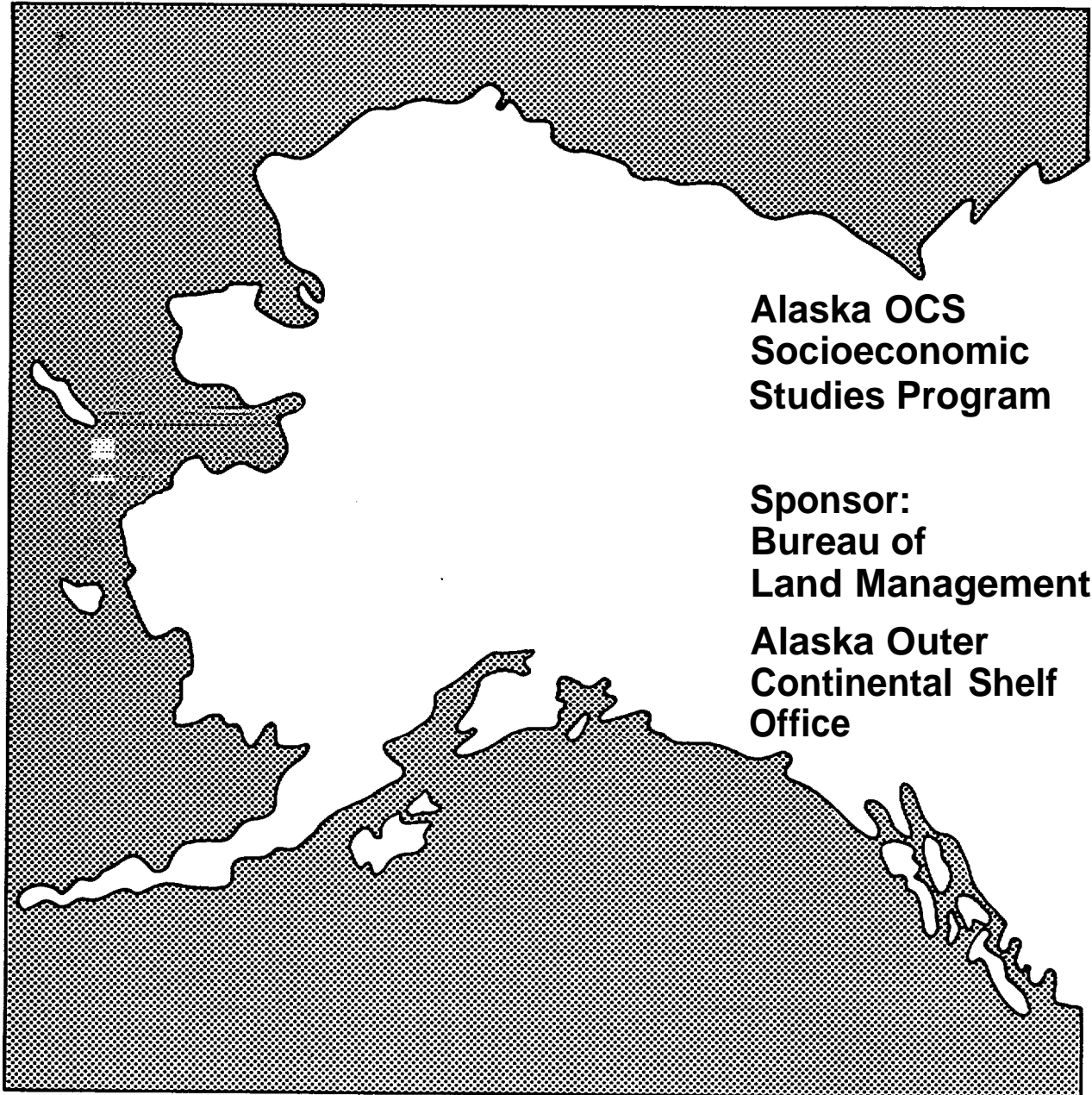


Technical Report
Number 16



**Alaska OCS
Socioeconomic
Studies Program**

**Sponsor:
Bureau of
Land Management**

**Alaska Outer
Continental Shelf
Office**

Beaufort Sea Region
Governance Study

The United States Department of the Interior was designated by the Outer Continental Shelf (OCS) Lands Act of 1953 to carry out the majority of the Act's provisions for administering the mineral leasing and development of offshore areas of the United States under federal jurisdiction. Within the Department, the Bureau of Land Management (BLM) has the responsibility to meet requirements of the National Environmental Policy Act of 1969 (NEPA) as well as other legislation and regulations dealing with the effects of offshore development. In Alaska, unique cultural differences and climatic conditions create a need for developing additional socioeconomic and environmental information to improve OCS decision making at all governmental levels. In fulfillment of its federal responsibilities and with an awareness of these additional information needs, the BLM has initiated several investigative programs, one of which is the Alaska OCS Socioeconomic Studies Program.

The Alaska OCS Socioeconomic Studies Program is a multi-year research effort which attempts to predict and evaluate the effects of Alaska OCS Petroleum Development upon the physical, social, and economic environments within the state. The analysis addresses the differing effects among various geographic units: the State of Alaska as a whole, the several regions within which oil and gas development is likely to take place, and within these regions, the various communities.

The overall research method is multidisciplinary in nature and is based on the preparation of three research components. In the first research component, the internal nature, structure, and essential processes of these various geographic units and interactions among them are documented. In the second research component, alternative sets of assumptions regarding the location, nature, and timing of future OCS petroleum development events and related activities are prepared. In the third research component, future oil and gas development events are translated into quantities and forces acting on the various geographic units. The predicted consequences of these events are evaluated in relation to present goals, values, and expectations.

In general, program products are sequentially arranged in accordance with BLM's proposed OCS lease sale schedule, so that information is timely to decision making. In addition to making reports available through the National Technical Information Service, the BLM is providing an information service through the Alaska OCS Office. Inquiries for information should be directed to: Program Coordinator (COAR), Socioeconomic Studies Program, Alaska OCS Office, P. O. Box 1159, Anchorage, Alaska 99510.

Technical Report No. 16

Contract No. AA550-CT6-61

Alaska OCS Socioeconomic Studies Program

GOVERNANCE IN THE BEAUFORT SEA REGION:
PETROLEUM DEVELOPMENT AND THE NORTH SLOPE BOROUGH

Prepared for

Bureau of Land Management

Alaska Outer Continental Shelf Office

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Alaska OCS Socioeconomic Studies Program
Governance in the Beaufort Sea Region:
Petroleum Development and the North Slope Borough

Prepared By
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Abstract

This study examines relationships between petroleum development and the evolution of local government institutions on Alaska's North Slope in the decade since the oil and gas discoveries at Prudhoe Bay in 1968. It focuses on the North Slope Borough, and it attempts to explain the formation and major operations of the borough essentially as responses to the problems and opportunities that arctic oil and gas development present to the Native people of the region.

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North Slope Borough Mayor Eben Hopson assured the cooperation of the borough administration, staff, and consultants and thus made it possible for us to conduct this study. Borough assembly members **also** were helpful and generous with their time. Many federal and state officials with North Slope-related responsibilities provided essential information.

Professor Gerald **McBeath** of the Political Science Department at the University of Alaska, Fairbanks, developed much of the data base for this report. His insights also contributed to our interpretations of North Slope **political** developments.

X



I. INTRODUCTION

Local government is, after all, the political foundation of America, and is a natural result of frontier resource development. Local government in rural Alaska will be the one sure lasting benefit of our national exploitation of **Alaska's** non-renewable resources. The organization of the North Slope **Borough** was a natural democratic development resulting from the **exploitation** of Prudhoe Bay.

-- North Slope Borough Mayor Eben **Hopson**¹

Objectives

This study examines relationships between petroleum development and the evolution of **local** government institutions on Alaska's North Slope in the decade since the oil and gas discoveries at Prudhoe Bay in **1968**. It focuses on the North Slope Borough, and it attempts to explain the formation and operations of the borough as responses to the problems and opportunities that arctic oil and gas development present to the Native people of the region.

Since the borough is essentially a product of petroleum development, and particularly of developments at Prudhoe Bay, and because North Slope Borough government affairs center largely on petroleum development, taxation, and related issues, there are no clear **limits** on the potential scope of the study effort. Almost everything significant about the borough as a political and governmental institution can be traced directly or indirectly to past, present, and planned oil and gas development in the region.

Accordingly, the North Slope Borough's responses to prospective Beaufort Sea-Outer Continental Shelf (OCS) exploration and development can usefully be viewed as but one element of a broader pattern of borough responses to resource development in the arctic. And, from the viewpoint of North Slope leaders, the federal Bureau of Land Management is only one of a similarly situated set of external institutions with which they must interact as they attempt to influence the course of development in their region. Tracing the outlines of this broader pattern of external forces and **inter-****nal** responses on the North Slope will thus provide essential perspective for understanding the borough's posture and reactions to the OCS program and anticipating its **likely** responses to **Beaufort OCS** activities in the future.

Examination of the North Slope experience--conceived as a limiting case of Native regional institutional responses to petroleum development in Alaska--should also provide a useful base and leads for studies of prospective institutional responses to OCS developments in other Alaska Native regions. While the North Slope pattern is in many ways unique to the region (the presence of **Prudhoe** Bay alone places substantial limits on generalization from the North Slope case), it can be assumed that Native leaders in other regions are likely to be drawn into comparable networks of relationships with external authorities and that they may often confront similar opportunities and threats. Perhaps the principal value of the North Slope analysis for studies of **OCS** development elsewhere in Alaska is that it magnifies basic issues and types of responses that are **likely** to occur **el**sewhere, albeit on a smaller scale and in

institutionalized forms that will vary with the distinguishing **socio-**cultural, political, and economic characteristics of a given region.

Our approach is thus to focus specifically on key issues of taxation, development, and environmental protection and on the interactions of the borough and external agencies concerning these issues. We also examine some institutional relationships within the region, paying particular attention to how the borough has affected governance in the villages and to how the borough and Arctic Slope Regional Corporation relate to each other. Finally, mindful that the borough has existed for only six rather crisis-ridden years, we attempt to reach some conclusions about the extent to which the North Slope Borough represents a successful case of Native **self-determination** or, in Mayor Hopson's words, a "natural democratic development."

Methods

Data collection was oriented to the selected issue-areas and institutional relationships **indicated** above. At the same time, we sought information about how North Slope Borough policy is made and who makes it. For these purposes, we relied heavily on North Slope Borough and state and federal agency files and on personal contacts with borough officials and consultants, regional corporation officials, village leaders, and federal and state officials with North Slope-related program responsibilities. In the extensive personal contacts, our discussions were both focused and open-ended, and they served the purposes of providing leads, verifying or elaborating on file materials and other documents, and often contributing new and in-depth information on a particular problem or issue.

We examined borough budget documents and financial reports, legal briefs and court judgments on major borough tax and land selection issues, periodical literature, previous studies and reports on borough issues, and several environmental assessments and impact statements. Special attention was paid to collecting and examining detailed materials on Outer Continental Shelf, National Petroleum Reserve, and North Slope haul road and utility corridor issues.

Information on North Slope villagers' attitudes toward the borough and their general assessments of its performance was contributed to this study through the Institute's National Science Foundation-supported Man in the Arctic Program (MAP). We incorporated several questions into the MAP survey of North Slope village households, which provided a valuable addition to the data base and made it possible to assess some of the major effects of borough government in the villages.

In connection with data collection work in Barrow, we had several opportunities to observe conferences, borough assembly meetings, and routine administrative operations of borough government. These observations were a minor but nonetheless very useful aspect of our research.

Several times during the course of planning and conducting the research, we met with colleagues engaged in related North Slope study projects, such as the MAP survey. Their questions, insights and knowledge were helpful in assessing and interpreting our data and in testing some of the key conclusions that evolved from our analysis.

Organization of Report

The structure of this report reflects the main contours of our analytical approach, which included making a series of successively more detailed explorations of the issues, events, and institutions pertinent to this study.

Chapter II is primarily an introduction to North Slope Borough government and a review of its origins. It briefly discusses the background of borough formation and then describes the structure and finances of the borough, emphasizing tax and revenue features and the capital improvements program in the villages.

Chapter III presents an extensive overview of regional institutions and issues. It examines extra-regional and **intra-regional** institutional relationships of the North Slope Borough and the **tax**, development, **environmental**, and related issues around which these relationships revolve.

Chapter IV looks at the internal policy process of the borough. It again focuses on the selected issues, examining their meanings, limits, and effects for North Slope Borough interests. This chapter also discusses the current status and some of the meanings of local self-determination on the North Slope.

Chapter V provides an in-depth examination of specific borough responses to major cases of petroleum development plans and activities. **It** covers borough involvement in haul road and utility corridor, National Petroleum

Reserve, and Beaufort Sea Leasing matters, and it describes some **additional** borough and village responses to other petroleum development plans and activities.

Chapter VI presents conclusions about the general character of the North Slope Borough, major policy issues and external relations, and political development within the region. It also draws some general implications for local government institutional change in other rural Alaska Native regions.

