAND TRADE AND TEXACO AGREEMENTS

### SUMMARY

#### Introduction

The following pages of this Proxy Statement first summarize and then detail a proposed trade by Old Harbor of most of its native lands to the United States in exchange for the right to explore and produce oil and gas resources underneath land located in the Arctic National Wildlife Refuge ("ANWR"). The trade also involves the possible payment by Texaco Inc. ("Texaco") to Old Harbor of approximately \$45,700,000 in cash if the trade were permitted to take place. In exchange for that payment, Old Harbor would lease to Texaco the oil and gas exploration and production rights which Old Harbor will receive if the trade takes place. Old Harbor would also receive, among other things, a 14% royalty interest in any oil or gas Texaco extracts from the ANWR lands which Old Harbor receives rights to in the trade.

The Board of Directors believes that the prosperity of Old Harbor's shareholders and the maintenance and betterment of their way of life is dependent upon developing a strong financial foundation for the corporation. The Board of Directors believes that the proposed land trade is an excellent opportunity for Old Harbor to develop such a financial foundation through the substantial payments to be received from Texaco by Old Harbor for the right to lease the rights in the ANWR lands and through the possibility of significant future income from royalties if any oil and gas is recovered from the ANWR lands. At the same time, Old Harbor's shareholders and the members of their community will continue to be able to hunt and fish and otherwise use the Old

Harbor lands just as they do now. Further, Old Harbor will continue to own the land on which the village of Old Harbor and the homes of its people are located as well as parts of other land located on Sitkalidak Island and on the north shore of Kiliuda Bay.

For these reasons, the Board of Directors of Old Harbor recommends a vote "FOR" the approval of the land trade with the DOI and the leasing arrangements with Texaco.

The Land Exchange Agreement between Old Harbor and the DOI, and the agreements with Texaco, constitute a sale, exchange, or other disposition of all or substantially all of the property and assets of Old Harbor. Approval of the proposed land trade and ratification of the various agreements documenting the trade must be approved by an affirmative vote of the holders of at least two-thirds of the outstanding shares of Old Harbor.

Your vote will be important in determining whether or not the proposed trade will be able to proceed to the next step toward completion. In arriving at your decision, please read this summary of the proposed trade and then please carefully examine the remainder of this Proxy Statement for important details you should consider concerning the proposed trade.

#### Risk

The proposed land trade and the lease arrangements with Texaco involve numerous risks. See "Risk Factors."

#### Summary of Proposed Land Trade

In 1971 the Alaska Native Claims Settlement Act ("ANCSA") became law. It authorized the creation of our corporation, Old Harbor. It also authorized the payment of some money to Old Harbor and the conveyance to Old Harbor of title to land around our village. Through ANCSA and the more recent Alaska National Interests Lands Conservation Act ("ANILCA"), Old Harbor has received or has become entitled to receive approximately 105,000 acres of land and an ownership interest in the Afognak Joint Venture. The Afognak Joint Venture owns surface rights in lands located on Afognak Island, Alaska. See "Transactions with Other Corporations in which Directors or Officers or their Families Have an Interest."

Of Old Harbor's 105,000 acres, approximately 65,000 acres are on Sitkalidak Island within the Alaska Maritime National Wildlife Refuge ("AMNWR"), approximately 35,000 acres are on Kodiak Island within the Kodiak National Wildlife Refuge ("KNWR"),

and approximately 5,000 acres are on Kodiak Island bordering on the KNWR. See "Background to Proposed Land Trade."

Old Harbor, along with several other native village and regional corporations, have been negotiating with the United States Department of the Interior ("DOI") about a possible trade of native corporation land for the right to explore and produce underground oil and gas resources within the coastal plain of ANWR. Old Harbor would receive exploration and production rights in ANWR which the DOI has estimated to be equal in value to the native lands Old Harbor has agreed to give up in the trade. The rights in ANWR were valued by the DOI based upon its estimate of the potential for oil and gas development in ANWR. Old Harbor's land to be included in the trade was valued through a series of negotiating sessions between Old Harbor and the DOI. See "Proposed and Trade."

Although Old Harbor and the DOI have not yet signed a formal agreement concerning a trade of Old Harbor lands for oil exploration and production rights in ANWR, they have agreed in principle upon the specific Old Harbor lands to be included in the trade and the value to be placed on those lands. Old Harbor and the DOI, through a process which took place in July, 1987, also have agreed upon the specific tracts of ANWR land to which Old Harbor would receive exploration and production rights if the trade took place.

Under the proposed trade with the DOI, Old Harbor would be trading approximately 90,000 of its 105,000 acres to the DOI. Those 90,000 acres are located on Kodiak Island and Sitkalidak Island. The 15,000 acres which Old Harbor would retain are located around the village of Old Harbor, on the north shore of Kiliuda Bay, and on Sitkalidak Island. Although Old Harbor would be giving up actual ownership of the approximately 90,000 acres included in the trade, under the proposal Old Harbor would nevertheless retain an easement to use the land for essentially the same hunting, fishing and other subsistence uses it currently enjoys.

One of the most important factors in determining the value of what Old Harbor would receive in the trade (and from Texaco, as described below) is the value placed on the approximately 90,000 acres Old Harbor would be giving up in the trade. After considering various approaches and after extensive negotiations, Old Harbor and the DOI set a value of \$45,700,000 on those Old Harbor lands to be included in the trade. Then, through the tract selection process which was completed in early July, 1987, Old Harbor identified tracts of land in ANWR, totaling approximately 58,000 acres, to which Old Harbor will receive

exploration and production rights if the trade is completed. The rights in the ANWR tracts Old Harbor selected were valued by the DOI at approximately \$45,700,000. No independent valuation of those rights has been obtained. See "Risk Factors" and "Proposed Land Trade."

Even if the Old Harbor shareholders approve the proposed trade, it would not take place unless the U.S. Congress passes legislation approving the land trade and authorizing the opening of the coastal plain of ANWR for exploration and production of oil and gas (the "Required Legislation"). This could take two or three years or more. Hearings have taken place in Congress on the legislation opening ANWR for oil and gas exploration and production. There has been significant political resistance to the proposals which have been suggested as part of that legislation.

Summary of the Terms of the Texaco Agreements

When the Board of Directors of Old Harbor made the judgment to consider participation in the land trades, it realized that Old Harbor had neither the oil and gas industry expertise to select tracts in ANWR nor the financial resources to negotiate with the DOI. Consequently, the Board negotiated with and entered into agreements with Texaco involving both the land trade with the DOI and the use and possession of the underground resources in the tracts of ANWR to be selected.

Under Old Harbor's agreements with Texaco, Texaco will have the option to lease Old Harbor's rights in the ANWR tracts if Congress approves the land trades and the opening of ANWR to oil and gas exploration and production. In return for that possibility of exploring and producing resources in ANWR, Texaco will pay Old Harbor as follows:

1. Texaco will reimburse Old Harbor for the expenses Old Harbor incurs in the land trade process, even if the land trade is not completed.

2. Upon the approval by the Old Harbor shareholders of the land trade proposal and the Texaco agreements, Texaco will pay Old Harbor \$5,000,000 in a lump sum and \$50,000 quarterly until Congress passes the Required Legislation, or December 31, 1993, whichever comes sooner. Old Harbor will be entitled to keep these payments whether or not Texaco ultimately elects to lease or Congress passes the Required Legislation.

3. If Congress passes the Required Legislation, Texaco will pay Old Harbor a lump sum payment of \$2,000,000.

*Must be a  
good deal for  
Texaco!!*

*This assumes  
the shareholders  
approve*

*ANUSA  
support*

21. 4. If and when Congress passes the Required Legislation, Texaco will have up to 40 days in which to exercise its option to lease Old Harbor's rights in the ANWR tracts. If Texaco chooses to lease, it must pay Old Harbor approximately \$38,700,000 (the \$45,700,000 negotiated value of the Old Harbor lands, less (a) \$4,500,000 of the \$5,000,000 sum mentioned in 2 above, (b) the entire \$2,000,000 sum mentioned in 3 above, and (c) all but \$250,000 of the expenses which Texaco has reimbursed Old Harbor for during the land trade process). If Texaco chooses not to exercise its option to lease Old Harbor's ANWR rights, Old Harbor can try to negotiate a lease with another oil company. Also, Old Harbor can cancel the Land Exchange Agreement with the DOI at that time if the legislation authorizing the opening of ANWR is not satisfactory to Old Harbor.

5. If Texaco leases Old Harbor's rights in the ANWR tracts, Texaco will pay Old Harbor a royalty of 14% of the value of any oil produced from the tracts. Pursuant to the lease, Texaco will also pay Old Harbor a 1-1/2% overriding royalty interest in any leases covering any lands within the coastal plain of ANWR which Texaco acquires from anyone after the commencement of its lease of Old Harbor's ANWR rights, subject to a proportionate reduction according to Texaco's partial interest in any such leases.

6. If Texaco elects to lease Old Harbor's ANWR rights, Texaco will make a bona fide effort to employ and train qualified residents of the village of Old Harbor during the conduct of oil operations on the ANWR tracts. Texaco also will provide \$10,000 annually for scholarships for Old Harbor shareholders or their children for postsecondary education. See "Texaco Agreements."

The Board of Directors intends to place Texaco's \$5,000,000 lump sum payment in bank certificates of deposit, U.S. Treasury Bills or other conservative, low-risk investments until the Board develops a plan for the use or investment of the total proceeds ultimately to be received from Texaco. THE BOARD HAS NO PRESENT INTENTION TO DISTRIBUTE ANY PART OF THE \$5,000,000 PAYMENT TO THE OLD HARBOR SHAREHOLDERS. The Board has determined not to develop a plan for the use, distribution or investment of the total Texaco proceeds until more of the contingencies to the completion of the land trade have been satisfied or removed. When the Board has developed such a plan, it will submit the plan to the Old Harbor shareholders for their approval. See "Use of Texaco Proceeds."

Texaco is involved in bankruptcy reorganization proceedings before a bankruptcy court in New York. Although the bankruptcy court has approved Texaco's assumption of the agreements

with Old Harbor, there can be no assurance that Texaco will be able to perform any or all of its obligations under those agreements. See "Texaco Bankruptcy."

#### Litigation

Litigation is pending which may prevent or adversely affect the proposed land trade. See "Litigation Affecting the Land Trade."

#### Tax Matters

The proposed trade of Old Harbor's native lands for oil and gas rights in the ANWR tracts may be considered a tax deferred exchange for federal income tax purposes. It is hoped that legislation approving the land trades will contain provisions making certain that the trade is tax-deferred for federal income tax purposes and exempting from federal income tax any royalty or other income to Old Harbor from the ANWR tracts. However, absent those legislative decisions, all income of Old Harbor from the ANWR tracts will be subject to federal income taxation. Furthermore, - Old Harbor's receipt of approximately \$45,700,000 of payments from Texaco will, for federal income tax purposes, be taxable income to Old Harbor, subject to possible deductions allowed for depletion, and each particular payment will be taxable income to Old Harbor when Old Harbor receives it. See "Income Tax Considerations."

#### Extent of Summary

The foregoing is a very brief, incomplete summary of certain matters relating to the proposed land trade. That summary must be considered together with a careful reading and examination of the remainder of this part of the Proxy Statement. The following section describes the risks involved in the proposed transaction and is followed by a detailed description of the terms of the proposed land trade and the agreements with Texaco.

#### RISK FACTORS

You should recognize that proceeding with the proposed land trade with the DOI and the leasing arrangement with Texaco involves substantial risks.

#### Old Harbor Will be Relinquishing Title to its Native Lands

If the proposed land trade takes place, Old Harbor will be giving up legal title to most of its native lands other than

the lands immediately surrounding the village of Old Harbor (to which Old Harbor will keep full legal title). See "Background to Proposed Land Trade" and the map attached to this Proxy Statement as Appendix A. While Old Harbor will retain an easement for its shareholders and their families to hunt and fish on the lands it is giving up and to use them for similar subsistence purposes, it will not have the right to develop, build on, sell, lease or transfer those lands. ✓

Old Harbor will not receive any land in exchange for the land it gives up in the trade. Rather, it will receive from the DOI rights to explore and produce oil and gas resources in certain selected tracts in the coastal plain of ANWR. Old Harbor also expects to receive from Texaco approximately \$45,700,000 in cash by the completion of the trade, and royalties in any oil and gas which is recovered from the ANWR tracts. However, neither Old Harbor nor any of its shareholders will have the right to settle on the ANWR lands, to hunt or fish there, or to develop, build on or sell, lease or transfer those lands or use them for any purpose other than oil and gas exploration and production. If little or no oil or gas is produced from the ANWR tracts, Old Harbor will not be entitled to the return of its native lands.

#### Negotiated Value of Native Lands

The oil and gas exploration and production rights which Old Harbor has selected to receive if the trade takes place, and the cash which Texaco will pay Old Harbor for the right to lease those rights, have been determined by specific reference to the value of the native land Old Harbor would be giving up in the trade. That value was agreed upon by Old Harbor and the DOI after extensive negotiations. The basis of those negotiations was an appraisal performed by the DOI's Fish and Wildlife Service and two appraisals performed by a private real estate appraisal company. There can be no assurance that any of the foregoing appraisals has accurately estimated the value of Old Harbor's native lands, that one appraisal has made a better estimate of value than another, or that the compromise which Old Harbor and the DOI reached accurately reflects the value of Old Harbor's native lands. See "Valuation of Old Harbor Lands."

#### DOI Valuation of ANWR Rights

As part of the tract selection process which took place in July 1987, the DOI placed values on the rights in various tracts in ANWR which it has proposed to trade for native lands owned by Old Harbor and the other native entities involved in the land trade process. Those values were not negotiated, but rather

were estimated and fixed by the DOI. See "Fairness of Consideration Offered by Texaco; Valuation of ANWR Rights."

There can be no assurance that the ANWR oil and gas exploration and production rights were accurately valued, nor can there be any assurance that the values set by the DOI fairly estimate the oil and gas potential in the ANWR tracts selected by Old Harbor.

Completing the Land Trade without a Pre-Arranged Oil Company Lease

Old Harbor could be obligated to trade its native lands for rights in the ANWR tracts even if Texaco elects not to lease those rights or elects to lease but cannot meet its contractual obligations to Old Harbor. If Texaco chooses not to lease the ANWR rights from Old Harbor after the appropriate Congressional legislation is in place, Old Harbor would have a limited amount of time to make alternative plans with another oil company before electing whether or not to complete the land trade with the DOI. See "Termination of Land Exchange Agreement." If Old Harbor cannot quickly make acceptable arrangements with another oil company, the DOI may take the position that Old Harbor must nevertheless complete the land trade. This is because under the proposed Land Exchange Agreement, although Old Harbor may refuse to go forward if the appropriate legislation is not satisfactory to Old Harbor, Old Harbor is not expressly permitted to refuse to complete the land trade solely because of losing its arrangement with an oil company.

In addition, if Texaco elects to lease the rights in the ANWR tracts selected by Old Harbor, but then delays in making the required payment of the balance of approximately \$45,700,000 due to Old Harbor (see "Payments by Texaco"), Old Harbor will have completed the land trade before having received that payment from Texaco. Further, if Texaco, because of bankruptcy proceedings or otherwise, does not ultimately make that payment to Old Harbor, Old Harbor may be faced with the situation of having given up its native lands without having an arrangement in place with an oil company and without having received any of the balance of the approximately \$45,700,000 it was expecting to receive.

Speculative Nature of Oil and Gas Exploration Activities; Market Factors; Operating Hazards

Exploration for oil and gas is an inexact science and involves a very high degree of risk. Although Old Harbor could receive substantial royalties on Old Harbor's selected ANWR tracts, there can be no assurance that any of those tracts, or any

ANWR tracts for which Old Harbor will be entitled to an overriding royalty, contains oil or gas, or, that if they do, such oil or gas is of a marketable quality or quantity. NEITHER THE DOI NOR TEXACO MAKES ANY REPRESENTATIONS OR WARRANTIES AS TO THE EXISTENCE, LOCATION, PRODUCIBILITY, QUANTITY OR QUALITY OF OIL AND/OR GAS RESOURCES IN OR UNDER ANY OF THE ANWR LANDS. Therefore, there can be no assurance that any oil or gas will ever be recovered from the ANWR tracts selected by Old Harbor or that Old Harbor will ever receive any royalties under its agreements with Texaco or otherwise.

In addition, even if the ANWR lands hold oil and/or gas which is recoverable, there can be no assurance that any of that oil or gas would be recovered or, if recovered, could be marketed, or, if marketed, that favorable price and contractual terms could be negotiated. This is because the cost of recovery could exceed the price obtainable for oil and gas, and that price depends upon numerous factors, including the extent of domestic production and foreign imports, market demand, the effect of governmental regulations, and competition with other enterprises engaged in oil and gas exploration and production activities.

Furthermore, exploring for and producing oil and gas involves hazards such as unusual or unexpected formations, pressures or other conditions, blowouts, fires, failure of equipment, down hole collapses and other hazards. On occasion, substantial uninsured liabilities to third parties may be incurred, the payment of which could ultimately be Old Harbor's responsibility if Texaco were unable to pay those liabilities or meet its indemnification obligations to Old Harbor under the lease agreement. Thus, because of uncertain market conditions and potential operating hazards, there can be no assurance that oil or gas will be recovered from the ANWR lands.

#### No Experience in the Oil and Gas Business

Since Old Harbor has no experience in the oil and gas business, it will need to rely entirely on outside consultants and advisors in dealing with Texaco about the oil and gas lease in particular and with respect to the recovery of oil and gas from the ANWR lands in general. Because of Old Harbor's lack of experience, the recovery of oil and gas from the ANWR lands will depend almost entirely on the efforts and incentive of Texaco.