Endnotes

1. Testimony of Mayor Eben Hopson, North Slope Borough, before **the** House Finance Committee, Alaska State Legislature, on the Proposed Oil and Gas Tax Measures, April 14, 1977.



II. THE NORTH SLOPE BOROUGH

The North Slope Borough grew out of the 1968 **Prudhoe** Bay oil discovery and a series of events throughout the 1960s that convinced North Slope leaders of the need for a Native-controlled regional government in the arctic. These leaders saw regional government as a means of getting a share of the profits from the **Prudhoe** Bay oil field; with this source of revenue, the borough could act to control future resource development on the mineral-rich North Slope as well as provide for basic social and economic needs of the region's villages.

This chapter looks first at the origins of the North Slope Borough and then at the borough's structural and financial growth since it was incorporated in 1972.

Background

By the late 1960s, the momentum of the Native land claims movement and the stimulus of the oil and gas discoveries of Prudhoe Bay provided necessary preconditions for the incorporation of the North Slope Borough. The Arctic Slope Native Association (ASNA) was the organizational vehicle for pursuing both land claims and borough formation, and, by 1969, when ASNA began taking official steps toward incorporation of the North Slope, the borough idea had acquired a force of its own. By that time, too, the magnitude and implications of the Prudhoe Bay discoveries were sufficiently clear: the North Slope now had a tax base of large and growing proportions, even a small part of which could apparently support a very

ambitious borough development program. ASNA leaders, moreover, were repeatedly frustrated by what they perceived as overly cautious or otherwise objectionable positions taken on the claims issue by other regional associations and by the statewide Alaska Federation of Natives, which was dominated by regional groups other than their own. And it was in any case not at all clear that a satisfactory settlement of the claims would ultimately be won. Thus, on the North Slope, borough incorporation became a second instrument of great potential for asserting Native control over North Slope lands and resources and capturing some of the economic benefits of petroleum development, regardless of the final legislative outcome on land claims in Washington.¹

PRE-BOROUGH SETTING

Although four North Slope villages were incorporated municipalities under state law by 1966 when ASNA was organized, Barrow was the center of North Slope political leadership and activity. With such exceptions as the protest of Point Hope villagers against atomic testing by the Atomic Energy Commission in the early 1960s, there was little indication on the Slope--outside of the Barrow leaders' growing capacity and reputation for activism--to suggest that this region would succeed in organizing itself effectively to press its demands on powerful authorities and interests outside the region.

As was generally the case in Alaska's rural Native regions, North Slope villages were small, isolated, impoverished, and too remote to expect or receive public facilities and services at anything approaching standards

of even the smaller towns of Alaska's urbanized regions. All North Slope villages, including Barrow, depended on federal and state programs to meet their most basic **educational, health, public safety,** and other **service** needs.

Until the Prudhoe Bay discoveries in 1968, most economic activity on the North Slope after World War II was accounted for by sporadic military construction and **oil** and gas exploration activities. With no stable or adequate economic **base,** a scarcity of **jobs,** and limited government assistance, North Slope villagers particularly outside of Barrow were **highly** dependent on subsistence hunting and fishing.

LAND CLAIMS

The decade of the 1960s was not, however, a static period in rural Alaska. After statehood in 1959, and federal initiation of anti-poverty and related programs in the **mid-1960s,** federal and state agency activities accelerated on the North Slope and elsewhere. During this period, the most significant stimulus to the mobilization of North Slope leaders, mostly of Barrow, was state selection of federal lands granted under the Statehood Act and the leasing of these lands for **oil** exploration and development in the area near Prudhoe Bay. These selections and early leasing activities (before the big sale of 1969) were perceived by Native leaders as direct and extremely threatening encroachments on aboriginal land rights to which they might lose all claim by default unless they reacted as forcefully as possible. Another stimulus was federal and state fish and game enforcement programs, which were viewed as unjustified

encroachments on traditional subsistence hunting and fishing activities. But the threat to the lands was most critical, and Barrow leaders responded by forming the ASNA in early 1966, immediately filing a claim to all lands north of the Brooks Range.

Similar Native organizational and protest activities underway at the same time in other regions led to formation of the statewide Alaska Federation of Natives (AFN) in late 1966. Throughout the **pre-settlement** act period of AFN, the ASNA leaders were the most militant group in the federation: they consistently staked out and vigorously **promoted** extreme positions, always emphasized land over money, called for the largest amounts of land, twice withdrew from (and later rejoined) the statewide association in protest over **AFN** compromise positions, and **further** broke ranks by making independent proposals to Congress. In the end, ASNA was the only AFN group to dissent from the land claims act passed by Congress. Voting symbolically against the act at an **AFN celebration** meeting in December 1971, an ASNA leader told the **Anchorage** gathering: "We **Inupiat** Eskimos have never wanted money as such--we wanted land. You are getting paid faster because ASNA **said** 'no, no, no.' We did not see a single **regional** association **help** the ASNA."2

BOROUGH FORMATION

The sense of estrangement and combative style of the North Slope leaders carried over into their borough formation effort. In the land claims, two of the Natives' early "enemies" --the state, which had selected and leased oil lands, and the oil companies, which were developing them

regardless of Native protests--ultimately became allies of the Alaska Native **lobby** in Congress. If haltingly and late, the state administration and the oil companies realized that a claims settlement **would** be necessary to end the Alaska land freeze previously imposed by the Department of the Interior because of the Native claims. The settlement act was thus one of the steps necessary to open the way toward construction of a pipeline to move Prudhoe Bay oil across federal lands to a southern Alaska port. Borough incorporation on the North Slope brought the Natives of that region again into direct and continuing conflict with the state and the oil companies, a conflict highlighted by protracted litigation over the borough's tax authority.

The stakes at issue in the litigation are very high. The Arctic Slope Regional Corporation, established under the terms of the claims act, will eventually receive a total of about \$52 million as its share of the legislated cash settlement. The North Slope Borough, through its powers of taxation, is in a position to realize multiples of that amount from oil company and related properties in the arctic. Accordingly, there was opposition to borough incorporation from the very start primarily because the small population of this oil-rich region, through incorporation of a borough encompassing **the whole** North Slope including Prudhoe Bay, would gain access to nearly the largest tax base in the entire state.

It is not clear exactly when ASNA leaders and their consultants and lawyers first seriously discussed incorporation of the North Slope. It is clear, however, that no action was initiated until after the Prudhoe Bay

discoveries. Thus, in 1969, North Slope leaders began the formal efforts that culminated in the borough's incorporation in 1972. On the way they encountered, first, the reluctance of the state administration to accept and act upon their incorporation petition and, second, oil company suits against the borough's tax authority. One of the state's primary interests, which has persisted through changes of administration, essentially has been to restrict the borough's access to the **Prudhoe** Bay property tax base, reserving it primarily as a statewide rather than as a local tax resource. The oil companies' related interest essentially has been to minimize and stabilize their current and prospective tax liabilities.

Borough Structure and Finances

With fewer than 4,000 permanent residents in eight scattered Eskimo villages,³ the North Slope Borough in fiscal 1977 had revenues of \$30 million.⁴ And the borough, covering 228,800 square kilometers (88,000 square miles) north of the Brooks Range, was in the third year of a \$150 million capital improvements program to bring new schools, houses, health clinics, roads, airports, and water and sewer systems to some of Alaska's most remote communities.

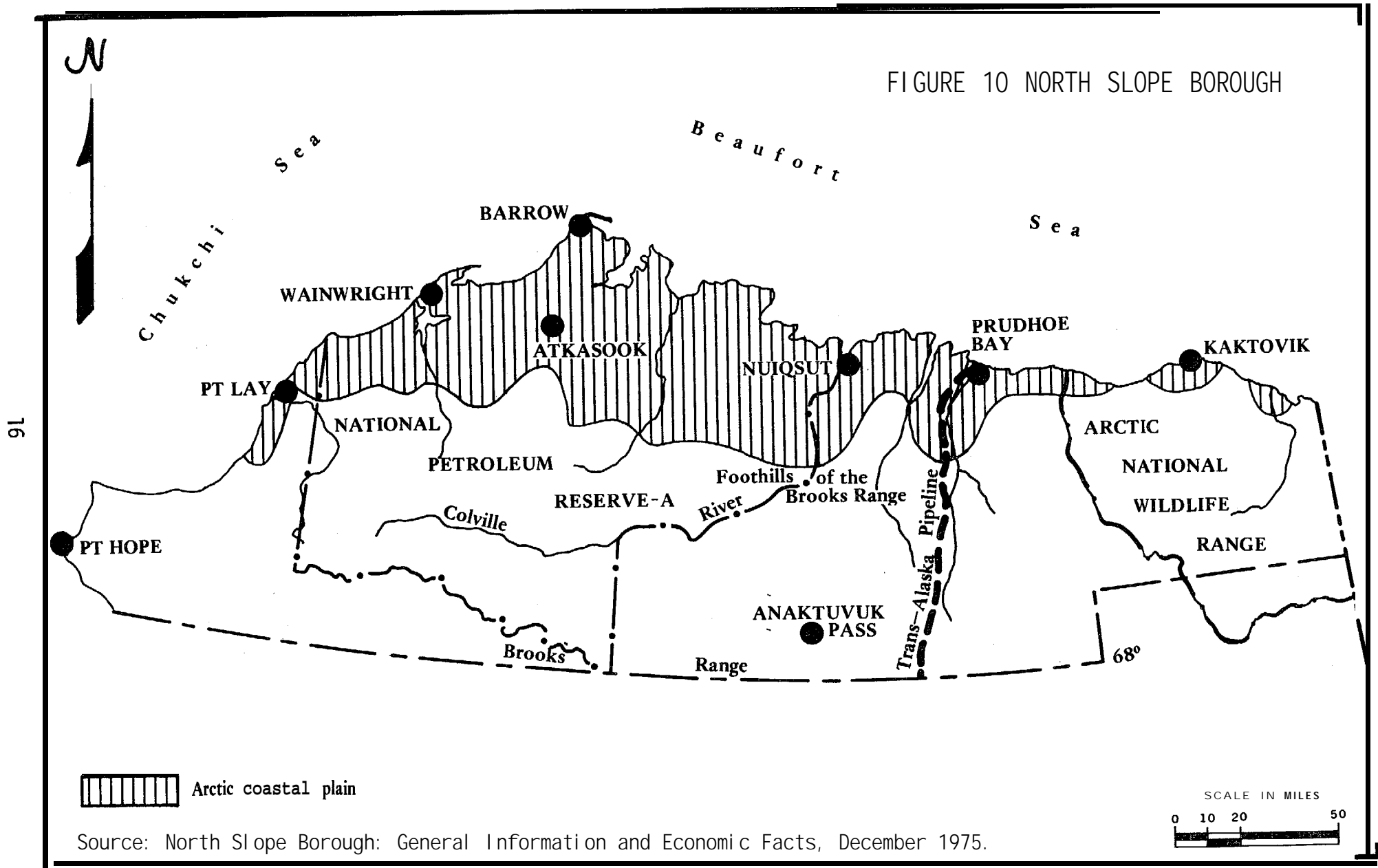
Most of the operating money for the borough that was formed in 1972 comes from property taxes levied on the **Prudhoe** Bay complex and **trans-Alaska** pipeline facilities within the borough. This oil development property in the borough was assessed at more than \$3 billion in 1977, and in boroughs and cities statewide, the North Slope Borough stood second in **assessed** value of taxable property only to the Municipality of Anchorage,

with a population of 200,000 and taxable property assessed at about \$4.5 billion.⁵ In 1973, real, personal, and business property in the North Slope's five oldest villages was assessed at less than \$4 million.⁶

The vast municipality, where hundreds of miles separate communities, is made up of the villages of Barrow, **Wainwright**, Point Hope, **Kaktovik**, Anaktuvuk Pass, **Nuiqsut**, Atkasook, and Point Lay; the population of these communities is about 4,000 and is predominantly Eskimo, with some white residents who mainly are teachers or government workers. (See map on next page.) Nearly **two-thirds** of the village residents live **in** Barrow, seat of borough government and the ninth largest city in the state. Also within the borough are the **Prudhoe Bay oil** complex, pump stations and maintenance camps for the **trans-Alaska** pipeline, seven stations for the Distance Early Warning system, and a military base at Cape **Lisburne**. "In July 1977, about 5,000 temporary borough **residents**⁷ lived in these areas, bringing the borough population to approximately 9,000.

The federal government owns about two-thirds of the land on the North Slope, including the 93,437 square kilometer (23 million acre) National Petroleum Reserve in the heart of the borough and the 35,562 square kilometer (9 million acre) Arctic National Wildlife Range that falls almost entirely within the borough. Property of the federal government cannot be taxed, but the borough takes the position that property of private firms now under contract to the U.S. government to carry out oil exploration in the National Petroleum Reserve is subject to the borough's property and sales and use taxes, just as privately-owned

FIGURE 10 NORTH SLOPE BOROUGH



development property on state-owned lands at **Prudhoe** Bay is taxed by the borough. Borough officials feel any future private development in the Arctic National Wildlife Range would be subject to the same **taxation.**⁸ State law limits the borough's taxing powers on private property on both state and federal lands, and as discussed in detail in Chapter III, there are continuing legal disputes over the extent and application of borough tax authority.