#### Legal and Political Resistance

Litigation is pending which seeks to stop or hinder the completion of the proposed land trade. See "Litigation Affecting

the Land Trade." Even if that litigation is dismissed, similar litigation to stop or hinder the proposed land trade could arise at various points as the legislative process progresses and all parties move closer to the completion of the trade. Also, even if the trade is completed and Texaco begins its exploration and production activity, litigation could arise which challenges the manner in which the exploration and production is conducted, based on environmental or other concerns.

In addition, even if current political resistance to the proposed land trades subsides, future political resistance could arise due to a number of factors, including changes in the members of Congress and shifts in executive branch (including DOI) policy caused by a change in presidential administrations in 1988.

Because of the possible effects of litigation and political resistance, there can be no assurance that the land trade will be allowed to take place.

#### Tax Risks

There can be no assurance that Old Harbor's exchange of its native lands for oil and gas rights in ANWR will be a non-taxable event for federal income tax purposes or that the rights in ANWR which Old Harbor receives will take on the same federal income tax attributes carried by Old Harbor's native lands under ANCSA. There can also be no assurance that any of the Required Legislation will exempt Old Harbor's receipt from Texaco of approximately \$45,700,000 or subsequent royalties from federal income taxation. See "Income Tax Considerations."

#### BACKGROUND TO PROPOSED LAND TRADE

In 1971, the United States Congress settled all Alaska native land claims with the passage of ANCSA. As part of the settlement under ANCSA, Alaska natives received approximately forty-million acres of land in addition to certain monetary payments. ANCSA directed that corporations organized under Alaska law be formed to manage the land and funds for the benefit of the Alaska natives and to facilitate the distribution of the land and funds to the Alaska natives.

Approximately 200 native village corporations were formed. They hold the land received under ANCSA. Old Harbor is one of those native village corporations. In addition, 13 native regional corporations were formed. They hold the subsurface rights to village corporation lands. All of the shareholders of Old Harbor are also shareholders of one of those regional corporations, Koniag, Inc. Under ANCSA, each eligible Alaska

native received shares of stock in his or her regional corporation and local village corporation.

Through ANCSA and ANILCA, Old Harbor has received or has become entitled to receive approximately 105,000 acres of land located on Kodiak Island and Sitkalidak Island. Of the 105,000 acres, approximately 65,000 acres are on Sitkalidak Island, within AMNWR, approximately 35,000 acres are on Kodiak Island, within KNWR, and approximately 5,000 acres are on Kodiak Island, bordering on the KNWR and located in the Shearwater area.

In 1980, ANILCA required the U.S. Fish and Wildlife Service ("FWS"), as the lead agency for the DOI, to conduct a study of the wildlife resources and mineral potential of the coastal plain of ANWR and to submit a report to Congress. The FWS conducted that study, which included an evaluation of the mineral resources by, among other methods, a seismic study funded by twenty-two members of the oil and gas industry, including Texaco. A draft report became available in November, 1986, and the final report was sent to Congress on April 21, 1987. The FWS has recommended leasing the entire ANWR coastal plain for the exploration and production of oil and gas with appropriate operating stipulations to protect the environment. 1/11/87

ANWR is located on the northeastern edge of Alaska, bordered by the Beaufort Sea. Its mineral potential was described in the report to Congress as follows:

The 1002 area [Coastal Plain of ANWR] is the Nation's best single opportunity to increase significantly domestic oil production. It is treated by geologists as the most outstanding petroleum exploration target in the onshore United States. Data from nearby wells in the Prudhoe Bay area and in the Canadian Beaufort Sea and Mackenzie Delta, combined with promising seismic data gathered on the 1002 area, indicate extensions of producing trends and other geologic conditions exceptionally favorable for discovery of one or more supergiant fields (larger than 500 million barrels). (Arctic National Wildlife Refuge, Alaska, Coastal Plain Resource Assessment, Report and Recommendation to the Congress/Final Legislative Environmental Impact Statement, April, 1987. Prepared by the U.S. Fish and Wildlife Service, in cooperation with the U.S. Geological Survey and the Bureau of Land Management, Department of the Interior).

The DOI has conducted negotiations for a land exchange of surface rights in refuge areas outside of ANWR which are

currently controlled by Alaskan natives for subsurface mineral (oil and gas) rights in ANWR. This would allow the DOI to acquire native lands in environmentally significant areas and allow Alaskan natives to acquire potentially valuable subsurface mineral rights in ANWR. Old Harbor has been negotiating with the DOI for the transfer of approximately 90,000 acres of the corporation's Kodiak and Sitkalidak Island lands in exchange for subsurface exploration and production rights in ANWR of estimated equal value.

The lands which Old Harbor would be transferring are outlined on the map attached to this Proxy Statement as Appendix A. They are shaded in blue. They will be referred to in this Proxy Statement as the "Old Harbor Lands." Old Harbor would keep approximately 15,000 acres of land located around the village of Old Harbor and in other areas, as more particularly outlined on the map attached as Appendix A. Those lands are shaded in yellow.

Through a draft of an agreement dated June 12, 1987 (the "Land Exchange Agreement"), Old Harbor and the DOI have tentatively reached an understanding of the structure of the proposed trade and the process for accomplishing the trade. If the process proceeds as Old Harbor and the DOI expect, the proposed trade will be presented to Congress as part of the Required Legislation.

When the Board of Directors first decided to consider participation in a land trade with the DOI, the Board sought out a major oil company to assist it in assessing the oil and gas potential of the ANWR lands, identifying specific ANWR tracts to trade for, and eventually exploring and developing those ANWR tracts the rights to which Old Harbor would ultimately obtain if the trade occurred. The Board's decision to explore this type of relationship with an oil company was based on Old Harbor's lack of oil and gas industry expertise and lack of financial resources to pursue negotiations with the DOI. After exploring such a relationship with a number of oil companies, Old Harbor eventually negotiated and entered into the agreements with Texaco.

A description of the material features of Old Harbor's proposed agreement with the DOI and the agreements with Texaco are set forth below.

#### PROPOSED LAND TRADE

The material features of Old Harbor's proposed land trade are set forth in the Land Exchange Agreement. Those features are as follows:

### Conveyance of Old Harbor Lands and Retainment of Easement

Old Harbor will convey to the United States the Old Harbor Lands and will relinquish all right, title and interest to those lands. Upon the conveyance, Old Harbor will retain an easement allowing the local residents of the village of Old Harbor the right to continue to use the conveyed lands to engage in customary and traditional uses of wild, renewable resources for direct personal or family consumption of food, shelter, fuel, clothing, tools or transportation (i.e., hunting and fishing); for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter or sharing for personal or family consumption; and for customary trade.

As indicated earlier, the Old Harbor Lands consist in part of acreage which Old Harbor is entitled to receive from the U.S. government but which has not yet been conveyed to Old Harbor. Since that acreage entitlement is included as part of the Old Harbor Lands, if the land trade takes place the entitlement will be extinguished.

### Receipt of Oil and Gas Rights

In exchange for the Old Harbor Lands, the DOI will grant to Old Harbor all right, title and interest of the United States in any oil and gas interests in and under the lands selected by Old Harbor in ANWR, including the right to explore and prospect for oil and gas, to drill wells, to produce oil and gas from the wells, and generally to do all things necessary towards the recovery of the oil and gas interests. The selection of the ANWR lands to which those rights will pertain was made in accordance with a Tract Identification Agreement, a copy of which can be reviewed at the business office of Old Harbor during regular business hours. A copy of the Tract Identification Agreement will be sent to you at your request. See "Tract Selection Process."

The DOI also will grant to Old Harbor the right to use the surface of the ANWR lands selected by Old Harbor for the recovery and production of the oil and gas interests set forth above. This will include the right of access across lands within ANWR as may be reasonably necessary and economically practicable for Old Harbor to exercise its rights of recovery and production of oil and gas interests. The DOI will also transfer certain water rights to Old Harbor and the right to remove sand and gravel from the ANWR lands at a reasonable price. After Old Harbor has completed all operations for the purpose of exploring, developing and producing oil and gas resources from the lands selected in

ANWR, Old Harbor will give up its oil and gas exploration and production rights in ANWR. Nevertheless, the easements retained by Old Harbor over the Old Harbor Lands will continue after Old Harbor has given up its ANWR rights.

Although Old Harbor will obtain rights to explore and produce oil and gas in the selected ANWR tracts, it will not own those tracts. Therefore, neither Old Harbor nor its shareholders or their families will have any right to settle on or develop those tracts or to hunt or fish on them.

THE DOI MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THE EXISTENCE, LOCATION, PRODUCIBILITY, QUANTITY OR QUALITY OF OIL AND GAS RESOURCES IN OR UNDER ANY OF THE ANWR LANDS. THEREFORE, OLD HARBOR WILL BEAR THE ENTIRE RISK AS TO THE EXISTENCE, LOCATION, PRODUCIBILITY, QUANTITY OR QUALITY OF OIL AND GAS RESOURCES IN OR UNDER THE ANWR LANDS SELECTED BY OLD HARBOR.

#### Tract Selection Process

Through the tract selection process, Old Harbor, with Texaco's assistance, selected a total of approximately 58,000 acres of ANWR land in which it would have oil and gas exploration and production rights if the land trade took place.

The DOI began the tract selection process by dividing the coastal plain of ANWR into 576 tracts, each of approximately 2,560 acres. The DOI then computed the exchange value of each ANWR tract in the same manner as it would have calculated minimum acceptable bids in a contemporaneous, competitive federal lease sale of an ANWR tract, with one exception. In a typical, competitive federal lease sale, royalties which ordinarily are paid to the U.S. government by the lessee are assumed to be costs to the lessee and therefore reduce the value per acre of a tract. However, in the proposed land trades, the government will not receive any royalties. Therefore, in valuing the ANWR tracts, the government increased the tract values by this royalty component. Thus, the value of each ANWR tract in which Old Harbor would receive rights if the trade took place reflects the DOI's estimate of the value of the royalties which the government will not be receiving from such tracts. Because the values of the ANWR tracts were increased by the royalty component, each participant in the land trade ultimately selected rights in less ANWR acreage than it would have received if the values of the ANWR tracts had not been increased by the royalty component.

Each participant in the proposed land exchange, including Old Harbor, then took part in a tract identification process in early July, 1987 in which each participant identified

the ANWR tracts in which it wanted to acquire oil and gas exploration and production rights. If more than one participant selected the same tract, the rights to such tract were awarded by bid or random drawing. The participant which did not receive the tract in conflict then was allowed to select the next tract it desired to receive.

When a participant was awarded rights to a tract, the exchange value of the participant's native lands to be traded was reduced by the value given to the tract by the DOI. The process involved a number of rounds of identification and selection until each participant had little or no exchange value remaining with which to bid for a tract. To permit the participants to use up as much exchange value of their native lands as possible, the participants also were allowed to select rights in partial tracts and were allowed to pool their remaining exchange values with other participants to jointly select partial tracts.

Through this process, Old Harbor identified and was allocated rights in approximately 58,000 acres of ANWR land, consisting of 22 full tracts, one partial tract, and shares of an undivided one-half interest in a partial tract with another participant, Native Lands Group. The exchange participants as a whole chose 65 whole tracts and 8 partial tracts covering 166,278 acres with an aggregate exchange value of \$538,700,000. Old Harbor's and the other participants' selections are outlined on the map of the coastal plain of ANWR attached to this Proxy Statement as Appendix B. Old Harbor's selections are shaded in green. The exchange value used by Old Harbor was \$45,694,000, leaving a remaining exchange value of approximately \$39,000. If the land trade takes place and Old Harbor still has that remaining unused exchange value, Old Harbor would retain acreage on Sitkalidak Island estimated to be equal in value to that unused exchange value.

#### Valuation of Old Harbor Lands

One of the major factors bearing upon the fairness of the consideration to be received by Old Harbor from the DOI is the value placed on the Old Harbor Lands. (Another major factor is the value of the oil and gas rights in the selected ANWR tracts. See "Fairness of Consideration Offered by Texaco; Value of ANWR Rights.") The value of the Kodiak lands to be transferred to the DOI by Old Harbor ranges between \$340 per acre and \$574 per acre, covering a total of approximately 35,571 acres, with a total overall value of \$14,863,030. The value which has been placed upon the Sitkalidak Lands pursuant to negotiations between the DOI and Old Harbor is \$563.50 per acre, covering a total of approximately 54,784 acres, for a total value of \$30,870,784.

The value placed on the Old Harbor Lands is the result of extensive negotiations between Old Harbor and the DOI. The DOI began the negotiation process by presenting to Old Harbor an appraisal performed by the DOI's Fish and Wildlife Service dated November 27, 1985 covering the Kodiak lands. That appraisal divides the lands into seven different tracts and appraises each tract separately. Taking into account the restrictions imposed by ANCSA on the use and development of refuge lands owned by native corporations, the appraisal estimates tract values ranging from \$85.20 to \$521.88 per acre. Without taking into consideration those restrictions, the appraisal estimates tract values ranging from \$135.52 to \$1,043.75 per acre. The Fish and Wildlife Service generally used a market data approach to estimate the value of the lands. With this approach, value is predicted by analyzing sales of similar, recently sold properties in order to arrive at the most probable sales price of the property being appraised. An abbreviated development approach was also used to estimate the value of some of the land identified as suitable for the development of recreational cabin sites. That approach focuses on the projected income from the property once it is developed.

After considering the Fish and Wildlife Service's appraisal, Old Harbor hired Mundy-Day & Associates, a private real estate appraisal company in Anchorage, to perform appraisals of the Kodiak and Sitkalidak lands. The appraisal of the Kodiak lands is dated February 24, 1987. The appraisal of the Sitkalidak lands is dated April 30, 1987. Each of those appraisals estimated the "public interest value" of the lands to be \$1,000 per acre. According to the appraisals, public interest value is determined using a market data type of approach, except that a premium is added for rare and scenic parcels of wilderness land.

After a series of negotiations involving disagreements over the appraisals, including the type of value to be determined and the approaches used to determine that value, the DOI and Old Harbor finally agreed on the values to be placed on the various parcels constituting the Old Harbor Lands.

PLEASE TAKE NOTE that other than the appraisals discussed above, there have been no independent appraisals of the Old Harbor Lands. The Board of Directors of Old Harbor has determined that further appraisals would not materially assist the Board in evaluating the fairness of the negotiated value placed on the Old Harbor Lands. The Board's determination was based on, among other things, recognition of the inherent difficulties in valuing those lands, including the scarcity of market data, the absence of income generated from those lands, and the effect of various governmental restrictions on portions of those lands.

PLEASE TAKE FURTHER NOTE that a copy of the Mundy-Day & Associates appraisals and the Fish and Wildlife Service appraisal can be reviewed at the business offices of Old Harbor during regular business hours. A copy of those appraisals will be sent to you upon request. ?

#### Termination of Land Exchange Agreement

The proposed land trade set forth in the preceding paragraphs requires ratification of the terms of the Land Exchange Agreement by the shareholders of Old Harbor and the enactment of the Required Legislation. Once the Land Exchange Agreement is signed, the DOI may terminate it if written notice of shareholder approval of that agreement is not received by the Secretary of the DOI within 120 days following the effective date of the Agreement. The Agreement also may be terminated by either party upon 30 days notice if the Required Legislation is not enacted by December 31, 1993, subject, in Old Harbor's case, to the prior written consent of Texaco. Old Harbor may terminate the Land Exchange Agreement upon written notice to the DOI before December 31, 1993 and before the enactment of the Required Legislation upon payment of the DOI's cost of negotiating the Land Exchange Agreement and after obtaining the prior written consent of Texaco.

Subject to obtaining Texaco's prior written consent, Old Harbor will also have the right to cancel the Land Exchange Agreement without any obligation upon written notice to the DOI (i) within 60 days of the enactment of legislation authorizing the opening of ANWR which is not in a form and content satisfactory to Old Harbor; (ii) within 60 days of the enactment of any provisions of the legislation approving the land trade which amends or seeks to amend any of the terms of the Land Exchange Agreement or alters or seeks to alter any of Old Harbor's rights and obligations under that Agreement without Old Harbor's prior written consent; or (iii) within 60 days of the enactment of any provisions of the legislation approving the land trade which are not addressed by the Land Exchange Agreement and are not in a form and content satisfactory to Old Harbor. Upon any such cancellation, Old Harbor will retain full ownership of the Old Harbor Lands.

#### Miscellaneous

PLEASE TAKE NOTE that a copy of the Land Exchange Agreement is available at the business offices of Old Harbor during regular business hours. A copy of that Agreement will be sent to you upon your request.

The United States of America, acting through the Secretary of the Interior, is the other party to the Land Exchange

Agreement. There is no material relationship of the United States to Old Harbor or any of Old Harbor's officers or directors.

#### TEXACO AGREEMENTS

The material features of Old Harbor's agreements with Texaco (the "Texaco Agreements") regarding the selection, exploration, development and production of the ANWR underground resources are as follows:

##### Preliminary Obligations of Old Harbor

Old Harbor will sign a Land Exchange Agreement with the DOI to obtain mineral (oil and gas) interests and the right to explore and produce oil and/or gas from those mineral interests underlying tracts within the coastal plain of ANWR identified by Texaco. Old Harbor also will select specific tracts of land as identified by Texaco within ANWR pursuant to the Land Exchange Agreement process, up to the entire value of the Old Harbor Lands as determined by the DOI and set forth in the Land Exchange Agreement. As noted above, although the Land Exchange Agreement has not yet been signed, the tract selection process has been completed. Old Harbor also will promote the Required Legislation.

##### Preliminary Obligations of Texaco

Texaco will advise Old Harbor in negotiating policy with the DOI regarding the Land Exchange Agreement which may affect Texaco's interest and will advise Old Harbor in establishing recommendations to the DOI concerning environmental and other appropriate exploration and development stipulations. Texaco also will identify specific tracts of land within ANWR which Old Harbor will select during the Land Exchange Agreement process to the extent allowed by the DOI. This has already taken place. TEXACO IN NO WAY WARRANTS OR REPRESENTS THAT OIL AND/OR GAS IS PRESENT UNDER THOSE TRACTS.