The Arctic Slope Regional Corporation and the eight village corporations on the North Slope have already received title to about 16,250 square kilometers (4 million acres) of the total 22,750 square kilometers (5.6 million acres) of land they will receive under terms of the Alaska Native Claims Settlement Act; this land will be subject to property tax after 1991. The state controls about 16,250 square kilometers (4 million acres) on the Slope, largely in the Prudhoe Bay **area.**⁹

Since it was incorporated in 1972, the sparsely-populated North Slope Borough has fought a series of legal battles with **Prudhoe** Bay oil companies and the state government to determine the borough's authority to tax oil and gas developments in Alaska's arctic.¹⁰ In February 1978--nearly six years after the borough was incorporated--an oil company executive noted in a letter to borough mayor Eben Hopson that "it is unfortunate there is a continuing series of disputes and litigation involving the tax relationship between the borough and the oil and gas **industry.**"¹¹

The Prudhoe Bay facilities and about 272 kilometers (170 miles) of the **trans-Alaska** pipeline and accompanying haul road are the only major **petroleum** developments in the borough now, but a federal-state nearshore oil lease sale in the Beaufort Sea off the borough's coast is scheduled for December 1979. And exploration and study programs under the jurisdiction of the federal Department of the Interior are now underway in the National Petroleum Reserve in Alaska to determine if the reserve does in fact have significant deposits of gas and oil, and if so, how those resources should be developed.

BOROUGH STRUCTURE

Powers

When the borough came into **being** July 1, 1972, under state law the new regional government assumed responsibility for education, taxation and assessment, and planning and zoning within its boundaries. Headed by a mayor and a seven-member assembly elected areawide for three-year terms, the borough adopted a home rule charter **April 30, 1974**. The charter authorizes the borough to assume any powers not prohibited it by state law; the same day borough voters approved the charter, the eight villages voted to transfer responsibility for a wide range of facilities and services to the regional government. The individual communities kept responsibility for providing police and fire protection and recreation, but voted to also transfer police power to the borough in **July 1976**.¹²

In its early days, the borough established departments of administration and finance and of planning under the direction of the assembly and the mayor. Later, when more powers were transferred to the borough by the individual villages, the regional government set up departments of health, public works, public safety, and conservation and environmental security. By state law, the borough school district is under the direct supervision of a seven-member elected school board;¹³ the assembly and the mayor review the annual education budget.

Employment

The borough's first budget document outlined the borough's hiring policy: ". . . all the major policy-making positions, all specialized fields of local government, will be filled by residents of the borough." Consultants drawn from outside the borough would be responsible for "training our employees and attacking our initial workload."¹⁴ As a further aid to local employment, when the borough capital improvements program got underway in 1975, many of the construction workers were hired as borough employees.¹⁵

In June 1974 there were 90 general government employees of the borough; by June 1977 this number had risen to 180¹⁶ and did not include school district employees and construction workers also on the borough payroll. A consulting firm estimated in 1977 there were more than 400 persons working for the borough in Barrow alone, about half of these school district employees.¹⁷

Education

Taking over schools formerly operated on the North Slope by the federal Bureau of Indian Affairs and the State of Alaska, the borough in 1974 employed 14 teachers and 3 administrative workers in 6 schools attended by about 400 students.

By June 1977 the borough employed 98 teachers and 20 administrative workers in 17 elementary and high schools it had taken over or constructed. The borough school district also employed 250 teachers' aides, cooks, and maintenance men in the district's 8 villages during the 1976-77 school year. Of the total of about 365 employees of the school district, approximately 190 worked in Barrow. More than 80 percent of the teachers and 95 percent of the administrative workers that year were white; Natives held about 61 percent of the total school district jobs.¹⁸

REVENUES

In its first year of operation, the North Slope Borough had revenues of \$550,000, more than \$400,000 of which stemmed from property taxes.¹⁹ The oil industry at Prudhoe Bay paid more than 98 percent of these property taxes.²⁰ Borough sales taxes that year netted \$37,000, and the state government supplied the remainder of that year's revenues. The following year--fiscal 1974--total borough revenues had jumped to more than \$6 million, about 75 percent of which came from property and sales taxes, paid almost entirely by oil companies. That year the state government contributed more than \$1 million, largely for education in the borough. The borough received about \$30,000 from the federal government in fiscal 1974.

By fiscal 1976, the borough collected more than \$16 million in revenues, with Prudhoe Bay oil companies paying about \$7 million in property taxes; under an agreement between the borough and the oil companies, there was no sales tax that year. The state and federal governments supplied \$6.5 million to the borough in fiscal 1976--\$2 million in state funds were general government revenues, and \$3 million state and \$1 million federal funds were school revenues. (See Table 1.)

TABLE 1. NORTH SLOPE BOROUGH REVENUES BY SOURCE, 1973-1977
(thousands of dollars)

| Fiscal Year Ended 6/30 | Taxes | | State | | Federal* | Other | Total |
|---------------------------|----------|-------|-----------|---------|----------|-------|--------|
| | Property | Sales | Education | General | | | |
| 1973 | \$ 418 | \$ 37 | \$ | \$ 95 | \$ | \$ 1 | \$ 528 |
| 1974 | 3,548 | 1,040 | 873 | 503 | 31 | 168 | 6,163 |
| 1975 | 5,501 | 1,181 | 1,819 | 521 | 1,714 | 975 | 11,711 |
| 1976 | 7,387 | --- | 3,359 | 2,208 | 1,029 | 2,651 | 16,634 |
| 1977 | 19,179 | 394 | 3,846 | 2,980 | 2,312 | 1,288 | 29,999 |

*Most federal revenues received during this period were for education.

SOURCE: North Slope Borough annual financial reports, fiscal years 1973-1977.

In fiscal 1977 the borough took in nearly \$30 million. The oil producers at Prudhoe Bay paid more than 98 percent of the \$19 million stemming from property taxes. The state government supplied the borough with nearly \$7 million that year, about \$4 million of which was for support of education in the borough. Federal aid amounted to more than \$2 million in fiscal 1977.

Within five years, general borough revenues increased 6,000 percent; revenue from property taxes rose from one-half million dollars to \$19 million during that same period. And revenue from state sources jumped from less than \$100,000 in the first year the borough was in operation to more than \$6 million in 1977. In a 1976 statement, Mayor Eben Hopson noted, "The development of the North Slope Borough was a direct consequence of the development of Prudhoe Bay . . . half [of the annual operating budget] comes from our own **Prudhoe** Bay tax levies and the other half comes from state revenue sharing programs. Of course, most of this state support comes from Prudhoe Bay also. We receive very **little** in federal funds . . . "21

CAPITAL IMPROVEMENTS

In 1973 a borough-funded survey of 356 households in the region's eight Eskimo villages found "None of the privately-owned housing in the borough is served by conventionally piped water and sewer systems" and that 14 percent of the surveyed households had no electricity. The study described Barrow as the largest community in the state with no reliable source of drinking water, no piped water and **sewer** systems and no high school. More than 20 percent of families surveyed lived in houses that lacked insulation in either the ceiling, walls or floor. Researchers placed Barrow unemployment that year at about 11 percent and estimated that unemployment in the smaller villages sometimes reached 90 percent.²²

In 1974 the borough began drawing up plans for a five-year, \$61 million capital improvements program to "provide for our people what has already been provided for residents of Fairbanks, Anchorage . . . schools,

houses, sanitary facilities, water, police, fire [protection], transportation . . . "2³The following year the borough issued \$18 million in general obligation bonds, and work on projects in the scattered villages began, with early emphasis on school construction. By June 1976, estimated cost of the program had risen to **\$115** million for 128 planned projects, and the borough had issued \$26 million in general obligation bonds. The borough also hoped to get state and federal funds to help finance the program.

In late **1976** and early 1977 work on all but nineteen of the borough's capital improvements projects was halted when Prudhoe Bay oil producers went to court to challenge portions of the **borough's** 1976 property tax levy. The borough maintained that it could levy taxes without limit to raise revenues to meet debt service payments on its general obligation bonds and had levied taxes in excess of rates otherwise allowed under state law. A Superior Court judge ruled against the North Slope Borough, and the case is now on appeal in the state Supreme Court. But in 1977, the state **legislature** took action that helped strengthen the borough's position on **raising** revenues for debt service payment, and in the **early** summer the borough sold an additional \$51 million in general obligation bonds, 24 Work on many capital improvements projects resumed. The regional government estimated that during the construction slowdown about 240 workers across the region were laid off, and an additional 160 workers that would have been hired were not.

By the end of June 1977, the borough had sold \$84 million of general obligation bonds to finance the five-year capital improvements program now projected to cost \$150 million.²⁵ About \$90 million in capital improvements projects are scheduled for construction in Barrow; by June 1977 about \$11 million of these funds had been spent in the North Slope's largest village, mainly for schools and public housing. Also slated for Barrow are road improvement projects, construction of sanitary systems, a health center, a public safety building, an airport terminal, and improved utility systems. (See Table 2.)

For the villages outside Barrow, the capital improvements plan calls for new or improved schools, public housing, community roads, airports, public safety buildings, sewage disposal equipment and sewage lagoons, central sources of water and water distribution equipment, and utility systems. Anaktuvuk Pass, in the Brooks Range about 400 kilometers (250 miles) southeast of Barrow, is scheduled to receive more than \$8 million in capital improvements; by June 1977, almost \$4 million of these funds had been spent for a school in the second-class city of about 150 persons.

Point Hope, on the Chukchi Sea, more than 570 kilometers (350 miles) southwest of Barrow, will receive about \$14 million in capital improvements. The second-class city with a population of about 400 recently moved from its traditional site at the tip of a piece of land extending into the Chukchi Sea to a nearby location more protected from the forces of the sea. More than \$5 million of appropriated money had been spent in construction of capital improvements at the new site by June 1977; most of this money was used for schools and public housing.

TABLE 2. NORTH SLOPE BOROUGH - CAPITAL IMPROVEMENTS PROGRAM
 CUMULATIVE APPROPRIATIONS AND EXPENDITURES
 BY VILLAGE, 1975-1977

| | Funds Appropriated* | | Expenditures as of June 1977 | |
|-------------------|-------------------------------|-------------------|---------------------------------|-------------------|
| | <u>Amount</u> (thousands) | <u>Percentage</u> | <u>Amount</u> (thousands) | <u>Percentage</u> |
| Barrow | \$91,100 | 60% | \$11,500 | 41% |
| Wainwright | 12,100 | 7 | 2,900 | 10 |
| Point Hope | 13,600 | 9 | 5,200 | 17 |
| Kaktovik | 3,300 | 2 | 700 | 3 |
| Anaktuvuk Pass | 8,900 | 6 | 4,000 | 13 |
| Nuiqsut | 6,800 | 5 | 2,400 | 7 |
| Atkasook | 9,100 | 6 | 2,700 | 9 |
| Point Lay | 7,000 | 5 | 30 | |
| TOTAL | \$151,900 | 100% | \$29,430 | 100% |

*"Appropriated" means the borough assembly has approved the expenditure of these amounts for capital improvement projects; it does not necessarily mean the total funds are on hand when the projects are approved. The borough hopes to also obtain federal and state funds to help finance the capital improvements program.

SOURCE: North Slope Borough annual financial report, July 1, 1976-June 30, 1977.

Kaktovik, on the Beaufort Sea about 498 kilometers (310 miles) east of Barrow, is a second-class city where the borough plans to spend more than \$3 million for capital improvements; less than \$1 million of these funds--largely for roads and public housing--had been spent by June 1977. About 130 people live in Kaktovik.

About 90 kilometers (60 miles) southwest of Barrow on the **Meade** River, Atkasook is one of three North Slope villages abandoned in earlier years but resettled in 1973 under the sponsorship of the Arctic Slope Regional Corporation. An unincorporated community of about 85, Atkasook is scheduled to receive \$9 million in capital improvements; by June 1977 nearly \$3 million of this money had been spent, **largely** for a school, public housing, and roads. Point Lay, a second village resettled in 1973, is on the **Chukchi** Sea about 480 kilometers (300 miles) southwest of Barrow. Residents are planning to move from the village's current location on an island to a site on the mainland; nearly \$7 million in borough capital improvements will be built at the new site over the next five years. Point Lay is unincorporated and has a population of about 50.

Nuiqsut, the third village resettled in 1973, sits 244 kilometers (150 miles) southeast of Barrow and is a second-class city with about 150 residents. Nearly \$7 million in capital improvements are **slated** for this community, with more than \$2 million spent by June 1977, mostly for roads, public housing, and schools.

Another second-class city, **Wainwright**, lies on the **Chukchi** Sea about 134 kilometers (85 miles) southwest of Barrow. The borough plans to spend more than **\$12** million for capital improvements in this village of about 400; by June 1977 nearly \$3 million of these funds had been spent, largely for construction of **school**'s and public housing.