##### Termination of the Texaco Agreements

If the Required Legislation is not enacted by December 31, 1993, Texaco thereafter may elect to terminate the Texaco Agreements; if the DOI should terminate the Land Exchange Agreement, Old Harbor must immediately notify Texaco and the Texaco Agreements will terminate; and if the Land Exchange Agreement is voided by any final administrative or court order and all avenues of appeal have been exhausted or have expired, the Texaco Agreements will terminate.

### Election to Lease by Texaco

Upon enactment of the Required Legislation, Texaco will have the exclusive right to:

(a) Lease all of Old Harbor's rights in the ANWR lands by giving written notice to Old Harbor of its election to lease; or

(b) Elect not to lease any of those rights. Upon an election not to lease, the Texaco Agreements would terminate and Old Harbor would be entitled to keep all monies which Texaco has paid it through the termination date. See "Payments by Texaco."

### Terms of the Texaco Lease

The form of the oil and gas lease which Texaco and Old Harbor will sign upon Texaco's election to lease is available for review at the corporate offices of Old Harbor. Under that lease, Texaco will pay to Old Harbor as a royalty 14% in amount or value of the oil and gas recovered from the leased area. Old Harbor also will receive a 1.5% overriding royalty interest in any leases covering any lands within the coastal plain of ANWR which Texaco acquires from a third party after the date of the lease entered into between Old Harbor and Texaco pursuant to the Texaco Agreements, subject to a proportionate reduction according to Texaco's partial interest in any such leases.

Under the lease, Texaco will also be required to pay an annual rental to Old Harbor of \$3.00 per acre. The lease will be issued for an initial term of five (5) years and will automatically be extended to ten (10) years once Texaco has begun one well to evaluate all or any part of the leased area. The lease will then be automatically extended for as long as oil or gas is produced in paying quantities. The lease will terminate only under very limited circumstances. Although the lease requires Texaco to use reasonable diligence in drilling, producing and operating wells on the leased property, there is no guarantee that Texaco will in fact explore and drill for oil or gas, and Texaco may leave the leased area in an unproductive state for substantial periods before Old Harbor may terminate the lease. See "Risk Factors."

### Payments by Texaco

Under the Texaco Agreements, Texaco will pay Old Harbor the following amounts at the following times:

(a) Texaco will pay \$5,000,000 to Old Harbor upon shareholder approval of the Land Exchange Agreement. Once those sums are received, Old Harbor will keep them whether or not the Required Legislation is enacted and whether or not Texaco decides to lease the rights in the ANWR tracts selected by Old Harbor.

(b) Texaco will pay another \$2,000,000 to Old Harbor after shareholder approval of the Land Exchange Agreement, but not earlier than 3 working days following enactment of the Required Legislation (whichever is later).

(c) Texaco will reimburse Old Harbor for Old Harbor's expenses incurred in connection with the Land Exchange Agreement, except expenses associated with litigation, not to exceed a total cost to Texaco of \$750,000 from January 8, 1987 up to and including enactment of the Required Legislation (whichever is later).

(d) Texaco will reimburse Old Harbor for any reasonable expenses connected with litigation arising out of the Land Exchange Agreement subject to the prior written consent of Texaco, to a maximum extent of \$100,000 in any calendar year and subject to a further maximum of \$675,000 up to and including December 31, 1993. Those litigation expenses will be deducted from the payments provided for in subparagraph (f) below which accrue after the expenses are incurred.

(e) Upon Texaco's election to lease all of the rights in ANWR tracts which Old Harbor receives in exchange for the Old Harbor Lands, Texaco will deliver to Old Harbor a sum of money representing the negotiated value of the Old Harbor Lands (approximately \$45,700,000) less (i) \$4,500,000 of the \$5,000,000 sum mentioned in (a) above, (ii) the entire \$2,000,000 sum mentioned in (b) above, and (iii) all but \$250,000 of the expenses which Texaco has reimbursed Old Harbor for during the land trade process. This sum shall be subject to an escalation factor equal to one half of the prime rate of Rainier Bank Alaska per year beginning January 1, 1989 and continuing until Old Harbor executes and delivers the lease with Texaco; and

(f) Upon obtaining shareholder approval of the Land Exchange Agreement, and continuing thereafter until enactment of the Required Legislation or until the Land Exchange Agreement has been terminated, Texaco will pay to Old Harbor \$50,000 per quarter.

### Employment of Old Harbor Residents; Scholarship Funds

Texaco also will make a bona fide effort to employ and train qualified residents of Old Harbor during the conduct of operations by Texaco on the ANWR lands to which Old Harbor's rights pertain and shall contribute at least \$10,000 annually for scholarships for qualified residents of Old Harbor who are pursuing an education at an accredited college or university commencing in 1987.

### Fairness of Consideration Offered by Texaco; Valuation of ANWR Rights

One of the major factors which bears upon the fairness of the consideration offered by Texaco is the value of the ANWR rights to be received by Old Harbor in exchange for the Old Harbor Lands. As indicated earlier, the other major factor is the value of the Old Harbor Lands. The Land Exchange Agreement provides that Old Harbor will receive mineral interests and other interests with respect to the rights in the ANWR lands that are equivalent in value to the Old Harbor Lands traded. See "Valuation of Old Harbor Lands." The Texaco Agreements provide that Texaco will deliver to Old Harbor a sum of money equivalent in value to the Old Harbor Lands traded upon Texaco's election to lease Old Harbor's ANWR rights as set forth above.

PLEASE TAKE NOTE that the Board of Directors has not sought any independent evaluation of the fairness of the value which the DOI placed on the rights in ANWR lands selected by Old Harbor or the value of the royalty interests which Old Harbor will receive under its lease agreement with Texaco or any residual interest in the rights in ANWR Lands which Old Harbor will receive if Texaco's lease with Old Harbor terminates before Old Harbor must return its interest in the ANWR lands to the DOI pursuant to the Land Exchange Agreement. See "Risk Factors." In transactions involving dollar amounts as large as those involved in the proposed land trade, a corporation would typically hire an expert, such as an investment banking institution, to evaluate and issue an opinion concerning the fairness of the consideration involved in the transaction. However, the Board of Directors of Old Harbor has determined that such a fairness opinion would not materially assist the Board in evaluating the fairness of the DOI's valuation of the ANWR rights or the fairness of the consideration to be received by Old Harbor from Texaco, and the Board has therefore not sought or obtained such an opinion.

The Board's determination not to seek or obtain such an opinion was based on, among other things, the scarcity of available geophysical, geological and similar data with respect to

the ANWR lands, the difficulty in evaluating the quantity, quality or type of oil or gas required to make exploration, production and development economically feasible, and the significant inherent risks in any oil and gas exploration in a field which has not yet been explored. After due consideration, the Board has determined that studies done of the ANWR lands by a group of oil companies, including Texaco, and the data made available by the DOI concerning those lands, has provided a sufficient basis for Old Harbor to accept the DOI's valuation of the rights in ANWR tracts selected by Old Harbor and to negotiate and ultimately agree on the consideration to be received from Texaco under the Texaco Agreements.

#### Use of Texaco Proceeds

The Board of Directors intends to invest Texaco's initial \$5,000,000 lump sum payment in bank certificates of deposit, U.S. Treasury Bills, or other low risk, interest-bearing financial products for Old Harbor's benefit until the Board develops a plan for the ultimate use or investment of the total of approximately \$45,700,000 to be received from Texaco. THE BOARD HAS NO PRESENT INTENTION TO DISTRIBUTE TO THE SHAREHOLDERS ANY OF THE INITIAL \$5,000,000 PAYMENT.

Because of the uncertainty about Congressional approval of the Required Legislation, and because of pending litigation and Texaco's bankruptcy proceedings, the Board has determined not to begin developing a plan for the use or investment of the total proceeds. If and when appropriate legislation appears close to Congressional approval, legal challenges have been stopped, and Texaco appears willing to lease Old Harbor's ANWR rights and able to perform its obligations under its agreements with Old Harbor, the Board intends to develop a plan for the use and investment of all of the Texaco proceeds which Old Harbor will receive upon Texaco's election to lease the ANWR rights and of all of the royalty or other payments which may be received during the term of Texaco's lease. The Board will submit the plan, when developed, to the shareholders for their approval.

#### Texaco Bankruptcy

On April 12, 1987, Texaco filed a voluntary petition under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the Southern District of New York. Chapter 11 proceedings permit a company to temporarily seek protection from creditors and to attempt to reorganize its affairs in order to emerge in a better position to pay its debts and meet its obligations.

In these Chapter 11 proceedings, Texaco is allowed the opportunity to reject certain agreements which it considers burdensome to its estate and to assume certain agreements which it considers beneficial to its estate. On June 12, 1987, Texaco, with the approval of the Bankruptcy Court, elected to assume the Texaco Agreements. As a result of this assumption, Texaco is legally obligated to perform under the Texaco Agreements just as it was before its Chapter 11 filing. If Texaco failed to perform under the Texaco Agreements at some future date during the course of these Chapter 11 proceedings, or if the Texaco Chapter 11 case were converted to one under Chapter 7 of the Bankruptcy Code (in which the company would be liquidated) and the Texaco Agreements were then rejected, such action would constitute a default under the Texaco Agreements and would, under the Bankruptcy Code, entitle Old Harbor to a priority administrative claim for any damages which would, absent bankruptcy, be recoverable for breach of the Texaco Agreements.

Because Texaco is in Chapter 11 proceedings, there can be no assurance that Texaco will in the near future be able to meet its obligations, including payment of all or any part of the \$5,000,000 to which Old Harbor would become entitled upon obtaining shareholder approval of the land trade and the Texaco arrangement. Similarly, there can be no assurance that, upon the enactment of the Required Legislation, Texaco will be able to pay Old Harbor the balance of the approximately \$45,700,000 which may become due or to otherwise meet its obligations to Old Harbor.

#### Miscellaneous

The name and address of the other party to the Texaco Agreements is Texaco Inc. whose address is 4800 Fournace Place, Bellaire, Texas 77401. There is no material relationship between Texaco and Old Harbor, its subsidiaries, officers or directors, except for the Texaco Agreements.

Texaco will reimburse Old Harbor for the expenses involved with the preparation of the portion of this Proxy Statement which refers to the Land Exchange Agreement and the Texaco Agreements. Expenses related to the other portions of this Proxy Statement will be borne by the Company.

#### LITIGATION AFFECTING THE LAND TRADE

On March 19, 1987, a lawsuit which may affect the proposed land trade was begun in the United States District for the District of Alaska. The case is called Trustees for Alaska, American Wilderness Alliance, National Wildlife Refuge Association, Northern Alaska Environmental Center, The Sierra Club,

The Wilderness Society, and the National Audubon Society, plaintiffs, v. William P. Horn, Assistant Secretary of Interior for Fish Wildlife and Parks; Donald P. Hodel, Secretary, U.S. Department of Interior; Frank Dunkle, Director, U.S. Fish and Wildlife Service; James Griffith, Acting Regional Director, U.S. Fish and Wildlife Service; The United States Department of the Interior; and The United States Fish and Wildlife Service, defendants. It is Civil Action No. A87-118 CIV in the court files in Anchorage.

Several Alaska native corporations, including Koniag, Inc., Akhiok-Kaguyak and Native Lands Group have intervened in the litigation. Old Harbor is not part of the lawsuit, but the outcome of the lawsuit may affect the Land Exchange Agreement and the Texaco Agreements.

The complaint in the lawsuit asks for declaratory and injunctive relief. It claims that the defendants have violated and are violating Section 102 of the National Environmental Policy Act ("NEPA"), regulations implementing NEPA, the Administrative Procedure Act, ANILCA, ANCSA, and the Wilderness Act by "actively pursuing land exchange negotiations involving the coastal plain of the Arctic National Wildlife Refuge and committing federal personnel and financial resources before Congress decides whether to allow oil and gas development in that area; and by proceeding with those negotiations on an expedited basis without preparing an environmental impact statement and without complying with other procedures required by NEPA and the NEPA implementing regulations." The plaintiffs have asked for a preliminary and permanent injunction against "all further negotiations and deliberations regarding the proposed land exchange unless Congress enacts legislation opening the area for oil and gas leasing, and until the proper procedures are followed."

The Secretary of the Interior and the other original defendants filed a motion to dismiss the complaint on April 14, 1987. The motion contends that plaintiffs lack "standing" to challenge defendants' authority to negotiate, that the defendants' actions are not yet "ripe" for review by a court, that the Administrative Procedure Act gives the court no jurisdiction to stop the negotiations and that plaintiffs have not stated any good grounds for their lawsuit.

On April 22, 1987, the plaintiffs filed a motion for preliminary injunction claiming that the defendants are violating NEPA in two distinct ways: (1) by prematurely committing government people and money to negotiations before a final decision is reached by Congress; and (2) by not preparing an Environmental Impact Statement on the proposed land exchange based

upon public participation "as early and as frequently as possible." Plaintiffs also argue that the land exchange negotiations violate ANILCA, ANCSA, and the Wilderness Act.

Following briefing of the issues raised both by defendants' motion to dismiss (joined in by the native corporation interveners) and plaintiffs' motion for a preliminary injunction (opposed by the native corporation interveners as well as by the original defendants), the matter was argued on July 16, 1987. The judge indicated that he would decide the matter later. There is no definite date by which the judge must decide these motions. As of the date of this Proxy Statement the judge has not rendered a decision on these motions.

If this lawsuit were dismissed, the DOI and Old Harbor would likely be able to finalize and sign their Land Exchange Agreement and continue promoting the Required Legislation. This assumes, however, that no new lawsuits with a similar purpose are in the meantime begun. If the District Court lawsuit were decided against the defendants, it could temporarily stall or completely stop the land trade process. It could also create new requirements for the native corporations, the DOI and/or the oil companies to satisfy before proceeding.

Because of the unique circumstances of the District Court case and the uncertainty in the applicable law, the Board of Directors cannot predict the outcome of the lawsuit.

## INCOME TAX CONSIDERATIONS

### Introduction

The following discussion is only a general summary of the United States federal income tax aspects of the proposed land trade and their effect on Old Harbor. Due to the uniqueness of the transaction, including the special tax treatment given to the ANCSA settlement lands and funds received by Old Harbor, the federal income tax consequences of the proposed transaction for Old Harbor are uncertain. In addition, as discussed below, any legislation approving the exchange may well preempt or modify the tax consequences that would otherwise ensue in the absence of such legislation. However, because the substantial cash payments which may be received by Old Harbor from Texaco in the land trade process would substantially exceed the maximum amount of federal income tax liability which Old Harbor is likely to incur, the Board recommends proceeding with the land trade in spite of the risk of taxation on all or part of the proposed transaction.

The Board also has determined, on the basis of the factors noted above, that it is not practicable in advance of the meeting to obtain either an opinion of counsel (other than the advice specifically mentioned below) or a ruling from the Internal Revenue Service on the federal income tax consequences for Old Harbor from the proposed transaction.

#### Tax-Deferred Exchange

Old Harbor will not incur any current federal income tax liability on the trade of the Old Harbor Lands for the oil and gas rights in ANWR if the trade qualifies as a tax-deferred "likekind" exchange under Section 1031 of the Internal Revenue Code. The Board has been advised by special tax counsel, Feldman, Waldman & Kline, A Professional Corporation, 235 Montgomery Street, Suite 2700, San Francisco, California, 94104, that, if this transaction only involved the exchange of the Old Harbor Lands for oil and gas rights in the ANWR tracts, the exchange in all likelihood would qualify as a tax-deferred exchange. However, the Board has been advised by such tax counsel that the concurrent lease of the oil and gas rights to Texaco may cause the exchange with the DOI to be a taxable event. Although such tax counsel has advised the Board that there are strong arguments that can be made that the exchange should be tax-deferred notwithstanding the leasing of the oil and gas rights to Texaco, a contrary position could be taken by the Internal Revenue Service and there can be no assurance that the courts would not sustain the Internal Revenue Service's position that the exchange is taxable.

If the trade qualified as a tax-deferred exchange, no tax would be due at the time of exchange, and Old Harbor would receive a tax basis in the oil and gas rights equal to the basis it had in the Old Harbor Lands. However, if the proposed trade did not qualify as a tax-deferred exchange, Old Harbor would incur a tax on the difference between the fair market value of the oil and gas rights Old Harbor receives and Old Harbor's tax basis in the Old Harbor Lands. ANCSA provides that the tax basis in the Old Harbor Lands is the fair market value of those lands at the time Old Harbor received them. The fair market value of the Old Harbor Lands when Old Harbor received them has not been determined. Since Old Harbor's tax basis in the Old Harbor Lands is unclear, it is impractical to estimate the amount of tax liability, if any, which Old Harbor would incur if the trade did not qualify as a tax-deferred exchange.

If the exchange were taxable, then, under present law and present tax rates (which are subject to change from time to time), the tax on the difference between the fair market value of the oil and gas rights which Old Harbor receives and Old Harbor's

tax basis in the Old Harbor Lands would be at a maximum rate of 40% if the trade took place in 1987 (which is very unlikely) and a maximum rate of 34% if the trade took place in 1988 or afterwards. This assumes that at the time the trade takes place a lower capital gains rate for corporations has not been reintroduced into the Internal Revenue Code.

#### Texaco Payments

Under the Texaco agreements, Texaco will pay Old Harbor certain sums whether or not Texaco elects to lease the oil and gas rights from Old Harbor. If Texaco elects to lease those rights, it will pay Old Harbor (1) an additional lump-sum for the balance of the total of \$45,700,000 which is payable to Old Harbor, (2) \$3.00 per acre per year, (3) a 14% royalty on any oil and gas recovered under the Texaco lease, and (4) a 1.5% overriding royalty on oil and gas recovered pursuant to certain third party leases.