GOALS

In a 1977 statement to a congressional committee, borough mayor Eben Hopson outlined what the state's largest regional government hopes to accomplish with petroleum revenues: ". . . Local **self-determination** and an improved level of living for the indigenous peoples of the North Slope." In the same statement, Hopson noted that "Threats to the **continuation** of mineral resource development are threats to the social and economic advancement of the people of the North Slope Borough." But he added, "The basis of the Eskimo culture of the North Slope Borough is vested in subsistence pursuits . . . the absence **of** subsistence **would** undoubtedly mean the destruction of the culture," and that petroleum and other mineral developments can threaten habitats of fish and **wildlife**.²⁶

Recognizing that the borough could not exist without funds from petroleum development, but that such development can bring unwanted changes to the traditional hunting and fishing territory of the arctic Eskimo, borough leaders are attempting to use revenues from the Prudhoe Bay oil field to establish a regional government that will have a strong say in how and when other areas of the North **Slope** are developed.



Endnotes

1. The land claims and borough formation movements on the North Slope are discussed in greater detail in **Gerald A. McBeath** and Thomas A. **Morehouse**, "Alaska Native Self-Government," a paper prepared for the Canadian Department of Indian and Northern Affairs, to be published, Summer 1978.
2. Anchorage Daily News, December 19, 1971.
3. Alaska Consultants 1978, Baseline Studies of the Manmade Environment: The Beaufort Sea Region, prepared for Peat, Marwick, Mitchell and Co., (draft).
4. North Slope Borough, Annual Financial Report, fiscal year July 1, 1976-June 30, 1977.
5. State of Alaska, Department of Community and Regional Affairs, "Alaska Taxable 1977," p. 34.
6. Dupere and Associates 1973, North Slope Borough Reconnaissance Study: An Inventory of the Borough and Its Communities, p. 52.
7. Alaska Consultants 1978, Baseline Studies of the Manmade Environment.
8. Information on borough position from telephone conversation with Vernon Snow of Gallagher, Cranston, and Snow, July 18, 1978.
9. Alaska Consultants 1976, "Issues Overview," prepared for North Slope Borough, p. 36.
10. For details on these court suits, see Chapter III.
11. Letter from **D.S. Mace**, assistant general manager, **Sohio** Petroleum Company, to Eben Hopson, mayor, North Slope Borough, February 7, 1978.
12. Information on borough structure and authorities from North Slope Borough, Official Statement of the North Slope Borough, Alaska, Relating to \$51,000,000 General Obligation Bonds, Series H, June 15, 1977, p. 6. Powers the borough assumed on April 30, 1974 are: streets and sidewalks; sewage and sewage treatment facilities; watercourse, and flood control facilities; health services and hospital facilities; telephone systems; light, power and heat; water; transportation systems; libraries; airport and aviation facilities; garbage and **solid-waste** collection and six disposal service facilities; housing and urban renewal, rehabilitation and development; preservation, maintenance, and protection of historic sites, buildings and monuments.
13. Alaska Statute 14.12.020.

14. North Slope Borough, Budget Document, fiscal year July, 1972-June 30, 1973,
15. Contact with construction management consultant to North Slope Borough, January 1978.
16. North Slope Borough, Annual Financial Report, fiscal year July 1, 1976-June 30, 1977.
17. Alaska Consultants 1978, Baseline Studies of the Manmade Environment.
18. Statistics from North Slope Borough School District.
19. Revenue figures in the following paragraphs taken from borough annual financial reports, fiscal years 1973-1977.
20. Percent figure of property taxes paid by Prudhoe Bay operators taken from Mayor Eben Hopson's statement to Mackenzie Valley Pipeline Inquiry, September 21, 1976, p. 9; and letter from **D.S. Mace**, assistant general manger, **Sohio** Petroleum Company, to Eben **Hopson**, North Slope Borough mayor, February 7, 1978,
21. "Mayor Eben Hopson's Warning to the People of the Canadian Arctic," Testimony before the **Berger** Inquiry, September 21, 1976, p. 9.
22. **Dupere** and Associates 1974, Manpower Development and Community Survey Reports.
23. Letter from Eben Hopson, borough mayor, to **D.S. Mace**, assistant general manager, **Sohio** Petroleum Company, February 22, 1978.
24. For further discussion of this court suit, see Chapter III.
25. Statistics and information on capital improvements program derived from borough annual financial reports, fiscal years 1973-1977; and North Slope Borough **CIP** documents.
26. Testimony of Eben Hopson before U.S. House of Representatives, General Oversight and Alaska Lands Subcommittee on Section 17(d)(2) Lands, August 12, 1977.

III. INSTITUTIONS AND ISSUES

Looking outward to the external world, North Slope Borough Leaders are preoccupied with gaining recognition, respect, and positive responses from organizations having substantial control over the fortunes of their new government and the people it was established to serve. Looking inward at the region they are responsible for governing and serving, these same leaders are involved in building a stronger and more effective regional government organization; they are centralizing and consolidating the capacity to decide and to act. To deal successfully with state and federal governments and oil companies, North Slope Leaders must establish their authority and "turf" within the region itself. In the process, new patterns of relationships are evolving in the region among villages, Native corporations, and borough as well as in the larger sphere of external organizations that are often unable or unwilling simply to meet the borough's demands.

The borough has been in existence for only six years, with nearly half of that time devoted to establishing its basic legal right and financial ability to exist. It is therefore not possible to draw firm or final conclusions about "patterns" of behavior oriented externally or internally. A current analysis can reflect the patterns of a relatively brief history and only speculate about longer term trends.

In this chapter we examine the basic sets of relationships in which the North Slope Borough is involved: external relations with state government, oil companies, and federal government and internal relations, primarily with the Arctic Slope Regional Corporation and village governments. The emphasis is on issues of arctic petroleum development and its consequences for regional and local self determination.

External Relations

Tax and finance matters are at the center of the borough's relationships with the state and the oil companies. But as a home rule regional government with powers to tax, regulate, and spend, the North Slope Borough necessarily joins issues with external agencies across a broad spectrum of governmental and private activity on the North Slope. This section reviews some of the most important relationships of the borough with external organizations--state and federal agencies and oil companies--emphasizing those affecting petroleum development activities and the borough's attempts to tax and control them.

OVERVIEW

As perceived by its top officials and consultants, the North Slope Borough's greatest problem remains, after nearly six years of existence, one of establishing its Legitimacy and "seriousness" in the eyes of federal, state, and oil company officials.¹ The borough continues to fight with state and oil company officials over its tax authority. Resentment persists toward state government generally for perceived neglect and abuses of the past. Relationships with federal agencies may be less immediately under strain,

but North Slope hostility does persist particularly against one of the dominant federal agencies of the past, the Bureau of Indian Affairs. North Slope Borough officials, led by the mayor, have also been active and vocal critics of proposed federal (and state) offshore oil and gas exploration and development programs. Adding to these problems are the past and continuing clashes over federal and state regulation of subsistence fish and game resources.

The North Slope Borough is attempting to establish an authoritative presence in a region that has been dominated by federal and state authorities not accustomed to dealing with or answering to a significant regional government in Alaska's arctic. These authorities, lately joined by the oil companies, are now having to learn how to do business with a new set of very assertive and often abrasive local leaders in a situation where the rules of behavior, and the practical extent and limits of borough authority, are yet unclear.

BOROUGH-STATE GOVERNMENT

The following summarizes significant state-North Slope Borough relationships from the **pre-incorporation** period to the present. They are described in terms of selected issue-areas: taxation, oil and gas development, fish and game protection, and coastal zone management.

Taxation

Four occasions of conflict over tax authority issues between 1972 and 1978 indicate both the breadth and persistence of borough-state differences in this critical area:

1972 Legislative "Package." In 1972, as borough incorporation proceedings were underway, the state administration proposed legislation that would have undermined the incorporation and taxation objectives of proponents of the prospective borough. Three bills, none of which were enacted, would have provided for the formation of a series of "unorganized boroughs" in the then unorganized borough, state assessment and distribution of property taxes in the unorganized borough, and imposition of an exclusive state tax on the **Prudhoe** Bay pipeline and related properties. According to a former state assistant attorney general, who had direct responsibilities in the matter:

The rationale for the state tax as the exclusive tax on the oil pipeline was that such property provides immense taxable value to certain areas [i.e., North Slope villages] without regard to the level of services required in those areas. It was believed that the revenue anticipated from taxation of oil and gas pipelines is properly considered a state resource rather than the exclusive property of the area where the property happens to be located.

1973 Special Session. In the 1973 special session of the legislature, administration-sponsored legislation was enacted that restricted the North Slope Borough's authority to tax **Prudhoe** Bay and pipeline properties. Property tax levies were limited to \$1,000 per capita (since raised to \$1,500) or to an amount derived from an alternative formula limiting the total assessed valuation that could be taxed locally

(AS 29.53.045(b) and AS 20.53.050(b)). In addition, local sales and use taxes were limited to the first \$1,000 of each sale or use (AS 43.56.030 (2)(A)). Finally, **oil** and gas leases and related possessor rights and values were exempted totally from local property taxation **(AS 43.56.020(a))**. At the same time, the state imposed a **20 mill** tax on oil and gas exploration, production and transportation properties, and **provided** that local taxes collected under the new provisions of AS 29.53 (above) would be credited against the state's 20 mills (AS 43.56.010). The North Slope Borough mayor **later** referred **to** these actions as "the destruction of our local revenue authority in 1973."³

1976 Regulation. In 1976, the borough levied property taxes above the rate established by the per capita limit in order to pay the debt service on borough bonds. Then, in the words of the mayor,

As soon as we did so, without consulting with the Borough or our attorneys . . . , the Commissioner of Revenue wrote to our Prudhoe Bay taxpayers to inform them that taxes collected by our Borough [in excess of the per capita limit] would not be credited against the 20-mill state ad **valorem** levy on **Prudhoe Bay** property. This resulted in a series of law suits that resulted in the closing of the bond market to the North Slope Borough . . . , resulting in a multi-million dollar loss⁴

The borough sued the state (North Slope Borough v. Sterling Gallagher, et al.) and the oil companies sued both the borough and the state (Sohio Petroleum Company, et al. v. North Slope Borough, et al.). Subsequently, however, the borough agreed not to contest the state's emergency regulation which denied the tax credit, and the state withdrew its contention that the borough could not levy in excess of the per capita limit unless the bonds were in or near default. Further, after a Superior Court ruling

in favor of the oil companies in the Sohio case, the state legislature enacted **legislation** explicitly authorizing tax levies above the limits in order to pay debt service, regardless of default. But the Sohio case remained alive and the Superior Court again found for the oil companies on grounds that the new law was not constitutionally enacted. The Sohio case is currently on appeal to the Alaska Supreme Court.⁵

1978 Interpretation of Tax Law. In early 1978, the borough and the state advanced conflicting interpretations of the local property tax limitation statute (AS 29.53.045(c) and 050(b) mentioned above). The borough population had decreased by 3,000 from 1977 to 1978 due to the completion of the main phase of the **trans-Alaska** pipeline and related construction. Consequently, in order to compensate for the population loss, which adversely affected the per capita tax limit formula, the borough chose to use an alternative property tax formula, also provided by statute. The difference between conflicting borough and state interpretations of the alternative formula amounted to some \$10 to \$15 million in potential local tax revenues from fiscal 1978.⁶ The dispute, not finally resolved as of this writing, further indicates the extreme vulnerability of the borough to state tax laws and decisions. Against the background of conflict reviewed here, it also suggests how anti-state government sentiments are continually renewed among borough officials.

Oil and Gas Development

Borough relationships with state government in the area of oil and gas development span a broad range of activities over which the borough has

either very limited or untested authority. This section briefly indicates some of the more significant of these activities and the nature of the borough's interests in them.

North Slope Haul Road. The haul road, constructed by Alyeska for use in construction of the **trans-Alaska** oil pipeline, is to be turned over to the state and will become part of its highway system in 1978. The general issue before the state is whether, when and under what terms the road should be opened for use to the public. The North Slope Borough mayor has repeatedly told state officials, including the governor, that the borough opposes opening the road for **public** use. The borough argues, among other things, that maintenance costs will be excessive and that the traffic and the necessary support services and activities will have harmful effects, particularly on subsistence resources.⁷ The borough has similarly attempted to influence the federal Bureau of Land Management (ELM) on the issue, given ELM's authority for planning and management of the adjacent federal lands in the pipeline-haul road corridor. The borough assembly has enacted ordinances under its zoning and subdivision authority intended to control future development along the haul road; however, the extent of such authority where federal and state lands are **involved** is not clear, and specific **claims** to authority will need to be tested in specific instances. As the local government with general authority in the area, the borough will at least play a significant advisory role in the haul road and related state development decisions affecting the North Slope region.