Each of these foregoing payments will likely constitute taxable income to Old Harbor, subject to a possible offset by the deduction allowed for depletion. The depletion deduction, if allowed, might reduce the tax liability of Old Harbor in the year in which Old Harbor receives the \$5,000,000 lump sum payment upon shareholder approval of the land trade and would reduce the tax liability of Old Harbor in the year in which Old Harbor receives the lump sum payments from Texaco for the balance of the \$45,700,000, as well as when Old Harbor receives any royalty payments.

#### State of Alaska Income Taxation

Alaska has adopted by reference the pertinent sections of the Internal Revenue Code applicable to the proposed transaction with the result that the tax consequences of the exchange and lease should be the same under Alaska law as under federal law, except that the maximum rate of tax imposed by Alaska on the taxable income of a corporation is 9.4%.

#### Possible Legislation

Since Congress originally provided for tax-free treatment of Old Harbor's initial receipt of ANCSA settlement lands and funds, it is possible that the legislation to be proposed for approving the land trades will provide that the exchange of native lands for oil and gas rights also will be taxfree. If that legislation passes with such a provision, it will not matter whether the trade otherwise qualifies as a tax-deferred exchange under the Internal Revenue Code. It is not certain whether the

legislation to be proposed for approving the land trades will also contain a provision exempting the Texaco payments from federal income taxation, or whether such a provision, if proposed, would be retained in the final bill if and when it is enacted into law.

AMENDING BY-LAWS TO INCREASE AUTHORIZED NUMBER OF  
DIRECTORS AND TO STAGGER ELECTION OF DIRECTORS

The By-Laws of Old Harbor currently provide that the affairs and business of the corporation shall be managed by a board of seven (7) directors. Each director currently serves a one-year term. Under Alaska law, if Old Harbor's board of directors consisted of at least nine members, the By-Laws could provide for the election of directors at staggered intervals instead of for the annual election of the entire board, and the directors could serve terms greater than one year.

The Board of Directors of Old Harbor recommends a vote "FOR" the amendment of the By-Laws to provide for a nine member board and to provide for staggered elections as follows:

Nine directors, who will constitute the entire Board of Directors, will be elected at the September 23, 1987 annual shareholders meeting. Three directors will be elected for a term of three years, three for a term of two years, and three for a term of one year, and each will hold office until his or her successor has been elected and qualified for office. For the foregoing purpose, a year will be determined as the time between an annual shareholders' meeting and the next annual shareholders' meeting. The three nominees receiving the highest number of votes will have three year terms, the three nominees receiving the next highest number of votes will have two year terms, and the three nominees receiving the next highest number of votes will have one year terms. In the case of a tie vote concerning which nominees are elected to the Board or which nominees so elected will have a particular term, the tie will be broken by random drawing. As the one, two or three year term of each director elected at the September 23, 1987 annual shareholders' meeting comes to an end, his successor will be elected for a three year term.

The vote required for approval of the foregoing amendments is the affirmative vote of a majority of the outstanding common stock of Old Harbor.

## ELECTION OF DIRECTORS

The Board of Directors has nominated the fourteen (14) people described below as the nominees to the Board of Directors. Assuming passage of the proposed By-Law amendment to increase the size of the Board, nine (9) of the fourteen (14) nominees will be elected to the Board of Directors.

Because the land trade transaction described in this Proxy Statement, if approved by the Old Harbor shareholders, will be a major event in Old Harbor's existence, with important long-term consequences for Old Harbor and each of Old Harbor's shareholders, the Board nominated more people for election as directors than there are seats on the Board in order to give the shareholders as broad a selection of potential directors as is practical and has decided not to endorse or recommend any particular candidates for election.

The Proxy will be voted according to the choices you make in the Proxy. As indicated on the Proxy, you may vote for as many as, but no more than, nine (9) of the nominees listed below. Also, you have cumulative voting rights as explained on page 3 of this Proxy Statement. The proxy holders will vote in accordance with the instructions you give them and will not have or exercise any discretion except to distribute your votes equally among the nominees which you have voted for if you do not specifically indicate how many votes your selected nominees are supposed to receive.

(Please note that if the proposal to amend the By-Laws to increase the authorized number of directors and to stagger the election of directors is not passed at the annual shareholders' meeting, the election of directors will be postponed to an adjourned meeting date and new proxies will be solicited).

The following sets forth the names and brief biographies of those persons nominated by the Board of Directors for election as directors:

Wilmer Andrewvitch:

Wilmer Andrewvitch's address is P.O. Box 67, Old Harbor, Alaska 99643 and he is 27 years of age. Wilmer has been employed by the Senior Citizens of Old Harbor as a van driver and by the City of Old Harbor as a part-time office worker and to perform odd jobs.

\*/ Ronald Berntsen:

Ronald Berntsen has served on the Board of Directors of Old Harbor from 1971 to the present. He is currently the Secretary-Treasurer of Old Harbor. Ronald's address is P.O. Box 27, Old Harbor, Alaska 99643 and he is 44 years of age. Ronald is self employed as a salmon fisherman. He was also employed by the City of Old Harbor as Public Works Foreman during 1986, by Clyde Terry Construction as a heavy equipment operator in the summer of 1985, and as a heavy equipment operator, and pipe layer, for the Alaska Public Health Service during 1983. He is also a member of the City of Old Harbor Volunteer Fire Department.

Ralph Capjohn:

Ralph Capjohn is a self employed salmon fisherman who was employed by the City of Old Harbor as a carpenter during the summer of 1976. He has also been employed by the Kodiak Island Borough School District as a Custodian of the Old Harbor City schools from 1982 to the present. Ralph's address is P.O. Box 15, Old Harbor, Alaska 99643 and he is 49 years of age. Ralph is a cousin of Harold Christiansen, Carl Christiansen, Emil Christiansen, George Inga, Linda Lester, Eugene Naumoff, and Leona Plummer, all of whom are also nominees for the Board of Directors. Ralph is a cousin of Terry Cratty who is a present director.

Bernadine Lou Christiansen:

Bernadine Lou Christiansen is the owner and operator of a video rental business in Old Harbor. Her address is P.O. Box 108, Old Harbor, Alaska 99643 and she is 31 years of age. Bernadine is the sister-in-law of Harold Christiansen, Carl Christiansen, Emil Christiansen and Sven Haakanson, and is the aunt of Linda Lester and Leona Plummer, all of whom are nominees to the Board of Directors. Bernadine is the aunt of Terry Cratty who is a present director.

Carl Christiansen:

Carl Christiansen is self employed as a salmon and crab fisherman. His address is P.O. Box 65, Old Harbor, Alaska 99643 and he is 45 years of age. Carl is a member of the Old Harbor City Council and the Old Harbor Tribal Council. Carl is the brother of Harold Christiansen and Emil Christiansen, the

---

\*/ Incumbent director.

brother-in-law of Sven Haakanson and Bernadine Christiansen, an uncle of Linda Lester and Leona Plummer and the cousin of Ralph Capjohn and Eugene Naumoff, all of whom are nominees to the Board of Directors. Carl is the uncle of Terry Cratty who is a present director.

Emil Christiansen, Sr.:

Emil Christiansen, Sr. is self employed as a salmon and crab fisherman. His address is P.O. Box 63, Old Harbor, Alaska 99643 and he is 34 years of age. Emil is a member of the Old Harbor City Council and the Old Harbor Tribal Council. Emil is the brother of Harold Christiansen and Carl Christiansen, a brother-in-law of Sven Haakanson and Bernadine Christiansen, an uncle of Linda Lester and Leona Plummer, and the cousin of Ralph Capjohn and Eugene Naumoff, all of whom are nominees to the Board of Directors. Emil is the uncle of Terry Cratty who is a present director.

\*/  
-/ Harold Christiansen:

Harold Christiansen has served on the Board of Directors of Old Harbor from 1971 to the present. His address is P.O. Box 114, Old Harbor, Alaska 99643 and he is 39 years of age. Harold has been self employed as the owner of Old Harbor Food Store since 1977 and is also employed as a salmon and crab fisherman. Harold is the brother of Carl Christiansen and Emil Christiansen, Sr., the brother-in-law of Sven Haakanson and Bernadine Christiansen, the cousin of Ralph Capjohn and Eugene Naumoff, and the uncle of Leona Plummer and Linda Lester, all of whom are nominees for the Board of Directors. Harold is currently a member of the Old Harbor City Council. Harold is the uncle of Terry Cratty who is a present director.

\*/  
-/ Walter Erickson:

Walter Erickson has served on the Board of Directors of Old Harbor from 1971 to the present. He is currently the Vice-President of Old Harbor. Walter's address is P.O. Box 89, Old Harbor, Alaska 99643 and he is 62 years of age. Walter is self employed as a salmon fisherman. He has been the owner of Walt's Village Store from 1972 to the present. Walter is a member of the Board of Directors of the Kodiak Area Native Association, the President of the Old Harbor Tribal Council, a member of the Old Harbor City School Advisory Board and a member of the Old Harbor City Council. He is the brother-in-law of Annie Pestrikoff who is also a nominee for the Board of Directors.

\*/  
-/ Sven Haakanson:

Sven Haakanson has served on the Board of Directors of Old Harbor from 1971 to the present. Sven is currently the Chairman of the Board of Directors and the President of Old Harbor. Sven's address is P.O. Box 35, Old Harbor, Alaska 99643 and he is 52 years of age. Sven has been self employed as a salmon fisherman from 1982 to the present. He is currently Mayor of the City of Old Harbor and has been the Chairman of the Board of Directors of Kodiak Island Housing Authority from 1976 to the present. Sven is the brother-in-law of Harold Christiansen, Carl Christiansen, Bernadine Christiansen and Emil Christiansen, the uncle of Linda Lester, the father of Leona Plummer and a cousin of George Inga, all of whom are also nominees to the Board of Directors. He is the uncle of Terry Cratty who is a present director. Sven filed a voluntary petition for bankruptcy under Chapter 7 of the U.S. Bankruptcy Code earlier this year.

George Inga, Sr.:

George Inga, Sr. served as a Director of Old Harbor from 1971 through 1977. George's address is P.O. Box 106, Old Harbor, Alaska 99643 and he is 62 years of age. George is a self employed fisherman who has also been employed by the City of Old Harbor in the Maintenance Department from 1971 to the present. George is a second cousin of Sven Haakanson and Ralph Capjohn, and a second cousin, once removed, of Leona Plummer, all of whom are also nominees for the Board of Directors. George is currently a member of the Old Harbor Tribal Council.

Linda Lester:

Linda Lester's address is 1510 Simeonoff Street, Kodiak, Alaska 99615 and she is 29 years of age. Linda has been employed by Mark-Air as a ticket agent and by Union Oil Sales as a receptionist. Linda is the sister of Terry Cratty who is a current member of the Board of Directors and a niece of Harold Christiansen, Carl Christiansen, Emil Christiansen, Sven Haakanson and Bernadine Lou Christiansen, and a cousin of Leona Plummer, Ralph Capjohn and George Inga, all of whom are nominees to the Board of Directors.

Eugene Naumoff:

Eugene Naumoff is self employed as a salmon gill netter and also has been a crewmember for the seine vessel owned by William Wolkoff. Eugene's address is P.O. Box 33, Old Harbor, Alaska 99643 and he is 33 years of age. Eugene is a cousin of Harold Christiansen, Carl Christiansen, Emil Christiansen, Ralph

Capjohn, Linda Lester and Leona Plummer, all of whom are also nominees to the Board of Directors. Eugene is a cousin of Terry Cratty who is a present director.

\*/  
- Annie Pestrikoff:

Annie Pestrikoff has served on the Board of Directors of Old Harbor from 1984 to the present, and for several years prior to 1980. In addition, Annie serves as a secretary and bookkeeper for Old Harbor. Annie's address is P.O. Box 93, Old Harbor, Alaska 99643 and she is 59 years of age. Annie has been employed by the City of Old Harbor and the Old Harbor Library. Annie is active in the Three Saints Russian Orthodox Sisterhood and volunteers her services as bookkeeper for this organization and for the Old Harbor Tribal Council Bingo. She is the sister-in-law of Walt Erickson.

Leona (Haakanson) Plummer:

Leona (Haakanson) Plummer has been working as a medical bookkeeper for Dr. Peter Marbarger in Anchorage, Alaska since 1984. Leona's address is 1001 Boniface Parkway, Space 4P, Anchorage, Alaska 99504 and she is 24 years of age. Leona has been a member of the Jaycees for two years and has served as the secretary for her local chapter for the past six months. Leona has been a member of Credit Women International for three years and currently is an advisor for their investment committee. Leona also is involved with the Russian Orthodox Sisterhood in Anchorage. Leona is the daughter of Sven Haakanson, a cousin of Linda Lester, Ralph Capjohn, George Inga and Eugene Naumoff, and the niece of Harold Christiansen, Carl Christiansen, Emil Christiansen and Bernadine Lou Christiansen, all of whom are nominees to the Board of Directors. Leona is a cousin of Terry Cratty who is a present director.

#### BOARD AND COMMITTEE MEETINGS

The Board of Directors met a total of eight (8) times during the fiscal year ended December 31, 1986. Each nominee who is an incumbent director attended at least 75% of all regular and special meetings of the Board during the 1986 fiscal year.

The Board does not maintain any committees which perform audit, nominating or compensation functions. These functions are performed by the Board as an entirety.

OFFICERS

The current officers of Old Harbor are as follows:

President	Sven Haakanson
Vice-President	Walter Erickson
Secretary-Treasurer	Ronald Berntsen

REMUNERATION OF OFFICERS AND DIRECTORS

The officers and directors of Old Harbor receive no compensation for their services to Old Harbor in those capacities other than compensation of \$75.00 per meeting for attending board meetings, special meetings or workshops, plus a per diem allowance of up to \$110.00 per day while attending those meetings or workshops and while travelling on Old Harbor business.

The compensation received by the five most highly compensated directors and officers for his or her services in all capacities to Old Harbor during the 1986 fiscal year was:

<u>Name</u>	<u>Position</u>	<u>Amount</u>
Sven Haakanson	President and Director	\$ 4,208.38
Annie Pestrikoff	Director	3,452.09
Walter Erickson	Vice President and Director	978.00
Ronald Berntsen	Secretary and Director	485.00
Harold Christiansen	Director	260.00

The total aggregate compensation in the 1986 fiscal year for all officers and directors as a group (10 persons) was \$11,210.31.

TRANSACTIONS WITH OTHER CORPORATIONS  
IN WHICH DIRECTORS OR OFFICERS OR  
THEIR FAMILIES HAVE AN INTEREST

All of the shareholders of Old Harbor are also shareholders of Koniag, Inc. Koniag, Inc. is one of thirteen native regional corporations which were formed pursuant to ANCSA. Old Harbor and Koniag, Inc. are members of the Afognak Joint Venture. A member of Old Harbor's Board of Directors is appointed as a

representative to the Board of Directors of the Afognak Joint Venture.

The Afognak Joint Venture was the result of Congressional legislation in December, 1980 approving as a part of Public Law 96-487 certain modifications in the land selection process by Old Harbor and other native village corporations. The legislation provided for certain of the native village and regional corporations' entitlements to be exchanged for surface and subsurface rights in lands located on Afognak Island, Alaska. One of the provisions of the exchange was the formation of a joint venture to accept ownership of the Afognak Island rights. Old Harbor has a 13.38% interest in the joint venture. The Afognak Joint Venture is currently attempting to organize a timber/logging operation on Afognak Island.

Since the beginning of Old Harbor's last fiscal year, there have been no other financial transactions, and there are no presently proposed financial transactions, by Old Harbor with any entity in which a director, executive officer, Board nominee or member of his or her family is employed by, is an officer or director of, or owns directly or indirectly an interest in, the entity, and in which the transactions in the aggregate exceed \$20,000.

AMENDING ARTICLES OF INCORPORATION TO  
INCREASE AUTHORIZED AMOUNT OF CAPITAL STOCK

The Articles of Incorporation of Old Harbor authorize Old Harbor to issue 2,500 shares of common nonassessable voting stock with a par value of \$1.00 per share. Due to an oversight by the Board of Directors of Old Harbor, Old Harbor has issued 3,350 shares of that common stock without having first increased the number of shares authorized for issuance. To correct this oversight, the Articles of Incorporation must be amended to authorize Old Harbor to issue no less than 3,350 shares of its common stock.

The Board of Directors recommends a vote "FOR" the amendment of the Articles of Incorporation of Old Harbor to give Old Harbor the authority to issue 10,000 shares of common nonassessable voting stock with a \$1.00 par value per share. The vote required for approval of this amendment is the affirmative vote of a majority of the outstanding common stock of Old Harbor. Although 10,000 shares is not required to be authorized to permit 3,350 shares to be issued, the Board of Directors recommends that the authorized number of shares be set at 10,000 to facilitate future issuances of common stock if Old Harbor decides from time

to time to issue additional shares. The Board of Directors has no present intention of causing Old Harbor to issue any additional shares of common stock.

AMENDING ARTICLES OF INCORPORATION TO CHANGE OLD  
HARBOR'S REGISTERED AGENT AND REGISTERED OFFICE

The registered agent of Old Harbor is currently Roy H. Madsen and the registered office of Old Harbor is currently P.O. Box 726, Kodiak, Alaska 99615. To facilitate the receipt and processing of notices, demands and processes served upon Old Harbor, the Board of Directors recommends a vote "FOR" the amendment of the Articles of Incorporation to name its local counsel, Jamin, Ebell, Bolger & Gentry, as its registered agent and to provide that the address of Old Harbor's registered office is 326 Center Avenue, Suite 203, P.O. Box 4269, Kodiak, Alaska 99615. The vote required for approval of this amendment is the affirmative vote of a majority of the outstanding common stock of Old Harbor.

RATIFICATION OF SELECTION OF  
INDEPENDENT PUBLIC ACCOUNTANTS

The firm of Peat Marwick Main & Co., which served Old Harbor as independent public accountants for the 1986 fiscal year, has been selected by the Board of Directors as Old Harbor's independent public accountants for the 1987 fiscal year. Representatives of that firm will be present at the annual shareholders' meeting, will be afforded the opportunity to make a statement if they desire to do so, and will be available to respond to appropriate questions.

All proxies will be voted for ratification of the selection of Peat Marwick Main & Co. unless authority to vote for the ratification of that selection is withheld or an abstention is noted. If Peat Marwick Main & Co. for any reason should unexpectedly decline or be unable to act as independent public accountants, the proxies will be voted for a substitute firm of independent public accountants to be designated by the Board of Directors.

The only services rendered by Peat Marwick Main & Co. during the 1986 fiscal year were audit services, which included consultation in connection with various audit-related accounting matters, and preparation of corporate tax returns. For the 1986 fiscal year, the total fees for all nonaudit services were approximately 54% of the total fees for both audit and nonaudit

services performed by Peat Marwick Main & Co. and paid for by Old Harbor. Old Harbor has had no disagreements with Peat Marwick Main & Co. in connection with audits of the 1985 or 1986 fiscal years.

The ratification of the selection of Peat Marwick Main & Co. as Old Harbor's independent public accountants requires approval of a majority of the total number of outstanding shares entitled to vote at the annual shareholders' meeting.

The Board of Directors recommends a vote "FOR" ratification of the selection of Peat Marwick Main & Co. as Old Harbor's independent public accountants.

#### ANNUAL REPORT

Enclosed with this Proxy Statement are the audited financial statements and accountants report for the fiscal years ending December 31, 1985 and 1986.

#### OTHER MATTERS

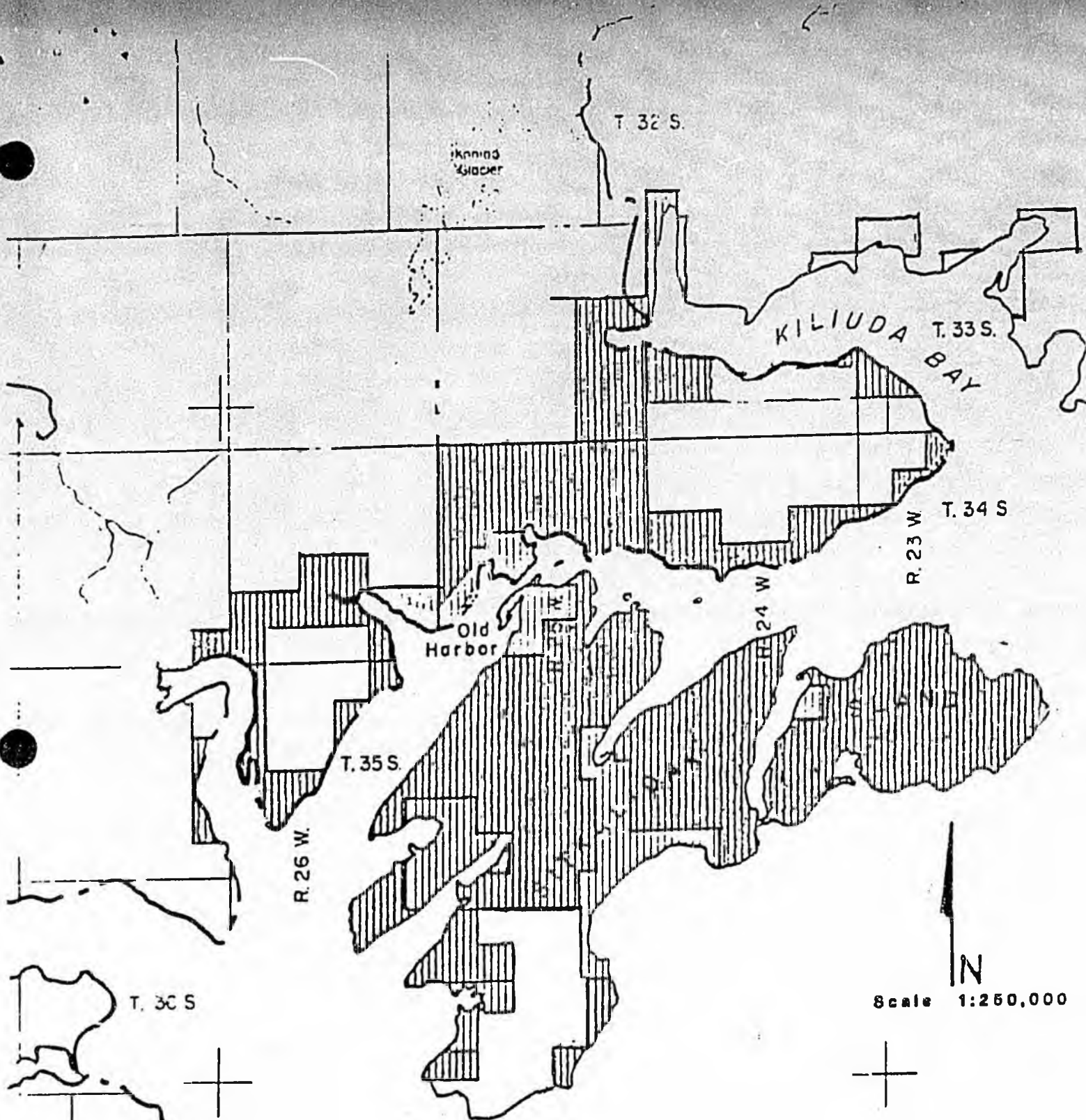
The Board of Directors knows of no other matters which will be brought before the annual shareholders meeting, but if such matters are properly presented at the meeting, the proxies solicited by this Proxy Statement will be voted in accordance with the judgment of the persons holding such proxies. All shares represented by duly-executed proxies will be voted at the meeting.

Texaco will bear the costs involved in preparing the part of this Proxy Statement which concerns the Land Exchange Agreement and the Texaco Agreements. Old Harbor will bear all other costs involved in preparing, assembling, printing and mailing proxy materials. The total amount estimated to be spent on the solicitation of proxies is \$85,000.00. The total amount already expended on the solicitation of proxies as of the date of this Proxy Statement is approximately \$60,000.00.

Old Harbor, Alaska  
August 28, 1987

By Order of the Board of Directors

RONALD BERNTSEN, Secretary



**OLD HARBOR NATIVE CORPORATION LANDS**

To be exchanged to the Fish and Wildlife Service



conveyed



selected

To be retained by Old Harbor Native Corp.

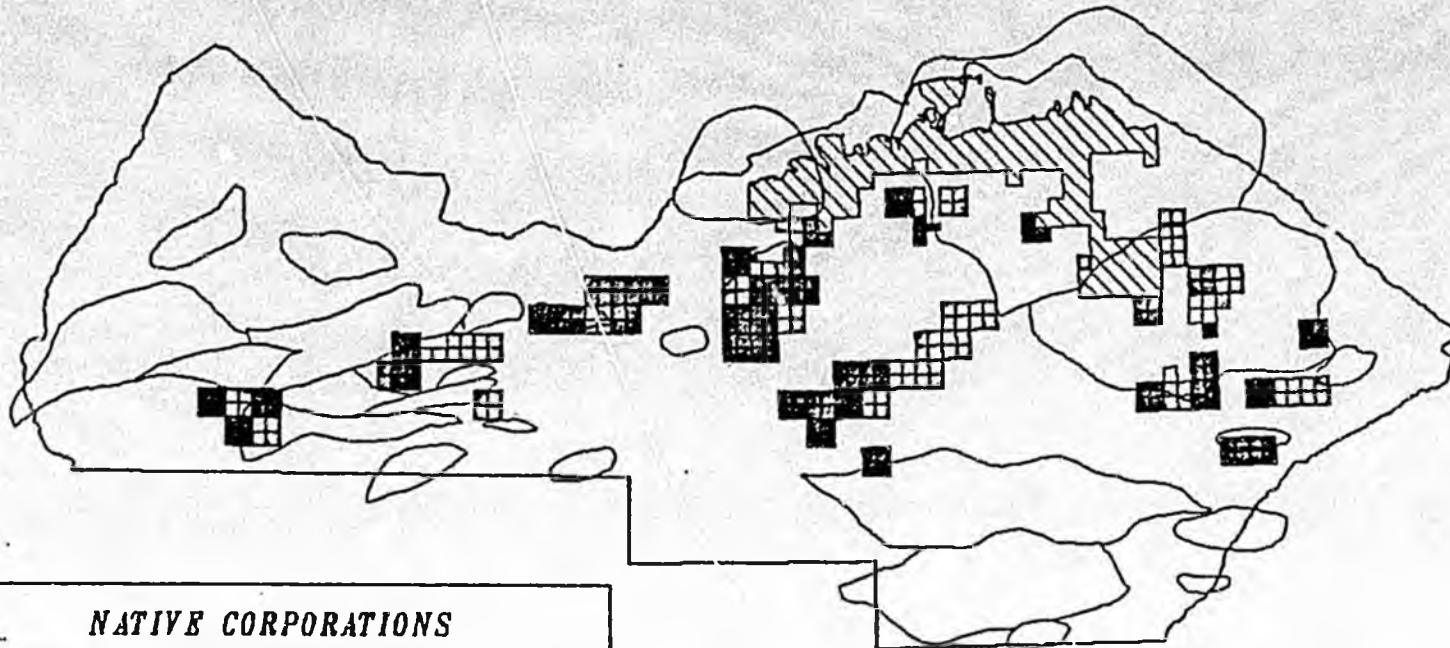


conveyed













selected

# NATIVE LAND EXCHANGE SELECTIONS ARCTIC NATIONAL WILDLIFE REFUGE - 1002 AREA



## NATIVE CORPORATIONS

-  EXISTING KAKTOVIK NUPIAT CORP.
-  DOYON
-  GANA-A' YOO
-  AKHIQ-KAGUYAK
-  NATIVE LANDS GROUP
-  OLD HARBOR
-  KONIAC
-  NATIVE LAND GROUP / AKHIQ-KAGUYAK POOL
-  NATIVE LANDS GROUP / OLD HARBOR POOL
-  SEISMICALLY MAPPED STRUCTURES

0      MILES      20  
0      KILOMETERS      32

U.S. FISH & WILDLIFE SERVICE  
REGION 7 - ALASKA

GRAPHICS BY  
BRANCH OF IRM/GIS



DATA SOURCE  
BUREAU OF LAND MANAGEMENT  
JULY 1987

2  
3  
4  
5 UNITED STATES OF AMERICA  
6 FEDERAL ENERGY REGULATORY COMMISSION  
7

8 \_\_\_\_\_ )  
9 TRANS ALASKA PIPELINE SYSTEM )  
10 \_\_\_\_\_ )

) Docket Nos. OR 78-1-041, -042,  
) and -043  
) (TAPS Remand)  
)

11  
12 PREPARED DIRECT TESTIMONY

13 OF

14 THOMAS E. KELLY

15 Q. What is your name and address and occupation?

16 A. My name is Thomas E. Kelly. I am the sole proprietor  
17 of a consulting firm specializing in the field of earth sciences.  
18 My office is located at 470 Maynard Building, 119 First Avenue  
19 South, Seattle, Washington 98104.

20 Q. Please describe the business of your firm.

21 A. As a consultant, I perform services for clients  
22 interested in the development of natural resources, with par-  
23 ticular emphasis on land management and development of oil and  
24 gas resources in Alaska.  
25

1 Q. Please briefly describe your education.

2 A. I received a bachelor's degree in geology from Texas  
3 A & M, and a master's degree in geology from the same institu-  
4 tion.

5 Q. Have you ever lived in Alaska?

6 A. Yes. I lived in Alaska from 1958 until 1983, with the  
7 exception of five years (from 1962-1967) when I resided in  
8 Houston, Texas. I have been actively involved in Alaska natural  
9 resource matters for approximately 27 years.

10 Q. Before moving to Alaska, what positions did you  
11 hold?

12 A. Upon completion of military service, I was employed by  
13 Continental Oil Company and spent most of my time as a well-site  
14 geologist in the Rocky Mountain area.

15 Q. What positions did you hold while living in Alaska?

16 A. From 1958 to 1967, I was employed by Halbouty Alaska  
17 Oil Company. In 1967 I was appointed by then Governor of the  
18 State of Alaska, Walter J. Hickel, to be the Commissioner of the  
19 Department of Natural Resources for the State of Alaska. In  
20 December of 1970 I left public office and established my own con-  
21 sulting firm in Anchorage. I have continued that endeavor since  
22 that time, although I moved to Seattle, Washington, in 1983. I  
23 maintain offices in Seattle and Anchorage, Alaska, and frequently  
24 visit Alaska when performing my consulting work.

25 Q. What were your duties with the Halbouty Oil Company?

1 A. From 1958 to 1962, I was resident geologist and Alaska  
2 manager for Halbouty Alaska Oil Company. My duties consisted of  
3 conducting all phases of oil and gas exploration then in progress  
4 by the company. This included coordinating geophysical programs,  
5 well site geology (including field work on exploratory wells),  
6 and completion work (putting a well in a position capable of pro-  
7 ducing oil or gas). I worked on petroleum economics of par-  
8 ticular wells or fields, which requires estimating recoverable  
9 reserves. I developed reserve estimates for the West Fort Gas  
10 Field, which Halbouty Alaska Oil Company discovered in 1960. I  
11 also performed extensive reserve studies for Halbouty Alaska Oil  
12 Company on the Swanson River Oil Field. In 1962, I was trans-  
13 ferred to Houston, Texas, and named executive vice president of  
14 Halbouty Alaska Oil Company. In addition to these duties, in  
15 1966, I was named general manager of Michel T. Halbouty  
16 Interests. Mr. Halbouty is a world-renowned consulting geologist  
17 and petroleum engineer, producer, and operator. I left Halbouty  
18 Alaska Oil Company and Michel T. Halbouty Interests in the fall  
19 of 1967 to accept the position of Commissioner of Natural  
20 Resources in Alaska.

21 Q. What were your principal duties as Commissioner of  
22 Natural Resources?

23 A. As Commissioner of Natural Resources, I was responsible  
24 for the management of the State's natural resources, including  
25 its lands, waters, minerals, oil and gas, agriculture, timber,  
26 and parks and recreation facilities. All of the management of

1 Alaska's resources other than fish and game are vested in the  
2 various divisions of the Department of Natural Resources.

3 Q. While you were Commissioner of Natural Resources did  
4 you perform studies and estimates of the petroleum resources in  
5 the State of Alaska?

6 A. Yes. I was called upon by the State to give testimony,  
7 both oral and written, to the State House of Representatives and  
8 State Senate on the location and value of oil and gas resources  
9 in Alaska. During my tenure as Commissioner of the Department of  
10 Natural Resources, Prudhoe Bay was conclusively established as  
11 the largest oil field ever discovered in North America.

12 Following each competitive state lease sale, I participated  
13 directly in analyzing the reasonableness of the apparent high bid  
14 before determining whether or not the State would accept them.

15 My testimony before and reports to the State Legislature  
16 were used by the State for such purposes as formulating budget  
17 projections for the State of Alaska. I negotiated the first  
18 contract for the State's sale of its royalty share of oil in the  
19 Cook Inlet Basin. I personally conducted the well-publicized  
20 1969 competitive oil and gas lease sale in the Prudhoe Bay area.

21 Q. Since the time you left public service, have you con-  
22 tinued to address questions of petroleum reserves in the State of  
23 Alaska?

24 A. Yes. My work frequently involves reserve estimates to  
25 determine the economic viability of a field, to determine the  
26 effect of taxation on the economics of a field, and to value

1 fields for estate tax purposes. For example, I conducted studies  
2 and prepared reports for the Kenai Peninsula Borough to use in  
3 assessing the Cook Inlet platforms for ad valorem tax valuation.  
4 I evaluated the oil production to the limit from each of the 14  
5 platforms in the Cook Inlet Basin.

6 I have prepared reserve estimates and economic projections  
7 for Amarex, Inc., Getty Oil Company, Enstar Corporation and the  
8 Cook Inlet Regional Corporation, all of which have leasehold or  
9 ownership interests in Alaska. Finally, I have prepared exten-  
10 sive evaluations of specific oil and gas properties owned by  
11 several estates with overriding royalty interests in leases in  
12 Alaska.

13 Q. Have you participated in the negotiation of oil and gas  
14 leases on ASRC's property?

15 A. I have participated in the negotiation of all ASRC  
16 leases, exploration and production agreements, and lease options,  
17 as well as ASRC's participation rights on leases in which it has  
18 no ownership interest (e.g., State and federal leases).

19 Q. Have you performed geological studies and reserve esti-  
20 mates on the Alaska North Slope?

21 A. Yes. I have prepared technical reports on a number of  
22 areas on the Alaska North Slope, including the overthrust belt,  
23 the coastal plain, and offshore Beaufort Sea.

24 Q. Have you appeared as an expert witness in this case  
25 before?

1 A. Yes. I appeared on behalf of ASRC in Phase I of this  
2 case. My testimony at that time (Tr. 8873-8890) was directed to  
3 the likely expectations of the parents of the TAPS carriers about  
4 reserve estimates for Prudhoe Bay and for other crude oil re-  
5 sources on the Alaska North Slope between 1969 and 1974.

6 Q. What is the purpose of your testimony in this remand  
7 proceeding?

8 A. The purpose of my testimony is two-fold. The first  
9 purpose of my testimony is to describe in detail ASRC's signifi-  
10 cant hydrocarbon interests in proven, probable, and possible  
11 reserves on the Alaska North Slope. ASRC has substantial oil and  
12 gas interests both on its land and on other properties on the  
13 Alaska North Slope. Because all of ASRC's crude oil interests  
14 lie on the Alaska North Slope, the Trans Alaska Pipeline System  
15 ("TAPS") is the only means of transporting these crude oil  
16 resources to the market. The TAPS tariff thus has a significant  
17 impact on the value of and the extent to which ASRC's crude oil  
18 resources will be developed and shipped on TAPS.