Beaufort Lease Sale. The borough, through the mayor, has been consistently critics⁷ of proposed offshore oil and gas exploration and development activities, particularly where federal offshore lands are involved, because of environmental risks in arctic ice pack areas. There has been less criticism of state plans for Beaufort Sea offshore leasing; state offshore lands proposed for leasing are generally within a near-shore area considered environmentally safer for oil and gas development activities.⁸ The state, moreover, has recently established an advisory committee for Beaufort leasing, and the borough has representation on the committee. The committee is strictly advisory, however, since the state, through the Department of Natural Resources, has the sole authority for leasing. Participating within the limits of its advisory role, the borough will seek to influence regulations affecting federal leasing in the Beaufort as well, which is planned to take place as part of a joint state-federal sale in 1979.

Borough Land Selections. Under state law, all boroughs are entitled to select 10 percent of "vacant, unappropriated, and unreserved" state lands within their boundaries (AS 29. 18.190). Most state lands on the North Slope were selected for their oil and gas potential and are located in the Prudhoe Bay and adjacent areas. The North Slope Borough has concentrated its claims to state lands in the Prudhoe Bay field area because of the potential revenues that could be derived from disposal of surface rights and in order to control the use of water and gravel at Prudhoe Bay.⁹ The state has refused to act on those claims, contending, among other things, that the lands are not "unappropriated," and are subject to oil

and gas leases. The borough brought suit against the state (North Slope Borough v. Robert LeResche), lost in Superior Court, and has appealed to the Supreme Court, where a decision is pending.

Water, Gravel, and Land Use Permitting. Prudhoe Bay field development has required extensive use of water and gravel resources and the conduct of other activities potentially affecting the land and waters of the North Slope. Wherever state lands and waters, including **anadromous** fish streams, are potentially involved, developers are required to obtain various permits from the Departments of Natural Resources (Division of Lands), Fish and Game, and Environmental Conservation. North Slope Borough officials have been particularly concerned about effects of water and gravel extraction and related development activities on fisheries and on game habitats. Although state authority is generally **overriding**, the borough has inserted itself into the permitting process through local notification, comment, and other consultation procedures. The borough's demands on state permitting officials are apparently greater than the latter normally expect from the **local** government **level**.¹⁰

Fish and Game Protection

North Slope residents have clashed periodically with federal and state fish and game enforcement authorities for many years. Most recently, conflict between the North Slope Borough and the State Department of Fish and Game reached a peak during the "caribou crisis" of 1976. Decline in the size of the western arctic caribou herd resulted in restrictions on all hunting, including Native subsistence hunting. In response, the borough denied

that the department's counts were **valid**, established a Borough Game Management Committee, and called for some significant share of authority in state fish and game management decisions. The borough has also variously proposed that it assert some form of jurisdiction over all subsistence resources, regardless of state authority, and that caribou management authority be transferred from the state Department of Fish and Game to the federal Department of the Interior. The borough mayor has repeatedly complained of "harrassment" by fish and game enforcement **officers**.¹¹

In general, the borough's position appears to be that oil and gas development pressures combined with state fish and game mismanagement have been among the greatest threats to North Slope subsistence resources; the borough's solution is to assert greater local authority over fish and game management and protection activities, while at the same time calling for displacement of state by federal management agencies.

Coastal Zone Management

Many of the North **Slope** Borough's concerns about oil and gas development and subsistence protection come together **under** the borough's concept of coastal zone management. While the state administration was working toward legislation authorizing a statewide coastal management program, the North Slope Borough initiated its own program at the end of 1976. Although emphasizing the perils of OCS development, the borough's "Arctic Coastal Zone Management Program" was defined very broadly to encompass virtually all significant areas of oil and gas development onshore and offshore, and all related problems of fish and game management. The

state legislature enacted an Alaska Coastal Management Act in 1977. The act established an Alaska coastal policy council under which district coastal programs would be developed and implemented by municipalities with planning and zoning powers. The North Slope Borough mayor was appointed to the coastal policy council, and the borough has continuously pressed state officials to view coastal management problems in the expansive terms already articulated by the borough for the North Slope. A key aspect of the borough's perspective is that coastal management programs should be locally controlled.¹²

As in the other areas of state-borough relations summarized above, the major question is how far the state will go to accommodate North Slope Borough demands for greater shares of authority in areas of state jurisdiction and prerogative. It appears that the North Slope Borough's **claims** on the state have been articulated more radically than those of any other **local** government in Alaska to date.

BOROUGH-OIL COMPANIES

Similar to its relationships with state government, the North Slope Borough's direct relationships with the oil companies operating at Prudhoe Bay are dominated by conflicts over the definition and use of the borough's powers of taxation. As seen by the borough mayor,

The single concern of our corporate taxpayers [the oil companies] is tax avoidance, with no compensating ideological concern for the growth and health of local government in rural Alaska Thus, the North Slope Borough has been in and out of court to defend **its** right to exist, and its revenue authority.¹³

Consequently, according to the mayor, "Lawyers are the only interface between our borough government and the oil industry as the relationship between local government and corporation taxpayers becomes increasingly unfriendly."¹⁴

Oil industry officials agree that relationships are indeed unfriendly and that much communication has been necessary between opposing lawyers. One company attorney, who has several times acted as a de facto spokesman for the major companies on the North Slope, believes that much of the conflict could have been avoided if the state had assumed more responsibility for establishing basic rules, since "state resources and revenues are at stake." Further, in the absence of more effective state-imposed controls and solutions, he believes that the stream of litigation has been unavoidable.¹⁵ Specifically on the tax issue, another industry official states simply that "While the Company has an obligation to pay all taxes lawfully imposed by the North Slope Borough, it has a parallel obligation to ensure that the Company pays only those taxes actually required to be paid under law."¹⁶ Together, the oil and gas operators on the North Slope pay about 98 percent of all **locally-generated** tax revenues collected by the borough.

This section summarizes borough-oil company relationships involving the tax issue.¹⁷ These are discussed in terms of borough-oil company litigation and a formal agreement on taxation and financial management between the borough and the companies in 1974.

Litigation

The oil companies filed four major suits against either the borough or the state between 1972 and 1977. Each has critically affected the borough's authority to **tax**.¹⁸

- For one and a half years after its incorporation was certified by the state in 1972, the borough was effectively prohibited from taxing, and therefore from any **significant** spending activity, until the Alaska Supreme Court ruled against a company challenge to the constitutionality of the incorporation action (Mobil Oil Company et al. v. Local Boundary Commission, et al.).
- A second, overlapping suit challenged the borough's authority to tax oil and gas **leases** (Mobil Oil Company, et al. v. North Slope Borough). This suit was settled out of court by agreement between the companies and the borough in August 1974. (The content and circumstances of this agreement are discussed below.)
- With major borough taxing and spending programs, including a projected \$150 million capital improvement program, finally underway, the **oil** companies challenged borough tax rates in excess of the \$1,500 per capita statutory **limit**, discussed above (Sohio Petroleum Company, et al. v. North Slope Borough, et al.).¹⁹ The actions caused a significant reduction in the borough's rate of capital project spending, and the case remains to be decided on appeal to the Alaska Supreme Court.

- Partially as a response to the Sohio suit and to related state legislation restricting its tax authority, the borough reinstated its sales and use tax at the end of 1976. In 1977, an oil company filed a suit challenging the borough's inclusive definition of the "sales **and uses**" to which such tax levies might apply (BP Alaska v. North Slope Borough).

1974 Agreement

As noted earlier, the state legislature in its 1973 special session passed legislation restricting the borough's authority to tax oil company properties on the North Slope. However, the oil companies' liability for property taxes levied before passage of the legislation remained as a principal issue to be decided in the Mobil Oil v. North Slope Borough case. The borough figured that the companies' liability amounted to some \$15 million in property taxes and \$3 million in sales and use taxes.²⁰ Borough officials were ready, however, to compromise. The 1973 special session had established basic ground rules for future taxation, the Mobil case could have been tied up in the courts for a prolonged period, and borough leaders were anxious to get on with borough programs.²¹ The oil companies, too, had an interest in resolving the matter at hand and in stabilizing their financial relationships with the borough at least for the immediate **future.**²²

As a result, the borough and the companies agreed in August 1974 to settle the Mobil case and related issues. The companies agreed to pay the borough \$5 million: \$3 million in settlement of the borough's previous

tax bills, and a \$2 million advance payment to be credited against the next four years of property tax bills. The borough accepted **the** compromise amounts and further agreed "to adopt and support a fiscal policy . . . consistent with" their original capital improvements program (**CIP**), **subject** to adjustments for inflation and for needs **which** might "develop subsequent" to the agreement. The companies, in turn, agreed "to support the **fiscal** program of the Borough" as set forth in **the** original CIP **and** in the **agreement**.²³ This agreement was to be in force for five years.

Within two years, the fragile truce between the borough and the companies broke down. From the borough's viewpoint, this was largely due to the **Sohio** case, which practically halted the borough's capital improvements program in 1976. The North Slope Borough mayor summarized his version of the matter: "In an attempt to live with the industry we signed an Agreement The main benefit to the Borough was that the oil industry was to support the Borough's Capital Improvements Program. They have demonstrated that they are not worthy of our trust."²⁴ Further, key **consultants** to the borough have complained that the companies never effectively lobbied for desired tax and other legislation in Juneau or assisted in obtaining funds from other sources.²⁵

An oil company official, who was instrumental in negotiating the agreement, sees it quite differently. "The North Slope Borough, almost from day one, ignored the agreement **in** letter and spirit." In 1975, he states, taxes were levied above anything projected, and they were raised again in **1976**; further, the NSB added new items to the CIP, such as \$50 million

for public housing. His implication is that these tax and spending increases were beyond those justified by inflation or needs identified subsequent to the agreement. In addition, he claims that industry lobbyists in Juneau supported the borough's successful effort to increase per capita property tax limit from \$1,000 to \$1,500, and the companies acceded to counting transient workers as "residents" for purposes of determining the population base for the per capita tax formula. The oil company official maintains, however, that the borough's real objective is to remove the limits on its tax authority, and that this would work against the longer term economic interests of the companies since it would create pressures to increase the state tax on oil properties.²⁶

BOROUGH-FEDERAL GOVERNMENT

In general, borough relationships with federal agencies are less intense and immediate than they are with state agencies and oil companies. This is due in part to the fact that the federal government does not directly control the borough's tax authority and **policies**, which have been the most critical determinants of the borough's fortunes--since its incorporation. Further, with the advent of borough government, the Bureau of Indian Affairs--which had extensive control over social services, education, and related programs in the region--largely withdrew from the North Slope as an immediate and increasingly unwelcome presence. The federal presence on the North Slope remains massive in a physical sense, however, with federal agencies controlling nearly two-thirds of the North Slope region, including nearly 130,000 square kilometers (30 million acres) in the National Petroleum Reserve and Arctic National Wildlife Range.

Added to those amounts are about 18,300 square kilometers (four and **one-half** million acres) of public **and** national interest land withdrawals²⁷ as well as the **trans-Alaska** oil pipeline and haul road utility corridor and several small military enclaves. 28 The borough, moreover, has been **involved** in intensive and often heated discussions with federal agencies responsible for sea mammal and migratory bird protection. But, with notable exceptions such as the bowhead whale moratorium and quota controversy of 1977-1978, relationships with federal fish and game agencies have been benign compared to recent relationships with state agencies (Departments of Public Safety and Fish and Game) in this field. Perhaps the major unresolved borough-federal issue for the immediate future concerns oil and gas exploration and development on the Outer Continental Shelf (**OCS**) in the environmentally sensitive shear zone and pack ice areas.

This section summarizes borough-federal relationships, focusing on OCS, NPR-A, pipeline-haul road utility corridor, and subsistence resource issues. 29

Organization for Federal Relations

In late 1976 and early 1977, the North Slope Borough formalized communications with federal agencies by establishing a Washington, **D.C.** liaison office and retaining a prestigious law firm (Van Ness, Feldman, and **Sutcliffe**) to advise and lobby for the borough, representing it before Congress and executive agencies.³⁰ The borough has also sought the assistance of prominent Washington-based conservationists, such as Russell Train, to provide additional support in land and subsistence resource

issue areas. And, to facilitate in-house planning and strategy for dealing with OCS, NPR-A, and related subsistence resource problems, the borough initiated its Arctic Coastal Zone Management Program and established a new Department of Conservation and Environmental **Security**.³¹

These moves clearly indicate realization by borough leaders that resource development and protection on the North Slope and its adjacent seas are heavily dependent, now as in the **past, on** federal decision making. The main difference today is that borough organizational and political resources enable North Slope leaders to influence federal decisions in more sustained and sophisticated ways and across a broader range of issues.

OCS Development³²

As noted earlier, the borough mayor in particular has been a persistent and vocal critic of the proposed federal OCS leasing program in the arctic. His concerns were precipitated by **OCS** operations in the Canadian Beaufort Sea near the Mackenzie River **delta, which** were seen as a major environmental and subsistence resource **threat** to the entire Beaufort gyre extending westward into U.S. waters off the North Slope coast. The mayor has targeted the prospective joint federal-state Beaufort lease sale in 1979 as an equivalent direct threat to Native subsistence resources, and he has publicized and pressed his views in several forums, starting with his statewide campaign for the U.S. House of Representatives in 1976.