19 The second purpose of my testimony is to analyze the  
20 throughput assumption used by the proponents of the TAPS settle-  
21 ment offer that was partially approved by the Federal Energy  
22 Regulatory Commission on October 23, 1985. That throughput  
23 assumption, I believe, is unduly conservative and underestimates  
24 a realistic throughput forecast for TAPS over the next two and  
25 one-half decades.

1 Q. How much land does ASRC hold an ownership interest in  
2 on the Alaska North Slope?

3 A. ASRC currently owns approximately 4.625 million acres  
4 of surface and subsurface estate on the Alaska North Slope. It  
5 is entitled to a total of approximately 5.034 million acres under  
6 the various provisions of the Alaska Native Claims Settlement Act  
7 of 1971, 43 U.S.C. §§ 1601-28 ("ANCSA"). Thus, it is still  
8 entitled to receive conveyances to over 400,000 acres of land on  
9 the Alaska North Slope. As of November 1, 1985, approximately  
10 2.1 million acres of ASRC's land holdings were under oil and gas  
11 leases to a number of major oil companies. ASRC has between one-  
12 half to three-quarters of a million acres of unleased lands with  
13 definite, demonstrable geological potential for oil and gas.

14 ASRC is currently negotiating contracts that will involve leases  
15 on some of its remaining leasable land in the near future.

16 Q. Does ASRC have interests in non-ASRC lands?

17 A. Yes. ASRC has overriding royalty interests in a number  
18 of leases held by oil companies on State and federal lands across  
19 the Alaska North Slope. In addition, ASRC has net profits  
20 interests and options to acquire overriding royalty and/or a  
21 working interest in leases covering lands it does not own.

22 Q. Do any of ASRC's 4.6 million acres or its interests in  
23 non-ASRC land include land that contains crude oil reserves?

24 A. Yes. ASRC has interests in oil and gas reserves on  
25 both its own land and on non-ASRC land. Because its interests  
26 are extensive and varied, I would like to categorize them in

1 terms of proven reserves, probable reserves, and possible re-  
2 serves, terms commonly used in the industry and by government  
3 agencies. To the extent my discussion of reserves may seem a bit  
4 technical, I refer you to pages 4-8 of Dr. Bruce Netschert's  
5 Phase I Remand testimony (Exhibit IR-1-0 at 4-8) for a descrip-  
6 tion of the oil exploration process and a definition of some of  
7 the terms that are used in describing that process. I have  
8 included as Exhibit \_\_\_-\_\_\_-\_\_\_ (TEK-1) to my testimony a map of  
9 the Alaska North Slope that shows ASRC's land holdings, its  
10 currently leased property, and all of the fields and geological  
11 structures that I will refer to in my testimony concerning  
12 proven, probable, and possible reserves in which ASRC has an  
13 interest.

14 Q. What are ASRC's interests in proven reserves on the  
15 Alaska North Slope?

16 A. ASRC has an interest in proven reserves on non-ASRC  
17 land in the Point Thomson Field. [Exhibit \_\_\_-\_\_\_-\_\_\_ (TEK-1),  
18 Item A.] ASRC's interest in gas condensate reserves (which is  
19 equivalent to crude oil) consists of a 0.5 percent overriding  
20 royalty in approximately 11,000 acres of Chevron USA and Sohio  
21 leases estimated to contain about 200 million barrels of high  
22 gravity (51° API) condensate attributable to the Chevron-Sohio  
23 leasehold. A reasonable but conservative estimate of the volume  
24 of recoverable crude oil attributable to ASRC's overriding  
25 royalty on the Chevron-Sohio leasehold is 1.0 million barrels of  
26 proven reserves. The Point Thomson Field is believed to be a

1 commercial field that will in all likelihood connect with TAPS  
2 sometime in the early to mid-1990's. ASRC's approximately one  
3 million barrels in proven reserves will thus likely begin to be  
4 shipped on TAPS in the mid-1990's.

5 Currently, there are no proven crude oil reserves on ASRC's  
6 own lands, but it does have royalty interests ranging from 12.5  
7 to 16.67 percent on a number of proven natural gas accumulations  
8 underlying its lands at Kemik [Exhibic \_\_\_-\_\_\_-\_\_\_ (TEK-1), Item B],  
9 Gubik, and East Umiat [id., Item C] that are now leased primarily  
10 to Chevron USA.

11 Q. What are probable reserves?

12 A. Probable reserves are reserves that can be quantified  
13 because many exploratory tests and techniques have been used,  
14 including in some instances test wells, to establish that it is  
15 probable that a defined geologic anomaly (structure or strati-  
16 graphic trap) contains hydrocarbons. In some instances, state-  
17 of-the-art geophysics can virtually assure the presence of  
18 hydrocarbons below the surface although a confirming well has not  
19 yet been drilled. For example, in Phase I, Dr. Bruce Netschert  
20 testified that the Lisburne and Kuparuk reservoirs contained  
21 probable reserves. Tr. 8519. Today, of course, those fields are  
22 classified as having proven reserves.

23 Q. Does ASRC have any ownership interest in probable  
24 reserves on its own lands?

25 A. Yes. The first discovery of oil on the Alaska North  
26 Slope occurred at Umiat in the late 1940's. That discovery

1 resulted from exploration by the United States Navy on the Naval  
2 Petroleum No. 4, later renamed National Petroleum Reserve,  
3 Alaska ("NPRA"). The Umiat field has always been regarded as a  
4 marginal economic field even though it contains an estimated 250  
5 million barrels of probable recoverable crude oil reserves west  
6 of the Colville River.

7 Extending eastward across the Colville River is a con-  
8 tinuation of the surface anticline called the Umiat anticline, or  
9 "East Umiat." East Umiat underlies ASRC's property and quite  
0 probably contains oil and associated gas although no specific  
1 reserve estimate has been made to my knowledge. The property is  
2 under lease to Chevron and ASRC's royalty interest is  
3 16.67 percent. When considered together with other nearby  
4 possible oil accumulations on lands either owned by ASRC or in  
5 which ASRC holds working interests on federal leases (as  
6 described below), the probable oil reserves at East Umiat are  
7 likely, at some future time, to be classified as commercial oil  
8 deposits. The probable crude oil reserves underlying ASRC's pro-  
9 perty are between 50-100 million barrels. ASRC's royalty inter-  
0 est in those probable reserves is between 8.3 and 16.7 million  
1 barrels of crude oil.

2 Q. Does ASRC hold any interest in probable reserves on  
3 non-ASRC land?

4 A. Yes. ASRC holds a number of separate interests in  
5 probable reserves on property that it does not own. ASRC holds  
6 interests in 26 separate lease blocks acquired by Shell Western

1 E&P, Inc. ("SWEPI"), et al. in the Diapir field as a result of  
2 the federal Outer Continental Shelf Sale 87 in October 1984 ("OCS  
3 Sale 87"). ASRC's interest initially consists of a  
4 0.0025 percent overriding royalty on SWEPI's interest in over  
5 66,000 hectares (about 163,000 acres), which interest is automa-  
6 tically convertible to a 30 percent net profits interest in  
7 5 percent of SWEPI's working interest at twice payout. For the  
8 purposes of my testimony, "payout" means the time period in which  
9 cumulative gross proceeds equal 100 percent of the cumulative  
10 chargeable costs and expenditures, including the cost of  
11 acquiring leases plus all direct, reasonable, and necessary costs  
12 of exploration, development and production on a lease-by-lease or  
13 unit basis.

14 While ASRC's interest is relatively small, the estimated  
15 recoverable reserves attributable to the prospect areas in which  
16 ASRC holds overriding royalty interests is significant and ASRC's  
17 probable reserves from this area are substantial. Based on  
18 detailed seismic evaluation and likely reservoir properties  
19 inferred from nearby wells, the probable reserves attributable to  
20 ASRC's interests in the 26 separate lease blocks that fall within  
21 six distinct lease areas in OCS Sale 87 is set forth below.

PARAMETERS FOR ASRC'S INTERESTS IN SWEPI LEASEHOLDS

Camden Bay Area (see Exhibit 1, Item D): 3 prospects  
 Prospective Acres: 40,000  
 Thickness of possible pay (seismic): 190-400 feet  
 Porosity: 20-30%  
 Estimated Recoverable Reserves (Total): 3.6 Billion bbl.  
 ASRC reserves to twice payout  
 Vol. x (1 - ZPO%) x SWEPI INT.% x NET LSE% x .0025 = 1.70MM

ASRC RESERVES AFTER TWICE PAYOUT

	<u>Vol.</u>	x	<u>SWEPI INT.%</u>	x	<u>NET LSE%</u>	x	<u>.30NP</u>	x	<u>.05</u>	=	
Area 1	640MM	x	.333	x	.80	x	.30	x	.05	=	2.557MM
Area 2	1,280MM	x	.333	x	.80	x	.30	x	.05	=	5.114MM
Area 3	840MM	x	.25	x	.80	x	.30	x	.05	=	<u>2.520MM</u>
											Subtotal = 10.192MM
											Camden Bay Total ASRC bbl = 11.892MM

Demarcation Bay Area (see Exhibit 1, Item E): 3 prospects  
 Prospective Acres: 29,000  
 Thickness of possible pay: 400 feet  
 Porosity: 18-30%  
 Estimated Recoverable Reserves (Total): 2.75 Billion bbl.

ASRC reserves to twice payout  
 Vol. x (1 - ZPO%) x SWEPI INT.% x NET LSE% x .0025 = 1.279MM

ASRC RESERVES AFTER TWICE PAYOUT

	<u>Vol.</u>	x	<u>SWEPI INT.%</u>	x	<u>NET LSE%</u>	x	<u>.30NP</u>	x	<u>.05</u>	=	
Area 4	450MM	x	.333	x	.80	x	.30	x	.05	=	1.798MM
Area 5	480MM	x	.333	x	.80	x	.30	x	.05	=	1.918MM
Area 6	660MM	x	.50	x	.80	x	.30	x	.05	=	<u>3.960MM</u>
											Subtotal = 7.676MM
											Demarcation Bay Total ASRC bbl = 8.955MM

TOTAL ASRC bbl in Camden and Demarcation Bay areas (all SWEPI leaseholds) = 20.847MM

1 In short, ASRC has probable reserve ownership in the 26  
2 separate lease blocks in the OCS Sale 87 of approximately  
3 20 million barrels of crude oil.

4 In addition, SWEPI acquired at OCS Sale 87 five Milne  
5 Point-Seal Island area tracts in which ASRC has an overriding  
6 royalty interest. [Exhibit \_\_\_-\_\_\_-\_\_\_ (TEK-1), Item F.] The Milne  
7 Point and Seal Island fields located northwest of Prudhoe Bay are  
8 believed to contain approximately 200 million barrels of recover-  
9 able oil. The SWEPI acreage is proximate to but not currently  
10 included within the existing unitized area for the Milne  
11 Point-Seal Island fields. Therefore, no reserves are specifi-  
12 cally attributable to ASRC interests at this time, although it is  
13 likely that future development of the Milne Point-Seal Island  
14 field may extend into SWEPI leases in which ASRC holds an  
15 overriding royalty interest.

16 Q. Can you summarize ASRC's interests in probable reserves  
17 on the Alaska North Slope?

18 A. Certainly. ASRC's interests in probable reserves on  
19 the Alaska North Slope include interests in a number of fields  
20 ranging in size from 50 million barrels to 1.6 billion barrels.  
21 ASRC's royalty interest in those probable reserves is in the  
22 range of 20 to 40 million barrels of crude oil and condensate.

23 Q. You also mentioned ASRC's interests in possible re-  
24 serves. What are possible reserves?

25 A. Possible reserves are a quantification of the volume of  
oil and gas in a favorable geological setting (oil and/or gas has

1 been previously discovered in the same or comparable exploration  
2 fairways or trends), although no well(s) have actually encoun-  
3 tered oil and/or gas. Quite often statistical analysis and sedi-  
4 mentary parameters are used to estimate possible reserves. For  
5 my purposes I have limited possible reserves to include only sur-  
6 face and subsurface (seismic) anticlinal closures that have been  
7 mapped in detail over the past 15 years by lessees of ASRC's  
8 lands. A mappable feature is a geological feature about which  
9 sufficient data exists to draft interpretations on maps.

10 I have excluded from my definition of possible reserves  
11 broad areas with imputed reserves based on volume of sediments  
12 within a defined basin or basinal segment as is often the basis  
13 of possible reserve estimates by the Minerals Management Service  
14 of the United States Department of Interior in frontier  
15 (unexplored) areas. Subtle geological features that are largely  
16 stratigraphically controlled are not included within my estimate  
17 of possible reserves.

18 Much of the Alaska North Slope still must be characterized  
19 as "possible reserves" because substantial exploration remains to  
20 be done with respect to geological formations that make the  
21 Alaska North Slope one of the most promising untapped resources  
22 for oil and gas in North America.

23 Q. What are the possible reserves on ASRC's land?

24 A. ASRC's fee and subsurface interests in the Western,  
25 Central, and Eastern Arctic (also known as the Arctic National  
26 Wildlife Refuge or "ANWR"), while speculative in nature, could

1 far exceed their proven and probable reserve interests that I  
2 have already described.

3 I have eliminated from the "possible reserve" category all  
4 mappable structures along the overthrust belt of the foothills  
5 region north of the Brooks Range with the exception of ANWR.  
6 Five exploratory wells have tested unsuccessfully for hydrocar-  
7 bons in separate closures along the Western and Central Arctic  
8 segments of the overthrust belt, but those test wells evaluated  
9 only a portion of that exploratory trend. Nonetheless, for pur-  
10 poses of this testimony, I have excluded this potential trend  
11 from possible reserves.

12 Q. You mentioned ASRC has interests in possible reserves  
13 in the Western Arctic. What are they?

14 A. ASRC's lands comprise over 500,000 acres in the Western  
15 Arctic west of the NPRA. [Exhibit \_\_\_-\_\_\_-\_\_ (TEK-1), Item G.]  
16 Much of these lands are currently under lease to Chevron, Unocal,  
17 and Amoco. Previous lessees included Shell and Mobil. ASRC has  
18 a royalty interest of 16.67 percent on these leases and has a net  
19 profits interest that varies according to the exploratory  
20 agreement of which each lease is a part. Over 150,000 acres of  
21 ASRC's leased lands are included within the crestal contour of 10  
22 separate anticlines all with demonstrable seismically controlled  
23 closure. Only one such anomaly has been drilled, the Union Oil  
24 Tungak Creek No. 1 well, which was drilled to a depth of approxi-  
25 mately 8,000 feet in 1982. Although abandoned as a dry hole due  
26 to seasonal drilling restrictions, there is reason to believe

1 that had drilling continued to deeper geologic horizons, the  
2 possibility of encountering hydrocarbons would have increased.

3       Nine of the closed anticlines (which is a four-directional  
4 convex fold in the earth) on ASRC's properties in the Western  
5 Arctic are north of the overthrust belt in a region of East-West  
6 harmonic-like folding with relatively steep flanked anticlines  
7 separated by broader synclines (which is a four-directional con-  
8 cave fold in the earth). Oil seeps (which are extrusions of oil  
9 onto the surface) have been reported by field crews of the  
10 lessees on ASRC's Western Arctic lands within a number of these  
11 closed anticlines.

12       While ASRC's interests in the Western Arctic are remote from  
13 the standpoint of transportation to TAPS, a large discovery in  
14 the NPRA could easily serve as the catalyst for feeder pipelines  
15 from the Western Arctic to TAPS.

16       In addition to its other Western Arctic holdings, ASRC owns  
17 over 50,000 acres of subsurface lands in the South Walapka area  
18 south of Barrow, Alaska. [Exhibit \_\_\_\_\_ (TEK-1), Item H.]  
19 ASRC leased these lands to Chevron and Sohio in 1984 in advance  
20 of an exploratory well drilled by ARCO Alaska in the winter of  
21 1984-85 on adjacent lands. ASRC's royalty interest in these  
22 leases is 12.5 percent and it also holds net profits interests in  
23 those leases. The well was abandoned and no information was  
24 released by the operator. Proven gas reserves are located imme-  
25 diately north of these ASRC lands on lands controlled by the  
26 North Slope Borough. The South Walapka area continues to be

1 prospective for oil occurring at a down dip position in sands  
2 that are projected to extend over ASRC leases, which are trun-  
3 cated or onlapped by transgressing shales in a south-to-north  
4 direction. These ASRC leases are possible reserves on ASRC land.

5 Q. You also mentioned possible reserves on ASRC lands in  
6 the Central Arctic. Where are they?

7 A. ASRC owns lands comprising over 600,000 acres in the  
8 Central Arctic north of Township 10 South (north of the Southern  
9 Foothills Province) that are currently leased to Chevron USA.

10 [Exhibit \_\_\_-\_\_\_-\_\_\_ (TEK-1, Item I.) ASRC's royalty interest in  
11 these leases is 16.67 percent. At least 12 mappable anticlines,  
12 affecting both Cretaceous rocks and older Ellesmerian sequences,  
13 extend east-west throughout this area as determined by outcrop  
14 samples and exploratory wells drilled over a 20-year period.

15 Nearly 200,000 acres of ASRC's lands in the Central Arctic are  
16 located within crestal contours on anticlines that have never  
17 been tested. These acres do not include the East Umiat and Gubik  
18 anticlines that were previously discussed in my testimony con-  
19 cerning proven and probable reserves. Active exploratory efforts  
20 are in progress on several of these prospect areas, and they  
21 constitute substantial possible reserves for ASRC.

22 In addition, ASRC has received, or is entitled under ANCSA  
23 to receive, over 100,000 acres of subsurface lands within the  
24 village of Nuiqsut's withdrawal of lands under section 11(a)(1)  
25 of the Act. A portion of these lands are subject to oil and gas  
leases issued by the State of Alaska prior to the conveyance of

1 the surface estate to Kuugpik Corporation, the village cor-  
2 poration for Nuiqsut. ASRC is the subsurface owner of the  
3 Kuugpik lands and has succeeded the State as lessor under the  
4 previously issued oil and gas leases.