Although the mayor and his advisors have attempted to develop a concept of "aboriginal offshore jurisdiction" and to emphasize the continuing trusteeship responsibilities of the federal government for Alaska Natives, there are apparently no firm legal grounds on which to base the borough's opposition to the OCS program. The approach, therefore, has so far been primarily political, using forces of publicity and various combinations of reason, pleading, and embarrassment of federal officials. The mayor has spoken widely on the issue; he has written many letters to and met with the Alaska congressional delegation and responsible officials of the Department of the Interior, Corps of Engineers, and Environmental Protection Agency; and he or his representatives have participated in federal **OCS** Environmental Assessment (research) Program meetings and in the state's joint Beaufort sale advisory committee. In mid-1977, the North Slope **Bor-**ough sponsored and hosted an **Inuit Circumpolar** Conference (ICC), which involved **Inuit** delegations from Canadian land claims and **Greenlandic** home rule organizations. The ICC was in significant part a highly publicized response to Canadian and U.S. programs for **OCS** exploration and development in the arctic.

National Petroleum Reserve-Alaska

The North **Slope** Borough sees the current exploration and prospective development of **NPR-A** as a problem but also as an opportunity if properly regulated to protect land, water, and subsistence resources. 33 The exploration and future development of the reserve could bring additional taxable resources, jobs for North Slope Natives, and continued and new local access on favorable terms to natural gas and coal resources. Thus,

through its lobbying activity in Washington, the borough actively supported provisions of the Naval Petroleum Reserves Production Act of 1976 (Public Law 94-258) which transferred jurisdiction over the reserve from the Navy to the Interior Department (thus making non-military property subject to taxation), guaranteed Barrow's access to natural gas at low price rates, and established a federal-state-local land use planning program including North Slope Borough representation at policy and working group levels. Although borough officials and advisors are concerned about instances of environmental, archaeological, and subsistence resource disturbance, they seem at least equally concerned that the current exploration program may be too little and too slow in bringing anticipated economic benefits.³⁴

Utility Corridor

Borough interests in **trans-Alaska** pipeline utility corridor planning by the Bureau of Land Management were noted in the earlier discussion of state policy on the haul road. Essentially, the borough currently seeks to block, **minimize**, or control haul road and related land use within the northern part of the utility corridor. The borough's most definitive action so far has been to enact zoning and subdivision ordinances, which are yet to be tested, as instruments for controlling any future development in the corridor.³⁵

Subsistence Resource Protection

Although not directly pertinent to this report, mention should be made of the bowhead whale and migratory bird controversies. In both of these

matters, the borough's defense of Native subsistence rights has brought it into conflict with federal agencies at the national level and even in international forums. 36 Subsistence hunting of migratory fowl has been a perennial problem on the North Slope. The Barrow "duck-fin" of 1960 was the most dramatic instance of North Slope Native-federal conflict in this area. 37 In the case of the bowheads, the North Slope Borough mayor spearheaded the Native fight against a moratorium on bowhead whaling, which was temporarily resolved before the International Whaling Commission in Tokyo in late 1977, and lent borough support to the creation of the Alaska Eskimo Whaling Commission (AEWC). (The AEWC is composed exclusively of Eskimo whalers, and its authority to manage either stock or whalers is de facto rather than de jure.) The bowhead controversy suggests the range of borough concerns and the lengths to which its leaders will go in defense of Native subsistence interests as they see them.

The North Slope Borough also clearly recognizes its dependence on oil and gas development, and its leaders pursue potentially conflicting resource extraction and protection values. Reflecting both of these interests, the borough has proposed that, instead of subdividing North Slope lands into separate park, refuge, industrial, and other management areas, the entire region, except for village land selections under the Alaska Native Claims Settlement Act, should be classified "as a wildlife range reserve allowing as the only human activities those associated with natural resource extraction and traditional subsistence gathering." 38

Internal Relations

The public record of legal suits, speeches, statements, press releases, newsletters and testimony portray a North Slope Borough government pre-occupied with its external relations and with making its mark in the larger world. This public record, moreover, has been produced almost exclusively by the North Slope Borough mayor and his chief advisors. These factors--the external orientation and the concentration of related activity in the mayor's office--strongly suggest a highly centralized regional organization whose intra-regional activities are largely overshadowed and even determined by its fortunes in dealing with threats and opportunities flowing in on it from the outside. The crisis-ridden history of the North Slope Borough reinforces this impression. Since its inception, the borough has been forced continually to react to state and federal government and oil company decisions affecting its basic developmental, financial, and subsistence resource protection interests.

This does not mean that there is no significant intra-regional dimension to the North Slope Borough experience. We have already noted, for example, the borough government's rapid growth in employment, revenues, and expenditures, including its burgeoning capital improvement program, particularly during the past three years (1975-1977).³⁹ A borough administrative structure is evolving and extending into villages throughout the region. But this intra-regional dimension of borough development has been critically dependent, as we have seen, on a flow of revenues directly subject to policy decisions by the state and legal action by the oil companies. To deal effectively with taxation and related resource development

protection issues, borough leaders have concentrated authority in the mayor's office, thereby reinforcing the centralization inherent in the creation of a regional level of home rule government on the North Slope.

The following sections briefly examine North Slope institutional developments in terms of borough relationships with the Arctic Slope Regional Corporation and the villages within the region. Also noted are pertinent features of the North Slope Borough school district and the **Inupiat** Community of the Arctic Slope established under the federal Indian Reorganization Act.

ARCTIC SLOPE REGIONAL CORPORATION

Borough-ASRC relationships can be summarized first by indicating basic comparative interests of the two organizations and then by looking **at** selected aspects of communication and of conflict and cooperation **between** them.⁴⁰

Comparative Interests

Much else obviously follows from the facts that ASRC is a private, **for-profit** organization seeking to increase the value of its shareholdings, while the borough is a public governmental body seeking to raise taxes, provide services, and regulate development in the region. In an oversimplified form, these differences are reflected in the comment of one top borough executive that "The borough must collect taxes to survive; the concept of a profit-making corporation is to fight taxes. They [ASRC] don't want to pay taxes."⁴¹ ASRC property, however, is largely shielded

from taxation until 1992 under the terms of the Alaska Native Claims Settlement Act of 1971.⁴² Differences between borough and ASRC leaders are still primarily differences of attitude and personality, which are expressed through their rival institutional roles and are moderated by leadership overlaps and family ties.

Both the borough and ASRC are offspring of the Arctic Slope Native Association, and their leaders are engaged in organizing and empowering the region to benefit as fully as possible from arctic petroleum development. Underlying their institutional and personal differences is this common objective, and the leaders of both organizations have tended to divide the regional domain and concentrate on building their own institution, each generally observing a rule of minimizing or avoiding interference with the other wherever possible. Thus, despite readily apparent and growing differences, ASRC and borough sufficiently share interests that provide a grounding for less obvious and implicit forms of cooperation within the region.

Communication

Borough and ASRC officials and staff almost uniformly report that there is little or no communication between the two organizations, although technical staff relationships apparently are becoming more common.⁴³ While formal and explicit communications may be limited, particularly between top officials of the two bodies, ASRC interests are at least potentially represented in borough decision making through ASRC officials' membership on the borough assembly. In 1977, five members of the seven

member assembly were ASRC officials, and ASRC has in this way been heavily represented on the assembly since incorporation. (Three of the five were considered to have especially strong ASRC identities.) There is less direct representation of the borough in the ASRC structure,⁴⁴ although both the mayor and the borough's top departmental director recently served concurrently on ASRC's fifteen-member board of directors.⁴⁵ This, of course, does not account for much informal communication between ASRC and borough officials and employees, most of whom reside in Barrow and many of whom are related by blood, marriage, and adoptive ties.

Conflict and Cooperation

The ASRC has increasingly participated in North Slope oil and gas development both as a land owner--leasing or otherwise making its land available for exploration--and as a business corporation, contracting to do business with major exploration and development firms on the North Slope.⁴⁶

Although the borough mayor has otherwise vigorously promoted Native efforts to benefit from development through contracting and employment opportunities--and, of course, through borough taxation and expenditures--he has also spoken quite critically of what he perceives to be a growing convergence of interests of the ASRC (and other Native regional corporations) and the oil companies. He has specifically criticized regional corporation opposition to increased state taxation of the oil industry as well as what he has perceived as the readiness of ASRC to adopt some of the industry's financial and tax attitudes on the North Slope.⁴⁷ A top ASRC executive, in turn, takes issue with what he perceives as the borough

administration's negative attitude toward development and the opportunity such development represents.⁴⁸

In view of (1) the borough's conditional and mixed reactions to petroleum development and its clear dependence on industry tax revenues and (2) ASRC's varying but mostly passive responses to the borough administration's initiatives in this **field**, it appears that this "conflict" is, so far, more a matter of symbols, personalities, and attitudes than of hard policy differences.

In building their respective regional organizations and strengthening their **capacities** to influence, exploit and control the course of arctic petroleum **development**, borough and ASRC have found several occasions for basic forms of cooperation. The following are some important instances:

- The founding or resettlement of the "pioneer" villages of Atkasook, **Nuiqsut** and Point Lay, which expanded the regional and village corporations' land base under the Alaska Native Claims Settlement Act; the borough participated with ASRC in initially settling and servicing the villages' new residents, and made special provisions for them in its capital improvement program.
- The borough's bonded debt program, which seeks to draw the bulk of its revenues for debt service from the **Prudhoe** Bay oil companies during the period before ASRC properties become taxable after 1991.⁴⁹

- ASRC'S financial contributions to the 1977 Inuit Circumpolar Conference, which was organized under the leadership of the borough mayor primarily to mobilize support for common international rules governing OCS petroleum development in the arctic; also, ASRC's loans to the western Canadian arctic land claims organization that the borough mayor has allied with in his OCS campaign.⁵⁰
- The borough's position on the disposition and management of federal (d) (2) and other public lands on the North Slope, which would permit resource extraction, necessary transport, and subsistence hunting, fishing, and gathering activities, and minimize interference with ASRC oil and gas development interests.⁵¹

Whatever their differences may be in the future, it is apparent that the basic economic interests of ASRC and the borough administration remain close if not totally shared, and that each has tended either to support or to assume a neutral position on the initiatives of the other.

VILLAGES

The establishment and growth of the North Slope Borough has undoubtedly strengthened the self-governing capacities of the people of the region. The question is whether enhanced self determination at the regional level can contribute to more effective self-government at the village level as well. The answer is not clear. To strengthen their potential influence over outside agencies and to benefit from North Slope petroleum development, North Slope villagers agreed to consolidate and regionalize their

traditionally very limited and dependent local governmental authority. In return, villagers have received public works projects, jobs, and incomes. Although the pattern varies from village to village, organized community activity has increased with borough **government** (and regional / village corporation) programs. But it is also apparent that village activities have become strongly oriented to and dependent upon the decisions of a small number of borough government officials in Barrow. As they begin to assess their new statuses as citizens of the region, some village leaders are increasingly demanding more effective-representation in borough government decision making.⁵²

Patterns

Relationships between the North Slope Borough government and the villages vary considerably depending on such factors as village size and age, dependence on Barrow, and the level of development of village leadership structures.

Barrow. As the seat of borough government and with nearly **two-** thirds of the permanent population of the region, Barrow is clearly the dominant village on the North Slope. But Barrow's city government, incorporate with first-class status in 1959, has been largely eclipsed by the new borough government structure with its authority, financial capability, and near monopoly (with ASRC) of the community's leadership and technically skilled people. The city government, moreover, transferred most of its local government powers to the borough, as did all of the North Slope villages. Barrow city **officials** have nonetheless been

frequent and outspoken critics of the borough (service delivery problems and disputes over title to land for borough housing and other construction projects), and successive mayors and managers have attempted to defend what remains of their institutional **prerogatives**.

Point Hope and Wainwright. These two villages, each of about 400 population, are the largest and most organizationally-developed villages outside of Barrow. Point Hope and **Wainwright** were incorporated as **second-class** cities in 1966 and 1962, respectively. Despite transfers of authority and initiative to the borough, their leaders retain a relatively strong sense of village identity. At the same time that they recognize the benefits of borough jobs, services, and facilities, they are also critical of delays in the delivery of promised assistance and services. Some regret the erosion of village council powers and are dissatisfied with their very limited participation in borough decision making. As elsewhere on the North Slope, however, there is apparent consensus in these two villages that borough government **is** beneficial and in the **region's** interest.⁵³

Kaktovik and Anaktuvuk Pass. These are the smallest of the older, established North Slope villages, with about 130 and 150 people, respectively. Anaktuvuk Pass has been an incorporated second-class city since 1957, and Kaktovik since 1971. With very small populations and extremely limited organizational resources, these communities probably had most to gain from incorporation of the borough and the new services and facilities that would be extended to them from Barrow. With some

exceptions, these villages have apparently been less critical of borough service delivery problems and of their limited participation in regional decision making than have Point Hope and **Wainwright**.