5 The most recent oil discovery on the Alaska North Slope (by  
6 Texaco) is located near the head of the Colville Delta  
7 [Exhibit \_\_\_-\_\_\_ (TEK-1), Item J], a few miles north of these  
8 ASRC lands. ASRC is currently evaluating the geological and  
9 geophysical data in the Nuiqsut area in an effort to determine  
10 the probable extent of Texaco's discovery, and it is pursuing  
11 exploration contracts with a number of companies in the Nuiqsut  
12 area, which will result in exploration leases.

13 Texaco has announced that it will drill as many as three  
14 confirmation wells during the 1985-86 winter season surrounding  
15 the discovery well, and Amerada Hess will likely drill two addi-  
16 tional confirmation test wells in the same area. ARCO recently  
17 announced plans to drill on former State of Alaska leases now  
18 owned by ASRC approximately seven to eight miles south of the  
19 Texaco discovery. Depending on the outcome of the ARCO well, the  
20 "possible reserve" category assigned the Nuiqsut area lands could  
21 be upgraded to probable or proven reserves within a very short  
22 period of time.

23 The size and significance of the Texaco discovery must await  
24 the outcome of several confirmation wells. However, the dis-  
25 covery well tested from 400 to 1,000 barrels of oil per day on  
26 initial tests, which is comparable to the volume of oil produced

1 from many wells in the Kuparuk reservoir. Additional test infor-  
2 mation may become public within the next several months which  
3 will assist more precise quantification of reserves in this new  
4 field.

5 Q. You also stated ASRC has possible reserves in the  
6 Arctic National Wildlife Refuge (or "ANWR"). What are they?

7 A. ASRC presently owns approximately 92,000 acres of sub-  
8 surface rights within the the village withdrawal for Kaktovik  
9 (under section 11(a)(1) of ANCSA) located at the northernmost  
10 portion of the coastal plain within ANWR. [Exhibit \_\_\_-\_\_\_-\_\_\_  
11 (TEK-1), Item K.] ASRC has leased its land within ANWR to  
12 Chevron, Sohio, and BP Alaska Exploration Company, and it has a  
13 20 percent royalty interest on those leases along with net pro-  
14 fits interests. Those companies have conducted two seasons of  
15 extensive seismic surveys on ASRC's lands and are currently pre-  
16 paring to continue drilling an exploratory test, which was  
17 suspended at the "break-up", or thaw, last spring.

18 Because of the highly sensitive and confidential nature of  
19 operations in ANWR, it is not possible for me to elaborate on the  
20 oil and gas potential for this area. Many technical papers have  
21 been written over the past ten years that treat the possible  
22 petroleum potential of ANWR, however. Those papers establish  
23 that ANWR is perhaps one of the most attractive prospective oil  
24 and gas area in all of North America. See e.g., Mull, C. G. and  
25 Kososki, B. A., undated, "Hydrocarbon Potential of the Arctic  
National Wildlife Range, Alaska," U.S. Geological Survey Admin-

1 istrative Report transmitted to the U.S. Fish and Wildlife  
2 Service, Division of Wildlife Refuges, on August 31, 1976;  
3 Tailleux, I. L. and Pessel, G. H., 1976, "Subsurface Geology and  
4 Some Implications Concerning Future Petroleum Exploration in  
5 Eastern Arctic Slope, Alaska," (abs.), Am. Assoc. Petroleum  
6 Geologists, Vol. 60, No. 12, at 2199; Grantz, A., and Mull,  
7 C. G., 1978, "Preliminary Analysis of the Petroleum Potential of  
8 the Arctic National Wildlife Range, Alaska," U.S. Geological  
9 Survey, Open File Report 78-\_\_\_. The Memorandum of the Alaska  
10 Department of Natural Resources produced by Alaska in this remand  
11 proceeding states that ANWR is "considered highly prospective for  
12 oil and gas," Memorandum, Department of Natural Resources,  
13 Division of Oil and Gas (Mar. 23, 1984), and I understand that  
14 one of the model simulations used in the Phase I Remand incor-  
15 porated estimates of ANWR's reserve potential. Exhibit IR-12-2  
16 at 3.

17 For present purposes, it is sufficient to note that explora-  
18 tion of ANWR is in its earliest stages and that surface occur-  
19 rences of hydrocarbons (seeps, outcrop samples, etc.) continue to  
20 suggest that the area may contain several highly attractive  
21 hydrocarbon prospects.

22 Q. Can you summarize ASRC's possible reserves on its own  
23 lands?

24 A. Yes. ASRC's possible reserves on its own lands in the  
25 Western, Central, and Eastern Arctic are between 2 and 4 billion  
26 barrels in fields ranging in size from 250 million to 700 million

1 barrels, and its royalty and net profits interest in possible  
2 reserves is 250-500 million barrels.

3 Q. Does ASRC have any interests in possible reserves on  
4 non-ASRC land?

5 A. Yes. ASRC owns working interests in federal oil and  
6 gas leases in NPRA and state competitive oil and gas leases  
7 onshore and offshore Beaufort Sea. At least one area on trend  
8 with Umiat and under lease to SWEPI is believed to have a good  
9 possibility for entrapment of hydrocarbons. Principal adjacent  
10 leaseholders include Chevron and ARCO in a prospect approximately  
11 12 miles long and 2 miles wide. ASRC's working interest in the  
12 SWEPI lease is 2 percent and is located at the most updip crestal  
13 closure of a faulted, breached anticline. Because the objective  
14 horizons at this structural feature (sometimes referred to by  
15 ASRC as "Duckhead") [Exhibit \_\_\_-\_\_\_-\_\_\_ (TEK-1), Item L] are more  
16 deeply buried and below permafrost depth, they are likely to be  
17 more productive than comparable reservoirs at Umiat. The poten-  
18 tial recoverable reserves at "Duckhead" based on known reservoir  
19 characteristics at Umiat, suggest a potential of three times that  
20 of Umiat, or 750 million barrels. ASRC's working interest in  
21 this possible reservoir would be 5.6 million barrels.

22 Q. Can you summarize ASRC's interests in possible  
23 reserves?

24 A. Certainly. ASRC has vast interests in possible re-  
25 serves, both on its own land and on non-ASRC land. ASRC has an  
26 interest in possible reserves in the range of 2 to 5 billion

1 barrels of crude oil, with ASRC having direct royalty ownership  
2 in 250-500 million barrels of possible reserves.

3 Q. Does that conclude your discussion of ASRC's interests  
4 in proven, probable, and possible reserves?

5 A. Yes. As you can see, ASRC has some interests in proven  
6 reserves that will come on line to TAPS in the near future. In  
7 addition, it has substantial probable reserves and very promising  
8 possible reserves, all of which will ultimately be served to some  
9 as yet unknown extent by TAPS.

10 Q. Will TAPS tariffs have an impact on ASRC's proven,  
11 probable, and possible reserves?

12 A. Yes.

13 First, TAPS tariffs will significantly affect ASRC's benefit  
14 from its lease bids and negotiated bonuses. The costs of  
15 exploring, developing, and producing oil on the Alaska North  
16 Slope are many times those in the lower-48 states. ASRC must  
17 compete with lower cost areas for exploration dollars, and to the  
18 extent the wellhead price of crude oil is lowered by the TAPS  
19 tariff, ASRC's ability to fully evaluate and market its resource  
20 is diminished. Oil companies will pay less for leases on ASRC  
21 lands thereby decreasing the value of those ASRC lands that will  
22 be leased under ASRC's leasing program during the next several  
23 years. Oil companies will invest fewer exploration dollars in  
24 both those lands and lands that have already been leased thereby  
25 decreasing the likelihood of discovery or commercial development

1 and lowering the range of future income to ASRC from royalty and  
2 net profits interests.

3 Second, the level of the TAPS tariff will directly affect  
4 the value of each barrel of oil shipped by ASRC on TAPS. The  
5 value of ASRC's approximately one million barrels of oil in the  
6 Point Thomson Field, for example, will be directly affected by  
7 the level of TAPS tariffs. Moreover, because much of ASRC's  
8 probable, and possible reserve interests are contained in marginal  
9 economic fields, the cost of transporting oil from ASRC's  
10 properties to market will have a dramatic impact on ASRC's capacity  
11 to reap the benefits from many of its oil and gas leases on  
12 its own lands and those in which it has an interest. It could  
13 preclude production altogether in some of its fields.

14 Many of ASRC's fields may become commercial only when aggregated  
15 with other smaller fields on its properties. The size of  
16 the TAPS tariff will be a critical factor in determining whether  
17 to develop some of these smaller fields, particularly when they  
18 are not clustered in the same general area, which is the case for  
19 most of ASRC's prospects except for the prospect groups in OCS  
20 Sale 87. The South Walapka and Western Arctic areas will be most  
21 affected by TAPS tariffs.

22 High tariffs will also have an impact on the amount of production  
23 from specific fields even when they do become commercial  
24 prospects and are developed. "Recoverable oil" is a term that is  
25 subject to economic definition: if the TAPS tariff is high, com-

1 mercial fields on ASRC property will shut down more quickly than  
2 they would if the TAPS tariff were low.

3 Moreover, exploration activity on ASRC lands that has been  
4 discontinued, such as on the southern foothills overthrust belt  
5 in which five wells were drilled, will be affected over the long  
6 term by economic factors such as the TAPS tariff. Exploration in  
7 these frontier areas will be affected directly by the economics  
8 of production of oil on the Alaska North Slope, a major component  
9 of which is the transportation cost of shipping that oil to  
10 market.

11 Q. Have you reviewed the throughput assumptions used by  
12 the proponents of the settlement to establish a tariff regime in  
13 support of the settlement offer partially approved by the Federal  
14 Energy Regulatory Commission on October 23, 1985?

15 A. Yes.

16 Q. Do you believe that the throughput projection used by  
17 the settlement proponents is reasonable?

18 A. No. I believe it is unduly conservative in a number of  
19 respects. While I think it is fair to say that TAPS throughput  
20 will decline over the next 25 years, I do not believe it will  
21 decline to the degree stated by the settlement proponents, and  
22 their underestimation of a number of significant hydrocarbon  
23 resources on the Alaska North Slope convinces me that substan-  
24 tially greater throughput will occur on TAPS over the next  
25 quarter century.

1 Q. What potential throughput sources have the settlement  
2 proponents underestimated?

3 A. As part of the discovery in this case, the State of  
4 Alaska furnished to ASRC a chart containing a "TAPS Medium  
5 Throughput Forecast;" which it used for calculating settlement  
6 tariffs. [Exhibit \_\_\_-\_\_\_-\_\_\_ (TEK-2).] In several specific areas,  
7 the throughput forecast provided by the State of Alaska is  
8 unrealistic.

9 First, annual reports provided by ARCO in this remand case  
10 and their 1985 Second Quarter Report [Exhibit \_\_\_-\_\_\_-\_\_\_ (TEK-3)]  
11 portray a substantially more optimistic throughput potential for  
12 the Prudhoe Bay, Kuparuk, Lisburne, and the West Sak fields. For  
13 example, the Supplement to the 1982 [ARCO] Annual Report states  
14 that programs instituted at Prudhoe Bay are "expected to increase  
15 gross oil recovery by some 4 billion barrels over the life of the  
16 Prudhoe Bay field." Id. at 4. The same document indicates that  
17 the company's recovery from the Kuparuk oil reservoir "with full  
18 field development and a successful waterflood program, could be as  
19 high as 750 million barrels." Id. at 6. This would be the return  
20 in that field to ARCO alone. The 1983 [ARCO] Annual Report  
21 states that the Ugnu Sands in the Kuparuk region "are estimated  
22 to contain from 6 billion to 11 billion barrels of oil in  
23 place." Id. at 13. The 1984 [ARCO] Annual Report states that  
24 "West Sak contains an estimated 15 billion to 25 billion barrels  
25 of oil in place . . . [and that] West Sak could start up in the  
early 1990's and continue producing well into the twenty-first

1 century." Id. at 17. Finally, the ARCO 1985 Second Quarter  
2 Report states that Lisburne will "gradually increase production  
3 to approximately 70,000 barrels per day by 1990, leading to peak  
4 production of about 100,000 barrels per day in the mid-1990's."  
5 Id. at 22. All the discussions in these ARCO reports indicate  
6 that, at least from ARCO's point of view, the throughput on TAPS  
7 will be substantially greater from Prudhoe Bay, Kuparuk,  
8 Lisburne, and West Sak than is forecast by the State for purposes  
9 of the settlement.

10 In addition, three of the general categories in the State of  
11 Alaska's "TAPS Medium Throughput Forecasts" are far too conser-  
12 vative. One category is described as "Federal Beaufort." It is  
13 my understanding that the estimates for throughput for the  
14 "Federal Beaufort" category include OCS Sale 71 and OCS Sale 87.  
15 If this is the case, throughput estimates for both of these  
16 federal lease sales are far too low in my estimation. Based on  
17 my knowledge of the Beaufort Sea, the potential to be derived  
18 from OCS Sale 71 and OCS Sale 87 will result in substantially  
19 greater throughput for TAPS than is estimated on the State chart.  
20 Over \$3 billion was spent in lease bonuses alone in the OCS  
21 sales, and the cost of the first exploratory well was con-  
22 siderably more than \$100 million. No reasonable profit-to-risk  
23 ratio can support the State's projected throughput for this area  
24 when compared to actual costs and future costs to develop and  
25 produce oil from the offshore Beaufort Sea.

1 The same is true of the category called "Federal Onshore."  
2 It is my understanding that that category includes both NPRA and  
3 ANWR. The throughput estimates for oil produced on "Federal  
4 Onshore" leases in NPRA and ANWR are far too conservative than  
5 what is likely to be produced from those regions.

6 The State of Alaska's chart also includes the category  
7 "Other." It is my understanding that "Other" includes all State  
8 offshore and onshore leases, including Point Thomson, Flaxman  
9 Island, Seal Island, and Gwyder Bay. The recent discovery in the  
10 Colville Delta and the hundreds of thousands of acres under  
11 State lease in the Kuparuk uplands area surely will in the aggre-  
12 gate produce more barrels per day than the State's throughput  
13 forecast indicates. In my view, the throughput estimates for  
14 "Other," which include all of these State leases is also far too  
15 conservative in light of the potential from the regions included  
16 within that category.

17 Finally, none of ASRC's lands or leaseholds are included  
18 within the State of Alaska's throughput forecast. As my testi-  
19 mony above describes, I believe there is substantial potential  
20 for production from ASRC's lands, much of which will be shipped  
21 through TAPS at some point within the next 25 years.

22 Q. Is there any other reason why you believe the State  
23 throughput forecast is unduly conservative?

24 A. Yes. The chart produced by the State of Alaska to ASRC  
25 is internally inconsistent. The bottom line of the chart is  
26 entitled "North Slope Total" and is intended to reflect the total

throughput in thousands of barrels per day anticipated for TAPS  
for each year until 2011. Starting in the year 2000, however,  
the "North Slope Total" numbers are in fact substantially lower  
than the actual total obtained by adding the throughput for each  
category in the column above the "North Slope Total" number. For  
example, in the year 2000, the chart shows a "North Slope Total"  
of 825,000 barrels per day. However, by adding the throughput  
expected from each of the nine identified categories for the year  
2000, the throughput total is 925,000 barrels per day, or 100,000  
barrels per day more than is reflected in the "North Slope Total"  
for that year. This problem is reflected in each year  
from the year 2000 to the year 2011. In each case, the "North  
Slope Total" number is at least 80,000 barrels per day less than  
the actual total (e.g., 2008) and as much as 120,000 barrels per  
day below the actual total (e.g., 2011). I do not know why this  
discrepancy occurs in the State of Alaska's chart, but clearly  
their own numbers dictate higher throughputs in the last 11 years  
of the pipeline than were in fact used by the State of Alaska in  
estimating the future tariffs that would result from the TAPS  
settlement.

Q. Have you reviewed the throughput projections of  
Dr. Bruce Netschert in the Phase I Remand case?

A. Yes. Dr. Netschert forecast two different throughput  
scenarios: a Netschert Constant throughput of 1.6 million  
barrels per day over the life of the pipeline and a Netschert  
declining throughput scenario, which is less conservative than

1 the declining scenario used by the TAPS settlement proponents.  
2 Prepared Direct Testimony of Dr. Bruce Netschert, Exhibit IR-1-0  
3 at 29. I believe that a realistic forecast for throughput for  
4 TAPS over the life of the line lies somewhere between the two  
5 Netschert estimates. The National Petroleum Council report on  
6 which Dr. Netschert based his declining throughput is in fact  
7 considerably more optimistic regarding crude oil reserves on the  
8 Alaska North Slope than is the Netschert declining throughput  
9 scenario. The National Petroleum Council report is more con-  
10 sistent with my own view of the crude oil resource on the Alaska  
11 North Slope, which will result in substantially higher through-  
12 puts in the later years of TAPS than are indicated by the State  
13 of Alaska's "TAPS Medium Throughput Forecasts." In estimating  
14 throughput for TAPS, I believe Dr. Netschert's declining through-  
15 put forecast should be used as a baseline for the most conser-  
16 vative scenario for throughput for TAPS over the life of the  
17 line.

18 Q. Does that complete your testimony?

19 A. Yes.

Robert W. Adler  
Patti J. Saunders  
c/o Trustees for Alaska  
725 Christensen Drive, Suite 4  
Anchorage, Alaska 99501  
(907) 276-4244

*Violate NEPA p. 15  
intended to influence Congress  
Violate ANILCA p. 21  
1002/1302h*

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ALASKA

*TRUSTEES 2<sup>nd</sup> Brief*

TRUSTEES FOR ALASKA, AMERICAN )  
WILDERNESS ALLIANCE, NATIONAL )  
WILDLIFE REFUGE ASSOCIATION, )  
NORTHERN ALASKA ENVIRONMENTAL )  
CENTER, THE SIERRA CLUB, THE )  
WILDERNESS SOCIETY, and THE )  
NATIONAL AUDUBON SOCIETY )

Plaintiffs )

v. )

WILLIAM P. HORN, Assistant Sec- )  
retary of Interior for Fish, )  
Wildlife and Parks; DONALD P. )  
HODEL, Secretary, U.S. Depart- )  
ment of the Interior; FRANK )  
DUNKLE, Director, U.S. Fish and )  
Wildlife Service; JAMES GRIF- )  
FITH, Acting Regional Director, )  
U.S. Fish and Wildlife Service; )  
the UNITED STATES DEPARTMENT OF )  
THE INTERIOR; and the UNITED )  
STATES FISH AND WILDLIFE SERVICE )

Defendants )

Civil Action No. A87-118

AMENDED REPLY TO DEFENDANTS'  
AND DEFENDANT-INTERVENORS'  
OPPOSITIONS TO MOTION FOR  
PRELIMINARY INJUNCTION

## I. INTRODUCTION

The defendants<sup>1/</sup> raise three fundamental arguments: (1) the court lacks jurisdiction on grounds of standing, ripeness, administrative finality, and the "political" nature of the case; (2) Plaintiffs are not likely to prevail on the merits; and (3) the standards for a preliminary injunction are not met. All of the jurisdictional arguments continue the pattern begun in the earlier Trustees for Alaska v. Hodel litigation of attempting to insulate government decisionmaking from both public and judicial scrutiny.

The NEPA case has been simplified tremendously by Interior's agreement to perform a full, two-stage legislative environmental impact statement (LEIS), with public notice and hearings, once the basic terms of the land exchange agreement are reached. Horn Affidavit, para. 15. Plaintiffs concede, with some reservations, that this agreement resolves Count 2 of the Complaint.<sup>2/</sup> However, Defendants' remaining arguments are not persuasive.

## II. THE COURT HAS JURISDICTION OVER THIS ACTION

### A. Plaintiffs Have Standing to Maintain This Action

The intervenors add little to the standing arguments that were raised in the Motion to Dismiss and addressed in Plaintiffs'

---

<sup>1/</sup> Unless indicated, defending parties will be referred to jointly as "Defendants". The Response Briefs will be identified as "Interior Response", "NLG Response", and "Koniag Response."

<sup>2/</sup> Plaintiffs continue to disagree with the timing of the proposed LEIS, which will not occur until after an "agreement in principle" is reached on the basic terms of the proposed land exchange, violating the basic purposes of NEPA. But given Interior's agreement to perform an LEIS if the negotiations are allowed to proceed, Plaintiffs accept the Interior proposal on when to initiate the NEPA process.

response thereto. Moreover, like the federal defendants, the intervenors rely almost entirely on general principles of standing law, and ignore almost entirely the extensive case law indicating that plaintiffs who use and enjoy a region that is subject to agency decisions have standing to vindicate procedural interests under NEPA. Pl. Response Brief at 3-15.

Plaintiffs' members use and enjoy the coastal plain of the Arctic National Wildlife Refuge for recreational and other purposes. The organizations have a long history of protecting these interests by advocating for the protection and preservation of this area. In particular, the organizations filed an earlier lawsuit that entitled them to comment on a draft of Interior's report to Congress. The organizations themselves, and members of the organizations, filed comments on the draft report. Pl. Exh. 21, attached to Pl. Response to Motion to Dismiss; Pl. Exh. 23, attached hereto. But the naked right to comment is meaningless. The significance of the right to comment is the potential it provides to influence the final decision in the matter. If unlawful actions prejudice the objectivity of the final decision, plaintiffs' procedural rights to a fair and objective decision guaranteed by NEPA are harmed, and they have standing to protect these procedural rights. By analogy, parties to lawsuits have a right to fair and objective consideration of their positions, violations of which (e.g. by jury tampering) would be actionable. There is no difference here.

Interior argues that this argument must fail because Plaintiffs cannot prove that Congress "will be biased." But neither

can a plaintiff seeking to force an agency to prepare an EIS prove that the EIS will change the final result. Such proof is unnecessary to confer standing under NEPA because NEPA governs the decisionmaking process. City of Davis v. Coleman, 521 F.2d 661, 670-72 (9th Cir. 1975). The same is true in the context of legislative decisionmaking. Realty Income Trust v. Eckerd, 564 F.2d 447, 452-54 (D.C. Cir. 1977); Atchison, Topeka and Santa Fe Ry. Co. v. Callaway, 431 F. Supp. 722, 729-30 (D.D.C. 1977). See Interior Response at 17. Plaintiffs are entitled to prevent the Defendants from prejudicing the Congressional decision, which is the subject of an existing EIS on which a final decision has not been made, whether or not the decision is ultimately in their favor, just as litigants have a right to fair process regardless of who wins the case. Standing is based on actual or potential harm. Kerr-McGee Chemical Corp. v. U.S. Department of the Interior, 709 F.2d 597, 600 (9th Cir. 1983) (harm may be "threatened or actual").<sup>3/</sup>

Interior also suggests that Plaintiffs were required to prove the extent of their interests in exhibits in support of their Motion for Preliminary Injunction. Standing under NEPA

---

<sup>3/</sup> Interior distorts this position by arguing that Plaintiffs seek to vindicate Congress' interest in not being prejudiced by the illegal land exchange negotiations. This is not the case any more than a litigant is interested in preserving the Judge or the Jury's right not to be influenced by prejudicial factors. The interest is in the opportunity for the litigant's position to be considered free from any unlawful prejudicial factors. Nor do Plaintiffs seek to prevent either the Native Corporations or Interior from influencing Congress in a lawful fashion, for example in testimony before the relevant Congressional committees.

requires the establishment of a "geographical nexus" to the area in question, e.g. by showing that members use and enjoy the area for recreational, aesthetic, commercial or other factors. Plaintiffs' Exhibit 23, attached hereto, is a series of affidavits proving that members of the Plaintiff organizations have used, and will continue to use the coastal plain for recreational and in some cases commercial purposes, that all had comments submitted on their behalf by the plaintiff organizations, see Pl. Exh. 21, and that some filed personal comments.<sup>4/</sup>

Plaintiffs also demonstrated how the decisionmaking process in question affects their interests. Plaintiffs submitted affidavits demonstrating that the Defendants and the Defendant-Intervenor themselves have cited publicly the role of the proposed land exchanges in influencing Congress' decision. Pl. Exhs. 4, 10, 11, 12, 13, 14, 15, 22. Again, Plaintiffs need not show that Congress will be influenced, just that they may be influenced.

Finally, NLG argues that the First Amendment affects Plaintiffs' standing. NLG Response at 10-11. There is no

---

<sup>4/</sup> Interior claims these affidavits had to be filed with our initial motion. Defendants raised standing in opposition to the Motion for Preliminary Injunction, and affidavits submitted in Plaintiffs' Reply are completely appropriate. We did not "rely" on this point in our opening brief, in the context of Local Rule 5, since it arises only in the affirmative defense. Moreover, it is incredible that the Defendants challenge this aspect of standing (use of the region) when such use was found by this Court and the Ninth Circuit in Trustees for Alaska v. Watt and Trustees for Alaska v. Hodel, see Pl. Response at 3-4, and thus has a collateral estoppel effect here. Plaintiffs submitted affidavits to support their use of the area in Trustees for Alaska v. Hodel, Pl. Exh. 24, attached hereto, the truth of which were not contested by Interior. Finally, Interior can demonstrate no prejudice from the submission of affidavits now.

merit whatsoever to the First Amendment argument. See Part II.D infra. Plaintiffs do not seek to prevent NLG or the other Corporations from communicating with their government. Indeed, since these parties were not even named defendants, there was no attempt to enjoin them from anything. The intervenors' first amendment rights do not include the right to a government response, especially if that response violates statutory requirements. If Interior's actions are unlawful and affect Plaintiffs' rights, we have standing to vindicate those rights.

**B. This Case is Ripe for Judicial Review**

The Defendants' ripeness argument distills to the following: Plaintiffs will not actually be "harmed" by the Defendants' activities until the proposed land exchange agreements are finalized and adopted by Congress, and only then can Plaintiffs seek judicial review of the legality of the negotiations themselves.

The problem with the Defendants' analysis is that, as in Trustees for Alaska v. Hodel, by the time the defendants would allow us into court, the possibility of meaningful judicial relief would be almost nonexistent. 806 F.2d 1378 (9th Cir. 1986). Moreover, Plaintiffs argue that the land exchange negotiations themselves are illegal, and not that the product of the negotiations will result in an irrational agency decision on the merits. Proceeding with the negotiations will put the Court in no better position to decide these issues. In short, all of the basic criteria for ripeness are present. The issues are fit for judicial resolution; and substantial harm to Plaintiffs' ability to obtain relief will result from the deferral of judicial review until after the harm has already

occurred, i.e. until after Congress' decisionmaking process has already been tainted by the commitment of federal resources to the land exchange process. Abbott Laboratories v. Gardner, 387 U.S. 136, 148-49 (1966); see Pl. Response at 16-26.

The easiest way to demonstrate that the issues raised in this case are ripe is to compare them with issues that would not be ripe. For example, Plaintiffs question whether the proposed land exchange would meet the standards in section 1302(h) of ANILCA, and whether Interior is properly accounting for section 22(g) of ANCSA, which was the primary basis for this Court's decision striking the St. Matthews Island land exchange on the merits in National Audubon Societv v. Hodel, 606 F. Supp. 825 (D. Ak. 1984). Similarly, we doubt whether the valuation process employed by Mr. Horn ensures that the public will receive a good bargain in these exchanges. Pl. Exh.5, Attachment 1. The Defendants would be correct in arguing that such issues are not ripe until the agency makes its final decision. The Court cannot properly review such matters until a final agency record has been built, and the agency may change its mind on how to apply these valuation factors before the agency action is final. This is clearly distinguishable, however, from the question of whether the agency has authority to proceed with the negotiations at all. The agency decided that it has such authority, and that the ongoing process does not violate NEPA or the other cited statutes. Plaintiffs disagree. These issues are ripe for judicial review.

NLG contends that the lack of a "final agency action" under the Administrative Procedure Act, 5 U.S.C. 704, precludes judicial

review of this action.<sup>5/</sup> Review is available under the APA regardless of the lack of a "final" land exchange agreement. Section 702 of the APA (the APA) establishes the general rule that persons adversely affected or aggrieved by agency action are entitled to judicial review. That section of the APA also provides a waiver of sovereign immunity for suits brought against federal agencies under the APA. See Rowe v. U.S., 633 F.2d 799 (9th Cir. 1980) cert. denied 451 U.S. 970.

This general presumption of reviewability under the APA, see Sierra Ass'n. for Environment v. F.E.R.C., 791 F.2d 1403 (9th Cir. 1986), is subject only to narrow exceptions. Section 701 states that the judicial review provisions of the APA apply except to the extent that other statutes specifically preclude judicial review or where an agency's action is committed to discretion by law. The Defendants do not argue that judicial review is statutorily precluded, and Plaintiffs disposed of the "committed to agency

---

<sup>5/</sup> This argument ignores the fact that the Complaint pleads a number of grounds for relief in addition to the APA. For example, relief is sought under the Declaratory Judgment Act. Such relief is appropriate where "there is a substantial legal controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." Lake Carriers Assn. v. MacMullan, 92 S.Ct 1749, 1755 (1972), quoting Maryland Casualty Co. v. Pacific Coal & Oil Co., 61 S.Ct 510, 512 (1941). Here, Plaintiffs and Defendants have a concrete legal disagreement about whether NEPA, ANILCA, ANCSA, and the Wilderness Act prohibit the negotiations. Since the harm sought to be redressed will already have occurred if we wait for Congress to reach a final decision on the coastal plain issue, there is sufficient immediacy to warrant relief now. Similarly, relief is sought under the All Writs Act, 28 U.S.C. 1651(a), which allows this Court to preserve the status quo pending review of the legality of agency action. Federal Trade Commission v. Dean Foods Co., 384 U.S. 597, 603-04 (1966).

discretion." Pl. Response Brief, at 27-32.

A second limited exception is provided in section 704 of the APA. 5 U.S.C. 704. NLG Response at 7, 28-29. NLG asserts that this section limits APA review to "final agency action." On its face, however, section 704 provides a cause of action for "agency action made reviewable by statute and final agency action for which there is no other adequate remedy . . ." (emphasis added). In this light, section 704 creates an opportunity for judicial review of final agency action that is otherwise nonreviewable in addition to the general provision for review of agency action "made reviewable by statute". FTC v. Standard Oil Co. of California, 449 U.S. 232, 238 (1980) (judicial review available only upon final agency action or where that action is directly reviewable by statute). The Supreme Court has ruled definitively that a cause of action exists to enforce the procedural obligations of NEPA. Aberdeen & Rockfish v. SCRAP, 422 U.S. 289, 319 (1975). Thus, the finality clause does not even come into play. Plaintiffs also seek statutory review under ANILCA, ANCSA, and the Wilderness Act.

Another exception to the finality requirement exists when an agency has taken action which is taken in excess of its statutory authority or delegated powers. See United States v. Feaster, 410 F.2d 1354, 1366-67, cert. denied 396 U.S. 962 (1969). "This Court cannot infer lightly that Congress does not intend judicial protection of rights it confers against agency action taken in excess of delegated powers." Feaster, supra, at 1367, citing Leedom v. Kyne, 358 U.S. 184 (1958). The Ninth Circuit adopted

the Feaster test for the reviewability of non-final agency action to decide whether an agency has violated a specific statutory provision or was acting in excess of its delegated powers. See Hunter v. National Mediation Board, 754 F.2d 1496, 1498 (9th Cir. 1985). See also Gellis v. Casey, 338 F. Supp. 651 (S.D.N.Y. 1972, a court may correct a preliminary agency decision when the agency has plainly exceeded its statutory authority). This is precisely what the Plaintiffs are claiming here.

Section 706 of the APA reaffirms the availability of judicial review under these circumstances: "The reviewing court shall hold unlawful and set aside agency action . . . found to be -- in excess of statutory jurisdiction, authority, or limitations. . . . [or] without observance of procedures required by law." 5 U.S.C. 706(2)(B)&(C). Plaintiffs allege that Interior has acted in violation of procedures required by statute and regulation. Plaintiffs also allege that the agency, in pursuing a land exchange agreement when Congress specifically removed such action from Interior's discretion, has acted beyond the scope of its delegated powers. These issues are all reviewable under the APA.

NLG's characterization of FTC v. Standard Oil Co. of California, 449 U.S. 232, 242 (1980) is completely inaccurate. In Standard Oil, the FTC issued a complain' stating that the defendant "may be" violating applicable laws which the FTC had been given authority to enforce. The defendant sought judicial review of this preliminary complaint. The court held that review of the agency decision to "institute the proceedings," an enforcement action clearly within the agency's statutory authority, would

hinder the agency's ability to pursue its delegated authority. The defendant did not even contend (as Plaintiffs do here) that the agency action itself had any legal or practical effect. See Standard Oil, supra at 242. It was also clear (unlike the present case) that the agency was acting well within its statutory authority. Thus, the court was reluctant to interfere with the proper functioning of the agency. Id.

NLG also misconstrues National Forest Preservation Group v. Butz, 485 F.2d 408, 411 (9th Cir. 1973) and Lewis v. Hickel, 427 F.2d 673, 677 (9th Cir. 1970) cert. denied, 400 U.S. 992 (1971) to mean that "the basic decision whether or not to enter into an exchange" is unreviewable. See NLG Response at 29. As explained in our Response Brief at 31, however, Butz held that while a pure policy decision may be unreviewable, specific legal questions regarding whether the agency acted within its statutory or regulatory limits was subject to judicial review.<sup>6/</sup> Lewis v. Hickel holds only that the determination of whether a land exchange would be in the public interest absent any discernable statutory standards was a decision committed to agency discretion. 427 F.2d at 677. By contrast, in National Audubon Society v. Hodel, where the land exchange was subject to specific statutory criteria under section 1302 of ANILCA, Judge Fitzgerald engaged in an extensive analysis of whether the agency met this test. 606

---

<sup>6/</sup> The basic policy decision may have been within the agency's discretion in Butz. But sections 1002 - 1004 of ANILCA divest Interior of such discretion in light of Congress' clear intention to reserve the decision regarding the fate of the coastal plain to itself. Pl. P.I. Brief, at 32-39.

F. Supp. 825 (1984).

C. This Action Does Not Involve a "Political Question"

Defendants assert that judicial review is precluded by the so-called "political question" doctrine. However, the Defendants use the word "political" in its colloquial rather than its precise legal sense. As the Supreme Court said in the leading modern case on this issue:

The doctrine of which we treat is one of "political questions," not of "political cases." The courts cannot reject as "no lawsuit" a bona fide controversy as to whether some action denominated "political" exceeds constitutional authority.

Baker v. Carr, 82 S.Ct. 691, 710 (1962).<sup>7/</sup> Thus, the mere fact that the case involves a "political" subject does not mean that judicial review is precluded, unless the precise standards for the limited exception to judicial authority are met. The Defendants do not even cite, much less analyze these standards.

The essential questions presented in this case are legal, not political. As such, these issues are fit for judicial review. Northrop Corp. v. McDonnell Douglas Corp., 705 F.2d 1030 (9th Cir.), cert. den. 104 S.Ct. 156 (1983). It is the basic role of the courts, of course, to pass on the legality of actions taken by the other two branches of government. Marbury v. Madison, 1 Cranch 137, 2 L.Ed. 60 (1803).

---

<sup>7/</sup> The same is necessarily true for nonconstitutional issues such as the interpretation of treaties, Trans World Airlines v. Franklin Mint Corp., 104 S.Ct. 1776, 1783-84 n. 25, reh. den. 104 S.Ct. 2691 (1984), statutes, Quinn v. Robinson, 783 F.2d 776 (9th Cir. 1986), or actions at law, Oneida County v. Oneida Indian Nation, 105 S.Ct. 1245, reh. den. 105 S.Ct. 2173 (1985).