Atkasook, Nuiqsut, and Point Lay. These villages are resettlements established through the initiative of borough and ASRC leaders in Barrow so that they would qualify for land entitlements under the Alaska Native Claims Settlement Act. Their identities as "pioneer" villages, their ties to Barrow, and their newness distinguish them from the other North Slope villages. They are, in effect, products of the land claims and borough formation movements. They are therefore closely associated with regional organizational interests and most dependent on delivery of services and facilities from Barrow. Among them, only the second-class city of **Nuiqsut** is incorporated under state law.

Service and Jobs

The most tangible evidence of borough government in the region's villages is services, facilities, and jobs. Indeed, villagers' perceptions of the borough and their assessment of its performance are largely determined in tangible, material terms. Accordingly, the most common and persistent complaints by village leaders about the borough concern its ability to deliver services and facilities and to do so speedily. Villagers' dependence on the borough for jobs is reflected in 1976 capital improvement project construction activities, which employed about 240 people. These jobs were in addition to some 500 others in the borough administration and school district.

Of the eight communities on the North Slope, only the city of Barrow had a population large enough to support some local services before borough formation. The next two largest communities, Point Hope and **Wainwright**, could support part-time constables but little else. The remaining two original **villages--Anaktuvuk Pass and Kaktovik--along** with the new "pioneer" villages--Point Lay, **Nuiqsut**, and **Atkasook--were** too **small** and resource-poor to exercise powers granted Alaska municipalities in state statutes.

In 1974 the borough administration and assembly called for a special election to authorize the transfer of fourteen powers to the borough (electrification, road and airport construction, street **lighting**, etc.). The transfers were endorsed with nearly the same rate of popular acceptance (85 percent) won by bond issues in the same election.

Escalated expectations together with an overload of demands on the borough have produced a flow of complaints about delays in the delivery of services and facilities, including schools, water and sewer facilities, and public safety programs. Some delays and program reductions have been due directly to the borough's legal struggles, such as those following the 1976 law suit (see discussion of **Sohio** case above), which temporarily brought the capital improvements program to nearly a total halt. Others have resulted from the borough's promising too much too soon, or simply from leaving the impression that a vote to transfer powers or to sell bonds would lead directly to new services in a village. And **still** others have resulted from the failings of program managers and contractors.

On several occasions the city of Barrow in particular has **resisted** transferring powers to the borough. The disagreements in part reflected personal and institutional rivalries between the two government units. But, more commonly, like officials in other villages, Barrow officials have questioned the ability of the borough to implement programs sufficiently fast. In Anaktuvuk Pass, after expenditure of \$2.5 million on the construction of a village school, the contractor employed by the borough administration had failed to complete the structure. Village residents faulted the borough and some even threatened to secede from it. In Point Hope, villagers were promised both housing and the relocation of their village, which was situated on unstable shore land. When the borough delayed in addressing their problems, several village corporation board members chartered a plane to Barrow to press their case at a borough assembly meeting.

Despite such problems, villagers look to the borough to meet their needs, and ongoing public works projects and borough jobs in all villages reinforce a perception of the borough as basically a source of material **benefits.**⁵⁴

Representation

The borough's representation in the outlying villages is stronger than the villages' representation in the borough's decision making structure in Barrow. With the extension of borough services and construction projects into the villages, jobs and incomes are the key indicators of the borough's presence. On the other hand, villagers' presence at borough

headquarters is quite limited. The borough assembly, which is elected at-large, has been almost totally comprised of Barrow residents since incorporation. And the borough administration in Barrow is, of course, a major employer of the city's residents.

The borough has hired "village coordinators" --essentially communicators of messages from Barrow and back--for all outlying villages. Although the coordinators' positions seem to offer sufficient pay for part-time tasks, turnover has been high. Borough officials and staff generally agree that, with one or two exceptions, the coordinator program has not worked well due to such factors as inadequate recruitment, selection, training, and supervision; poor definition of the job; and related deficiencies.⁵ Some of these jobs have been absorbed into the borough's public works program, with coordinators serving as heavy equipment managers, which is otherwise another paid borough job in each village. The borough has also hired health aides in all villages, and this program is generally regarded as quite successful. At least four villages had resident public safety officers, who are employed by the borough Department of Public Safety, at the end of 1977. The borough school district is another major employer, hiring teachers' aides, maintenance workers, and the like in every village. The capital improvement program has been a major if unstable source of construction employment in all villages.

Borough representation in the villages is thus characterized in material and monetary terms. This reinforces the tendency of villagers to perceive the borough as a provider of material benefits, **and**, as discussed

above, their assessments of the borough appear to be strongly influenced by its speed and success in delivering them.

Village representation within borough government at the regional level is limited in elective positions but substantially more than proportionate in appointive advisory board positions. (See Table 3.) In 1977, six of seven borough assembly members were from Barrow; in the October election, a winning candidate from Point Hope increased the outlying villagers' representation to two. The school board, on the other hand, has progressively increased representation from outlying villages through appointments to vacant positions, with the appointees going on to survive in subsequent at-large elections. 56 The borough mayor has partially compensated for village underrepresentation on the assembly and in borough executive positions by appointing majorities of non-Barrow villagers to the borough's principal advisory boards and commissions.

Head counts are not conclusive measures of village representation in borough government. But Barrow's domination of the borough's legislative and executive branches is obvious as are the inefficiencies and costs of communication between Barrow and the seven outlying villages. Even the villages' mayors, who presumably function as spokesmen for village interests, make few trips to Barrow to meet with the mayor and other officials.⁵⁷

TABLE 3. VILLAGE REPRESENTATION
AS OF AUGUST 1977

| <u>Regional Body</u> | <u>Village Membership</u> | | | | |
|-----------------------|---------------------------|---------------|-----------------|-------------------|--------------|
| | <u>Total</u> | <u>Barrow</u> | <u>Pt. Hope</u> | <u>Wainwright</u> | <u>Other</u> |
| <u>Elected</u> | | | | | |
| Assembly | 7 | 6 | | | 1 |
| School Board | 7 | 4 | | 2 | 1 |
| <u>Appointed</u> | | | | | |
| Planning Commission | 5 | 2 | 1 | 1 | 1 |
| Utility Board | 5 | 2 | 1 | 1 | 1 |
| Game Mgmt. Committee | 9 | 3 | 1 | 1 | 4 |
| Historical Commission | 4 | 2 | 1 | 1 | |

SOURCE: North Slope Borough

SCHOOL DISTRICT

Although legally a part of borough government, the North Slope Borough school district, like borough school districts elsewhere in the state, operates with substantial autonomy. There is virtually unanimous agreement among both borough and school officials that the district in fact operates independently of the borough government in substantive school policy matters.⁵⁸ Further, although the school budget is subject to approval by the assembly, most of the time the district "gets what it wants from the borough, and the school administration is happy,"⁵⁹ The mayor can recommend overall but no line item budget reductions to the assembly, leaving the school administration and board to determine specific cuts when necessary.

In general, the school district's relationship with the borough government is defined in budgetary and capital improvement program terms; the school district's financial fortunes are linked to the borough's, and the borough has consistently placed a high **priority** on educational and school construction needs. Supplying about half the funds in the district's budget, the North Slope Borough provides a greater proportion of school funds than any other local government in the state.⁶⁰ The school district, then, looks to the borough as a source of financial support, and it has not yet been seriously disappointed insofar as North Slope leaders have been able to control the borough's ability to tax oil **com-**pany properties.

INUPIAT COMMUNITY OF THE ARCTIC SLOPE

The **Inupiat** Community of the Arctic Slope (**ICAS**) was established in 1971 as a regional "Indian tribal organization" under the federal Indian Reorganization Act. Like the Arctic Slope Regional Corporation (**ASRC**) and the North Slope Borough, it was founded by leaders of the Arctic Slope Native Association (**ASNA**) as a regional instrument for protecting and pursuing Native interests. One of the functions of **ICAS** has been to serve as a formal vehicle for a suit filed against "third party trespassers" on **Prudhoe** Bay lands claimed by the **ASNA** before passage of the Alaska Native Claims Settlement **Act**.⁶¹

As an exclusively Native, tax-exempt entity, **ICAS** could potentially serve as a protective repository of Native corporation lands and stocks after **1991** when the lands become taxable and the stocks alienable. Currently,

ICAS staff work closely with the ASRC land department to provide realty assistance in individual Native land allotment matters. **All ICAS officials** are from Barrow, and several of them are also officials of ASRC. There are plans to expand the seven-member board to thirteen and to assure that each North Slope village will be represented on the board. ⁶²

ICAS qualifies for federal funds available exclusively to Indian tribal organizations. After several years of latency, **ICAS** was reactivated in 1977 with **ASRC** technical and financial assistance. The stimulus was the federal Indian Self-Determination and Education Assistance Act of 1975 (P. L. 93-638), which made new funds available for Native education, social service, and economic development programs. **ICAS** provides the North Slope Borough with indirect access (through resolutions and contracts) to **federal** Indian money for borough health programs, and the related social service activities of the two organizations appear to be closely coordinated. While relations between the borough and ICAS have been harmonious, there is concern on the part of some borough officials that ICAS eventually may compete with the borough for control of social service funds and programs. ⁶³

Conclusion

An Arctic Slope Regional Corporation official, who is also one of the more outspoken members of the borough assembly, recently stated that in his view the North Slope Borough's greatest problem is that "We haven't been able to operate as a normal local government." ⁶⁴ Other persons close to the borough and its chief officials--a long-term consultant, a former

staff attorney, and a current member of the administration--see the borough as caught in a pattern of government and management "by crisis. "65

Another consultant, closely associated with the borough and its mayor for several years, summarizes the borough experience essentially in the following terms: It has been continuously forced to respond to external threats and attacks; at the same time, it is trying to put its own house in order and to manage a massive capital improvements program and meet village needs and expectations in a region that has been badly neglected by state and federal agencies; the result is government under great pressure with consequent limitations on its ability to function in any stable or predictable fashion.⁶⁶

Such characterizations may need to be discounted to some degree because the people who make them have close, personal involvements in the North Slope's and the borough's fortunes. But we have also seen that such observations are grounded in the realities of taxation and development issues and events **impinging** on the North Slope since the borough's **inception**.

Preoccupied with their external relations, borough leaders have sought to establish the borough's presence and win acceptance of its rights and authority, the outlines of which are still to be defined. The borough has also sought to ensure an expanding **stream of** revenues to support its growing expenditure programs and to meet village expectations for the delivery of promised material benefits. In the process, the North Slope Borough has become a highly centralized institution that depends on

outside expertise to help guide it through a very insecure period of development.

In exploiting the economic opportunities that began with the **Prudhoe** Bay discoveries, the borough has become heavily dependent on a petroleum property tax base. At the same time, borough leaders have attempted to protect Native villagers and their subsistence resource interests from the **social** and environmental disturbance and change that accompany oil development and growth in the region's cash economy.

Under the circumstances, it remains doubtful that the North Slope Borough will soon be able to operate "as a normal local government" --that is, without unusual vulnerability to critical decisions made at state, national, and even international levels.

1



Endnotes

1. Generalization based primarily on personal contacts with some fifteen borough administrative officials and consultants in Barrow and Anchorage between October 1977 and February 1978.
2. Richard W. Garnett, III, "Equalization of Local Government Revenues in Alaska," ISEGR Occasional Papers, No. 9 (Fairbanks: Institute of Social and Economic Research, January 1973), p. 16.
3. Testimony of Mayor Eben Hopson, North Slope Borough, before the House Finance Committee, on the Proposed Oil and Gas Tax Measures, April 14, 1977, p. 6.
4. Ibid., pp. 6-7.
5. See "Official Statement of North Slope Borough, Alaska Relating to \$51,000,000 General Obligation Bonds, Series H," June 15, 1977, pp. 11-14; memorandum from Charles K. Cranston to Eben Hopson, Mayor, Re: "North Slope Borough Revenue Authority, with special emphasis on litigation," February 3, 1978 (reproduced as Appendix A below).
6. Letter from Thomas K. Williams, Alaska Department of Revenue to Lloyd Ahvakana, North Slope Borough, December 20, 1977; letter from Eben Hopson, Mayor, North Slope Borough, to Jay S. Hammond, Governor, Re: "Interpretation of AS 29.53.045(c), North Slope Borough 1978 Property Tax Levy," January 3, 1978.
7. See North Slope Borough, "Proposed Land Use Management System for the Haul Road and Other Highways," November 1977.
8. See memorandum from Billy Neakok, Director, Conservation and Environmental Security, to Mayor Eben Hopson, Subject: "Statement of the Environmental Protection Policy of the North Slope Borough," March 1977. (This memorandum is reproduced as Appendix B below.)
9. Ibid., p. 2.
10. Based on discussions with officials of the Department of Natural Resources and Fish and Game, Fairbanks, February 1978.
11. Memorandum from Neakok to Hopson, previously cited; letter from Mayor Hopson to James W. Brooks, Commissioner, Alaska Department of Fish and Game, April 29, 1976; letter from Mayor Hopson to Nels Anderson, Alaska House of Representatives, August 3, 1977; and observations at North Slope Borough Assembly meeting, June 15, 1977 and at meeting of North Slope Borough and Department of Fish and Game officials, Barrow, February 6, 1978.

12. See memorandum from Neakok to Hopson previously cited; North Slope Borough, Arctic Coastal Zone Management Newsletter, Nos. 1-9, January 1977-February 1978; Session Laws of Alaska, 1977, Chapter No. 84; and letter from Mayor Hopson to Kevin Waring, Department of Community and Regional Affairs, February 22, 1977.
13. "**Eben Hopson's** Statement on the Influence of the State Constitution and the Development of Local Government in Rural Alaska," delivered at the University of Alaska, Fairbanks, October 16, 1977, p. 4.
14. Ibid.
15. Personal contact with Mark Singletary, regional attorney, Atlantic Richfield Company, Anchorage, February 10, 1978.
16. Letter from D.S. Mace, assistant general manager, **Sohio** Petroleum Company, Anchorage, to Eben Hopson, mayor, North Slope Borough, February 7, 1978.
17. Other types of relationships exist, but they are minor compared to those directly concerned with borough finances, or they involve relationships that are primarily indirect--via state and federal government decisions on OCS development, for example. Such secondary or indirect relationships are discussed at appropriate points in other parts of this report.
18. The four cases are described in the borough memorandum reproduced as Appendix A below. Only the basic import of each case is summarized in this section.
19. It should be noted, too, that the suit was precipitated by the state Department of Revenue's "emergency regulation" prohibiting the companies from crediting the excess tax payments against their state property tax bills.
20. Memorandum from Eben Hopson, mayor, North Slope Borough, to assembly and school board, Subject: "State Revenue Structure to Deliver an Equitable Oil Bonus to Citizens of Alaska," December 6, 1976.
21. Personal contact with Robert Dupere, North Slope Borough financial consultant, Barrow, February 7, 1978.
22. Personal contact with Mark **Singletary**, regional attorney, Atlantic Richfield Company, Anchorage, February 10, **1978**.
23. "Stipulation and Settlement Agreement" between the North Slope Borough and oil and gas leaseholders and property owners, August 27, 1974.
24. Memorandum **from** Eben Hopson, mayor, North Slope Borough, to assembly and school board, December 6, 1976, previously cited.

25. Personal contacts with two borough consultants, February 1978; letter from legislative consultant to mayor Hopson, August 15, 1975.
26. Personal contact with Mark **Singletary**, regional attorney, Atlantic Richfield Company, Anchorage, February 10, 1978. The industry position on the borough's expenditure program is elaborated in recent correspondence between mayor Hopson and two other oil company officials: letter from **D.S. Mace**, assistant general manager, **Sohio** Petroleum Company, to Eben Hopson, mayor, North Slope Borough, February 7, 1978; letter from **Harry W. Brown**, assistant Alaska operations manager, Exxon Company, U.S.A., to mayor Hopson and other borough officials, February 14, 1978; and letter from Eben Hopson, borough mayor, to **D.S. Mace**, Sohio Petroleum Company, February 22, 1978.
27. Under sections **17(d)(1)** and 17(d)(2) of the Alaska Native Claims Settlement Act.
28. See Alaska Consultants, **Inc.**, "North Slope Borough Issues Overview," December 1976, Table 2, p. 36.
29. See especially Chapter V below for more detailed treatment of OCS, **NPR-A**, utility corridor, and related oil and gas development activities.
30. Arctic Coastal Zone Management Newsletter, No. 2, February 1977; National Journal, Vol. 10, No. 5 (**February 4, 1978**), p. 174.
31. Memorandum from Neakok to Hopson, previously cited.
32. This section is based primarily on several articles in the borough's Arctic Coastal Zone Management Newsletter, Nos. 1-9 (**January 1977-February 1978**).
33. This section is based primarily on testimony of mayor Eben Hopson and the then-president of the Arctic Slope Regional Corporation, Joe Upicksoun, as reported in Federal Energy Administration, "Hearings on Pet 4 Explorations Development, Production and Related Issues," Barrow, April 10, 1976 (transcript); and memorandum from Tom **Smythe**, Alaska Consultants, Inc., to mayor Eben **Hopson**, North Slope Borough, Subject: "Background information for Mayor **Hopson's** presentation before the Federal Energy Administration's public hearing in Barrow on **10 April 1976**." See Chapter V below for detailed treatment.
34. Personal contact with borough consultant, Barrow, February 1978.
35. Chapter V below includes detailed treatment of this issue.
36. See Arctic Coastal Zone Management Newsletter, Nos. 3-9 (March 1977-February 1978) for the borough's version of these controversies.

37. In defiance of the International Bird Treaty of 1916, Barrow hunters--138 in all--shot eider ducks out of season and presented themselves, ducks in hand, to federal enforcement officers who backed out of the situation. See Alaska **OCS** Socioeconomic Studies Program, "Beaufort Sea Region **Sociocultural** Systems," March 1978 (Draft report), pp. 61-63.
38. "Testimony of Mayor Eben Hopson before the General Oversight and Alaska Lands Subcommittee on Section 17 (d)(2) Lands," **August 12, 1977**; Arctic Coastal Zone Management Newsletter, No. 7 (**October 1977**).
39. See Chapter II above.
40. This section on **borough-ASRC** relationships is distilled **primarily** from personal contacts with some twenty borough and ASRC **officials**, staff, and consultants between October 1977 and February 1978. **Most** of these contacts were with persons associated mainly with the **borough**. A complete list of personal contacts appears at the end of this report.
41. Personal contact, North Slope Borough official, Barrow, December 1977.
42. It is the borough's sales and use tax that currently can tap the value of ASRC transactions and property but not yet in large amounts.
43. See note 40 above.
44. The consensus of perceptions on the North Slope seems to be that the primary identification of the **ASRC-assembly** member is as an ASRC official rather than as a borough assembly member. Similarly, a borough executive official who also serves as an ASRC director is identified as borough official first and foremost.
45. It should be noted that the North Slope leadership pool is a relatively small one; it is not a new or uncommon phenomenon that one person wears two or more leadership or official hats.
46. See, for example, "Tough Times for Some Native Firms," Alaska Industry, Vol. X, No. 1 (January 1978), pp. 50-51.
47. "Mayor Hopson's Warning to the People of the Canadian Arctic," Testimony before the **Berger** Inquiry, September 21, 1976; memorandum from Eben Hopson to **assembly** and **school board**, December 6, 1976, previously cited.
48. Personal contact with ASRC official, October 1977.
49. Personal contact with borough consultant, Barrow, February 1978.
50. Arctic Coastal Zone Management Newsletter, No. 1 (January 1977).

51. See discussion under "Federal Relations" **above**; also, personal contact with borough consultant, Anchorage, February 1978.
52. This discussion of village-borough relationships is based primarily on personal contacts with nine borough administrative officials; five assembly members, including two from villages other than Barrow; a current official of Barrow; and six Point Hope village leaders. All of these contacts were made between October **1977** and February 1978. Other sources are noted as appropriate.
53. See Chapter **IV** below for further discussion of North **Slope** villagers' attitudes toward borough government.
54. See description of capital improvements program **levels** by village in Chapter **II** above.
55. See note 52 **above**. Also based on review of reports of village coordinators in borough administration files.
56. Personal contact with Don **Renfro**e, North Slope Borough school district superintendent, Barrow, February 7, 1978.
57. Personal contact with a top borough administrative official, Barrow, December 1977.
58. Personal contacts with mayor, assembly members, and school **superin-**tendent, Barrow, October 1977-February **1978**.
- 59.** Ibid;
60. Personal contact with Don **Renfro**e, school superintendent, Barrow, February 7, 1978.
61. The suit, originally titled Edwardsen v. Morton, is now known as United States v. Atlantic Richfield Company, et al.; it is presently before the U.S. District Court for the District of Alaska. The federal government has assumed responsibility for pursuing the case under its Native trusteeship obligations.
62. Personal contact with **ICAS** official, Barrow, February 1978.
63. Personal contacts with borough administration and assembly officials, Barrow, October 1977-February 1978.
64. Personal contact, Barrow, February 1978.
65. Personal contacts, Anchorage, January-February 1978.
66. Personal contact, Anchorage, February 1978.



IV. GOALS AND CONSTRAINTS

The North Slope Borough wants oil and gas development to supply the tax revenues necessary to pay for construction of public facilities, provision of services, and employment of the largest part of the region's work force outside of Prudhoe Bay. The borough also wants to increase Native control of the region and to protect subsistence hunting and fishing and related land and water use values. To pursue these potentially conflicting objectives, North Slope leaders have centralized authority and initiative in borough government, using it as an instrument of confrontation and bargaining with external agencies that also have substantial controls of their own over the region. Arctic petroleum development is thus both a condition of and a challenge to local self-determination on the North Slope, presenting both opportunities and threats to Native interests.

This chapter discusses the North Slope Borough's development and protection goals and the borough's efforts and capacities to achieve them. A brief review of the character of borough policymaking is followed by an examination of major policy issues of petroleum development and taxation and protection of Native social and environmental interests. A final section explores some of the current meanings and forms of "self-determination" on the North Slope.

Borough Policy Making

The structure of **policy** making (for the major issues discussed in this report) in North Slope Borough government is dominated by the mayor and a few close advisors; the borough assembly for the most part is **passive-**reactive and ultimately compliant. The content of policy reflects the borough's pursuit of divergent developmental and protection goals--to defend against threats and to exploit opportunities presented to it by outside forces.

POLICY STRUCTURE

Holding office since the borough's incorporation, Mayor Eben Hopson is a "strong mayor" in both formal-legal and informal-personal senses of the term. The borough's home rule charter vests broad executive powers in the office of the mayor, and Mayor **Hopson** has aggressively exercised them, testing their limits in many directions. With the assistance of consultants and other advisors, the mayor has also attempted to push the borough powers to their limits, testing borough authority and influence at state and national levels. On the public record and in the estimation of participants and close observers, the incumbent mayor is clearly the dominant figure in North Slope Borough **government.**¹

Some of the borough's consultants have contributed substantially to the development of the borough's financial policies. Planning and engineering consultants have been less prominent, but nonetheless important, contributors to borough policy development and administration as well.² The principal financial consultant has played a key **role** in borough

affairs beginning with the drive toward incorporation: he provided **essen-**
tial information and advice; he devised plans for borough financing
(revenue anticipation notes and other forms of borrowing) during the **two-**
year period that the borough's tax authority was under challenge in the
courts; and he developed basic bonding and expenditure strategies for the
capital improvements program. Other consultants have helped devise strat-
egies for dealing with issues of **land** management and resource protection
and have lobbied intensively in Washington, **D.C.** on legislation affecting
the National Petroleum Reserve and coastal zone management issues. A
consultant-lobbyist in Juneau has been instrumental in defending the
borough's tax authority and in winning some tax concessions (e.g., in-
crease in per capita tax limit from \$1,000 to \$1,500).

In general, the key financial and planning consultants have had long-
standing ties with the borough and its chief officials, and they are con-
sidered essential participants in borough policy development. They,
along with a group of non-Native department heads and staff people, pro-
vide expertise and experience not otherwise available on the North Slope,
and their loyalty to the borough has been reciprocated by the mayor and
other borough officials.

Policy initiative is thus centered in the borough executive and particu-
larly in the mayor's office. The assembly, in contrast, with few excep-
tions considers only those issues that the mayor, assisted by his consul-
tants and advisors, places before it. Moreover, the assembly generally
approves the mayor's proposals and requests with little or no modification.

Assembly members themselves acknowledge that initiative lies with the mayor and that they depend on his agenda and the information he supplies.³ While this dependence is not necessarily to assembly members' liking, at least one assembly leader believes that the pace of events and the complexity of issues facing the borough have required the assembly to defer often to the administration. Several assembly members nonetheless criticize the mayor's control of assembly agendas and information, which, they claim, have rarely been available to them until immediately before a meeting.⁴ Further, the mayor has even effectively asserted control over the schedule of assembly meetings, to the dismay of one former presiding officer.⁵

Given the mayor's official and personal dominance of borough affairs, and the pattern of crisis-like reactions to major issues continually arising in the larger political-intergovernmental sphere in which the borough operates, it is not surprising that borough policy making is strongly executive-centered and that what the mayor says is generally indistinguishable from "official" borough policy pronouncements on any given issue. Indeed, one key staff member observes that the mayor's statements generally are borough policy, and he points out that the assembly generally passes resolutions introduced by the mayor. He further observes that the only check the assembly has effectively imposed on the mayor derives from its ability to "bicker" over the details of the mayor's proposals rather than from any authority to interpose itself as a source of initiatives or significant alternatives.⁶

Taken together, these characteristics of borough policy making indicate the need for caution in assessing the meanings and effects of borough policy positions. The mayor's statements, whether or nonofficially endorsed by the assembly, often appear to be tests of the political environment rather than definitive positions that can then be translated into operational programs or specific actions. It is clear, however, that, under the mayor's leadership, the borough is establishing itself, in the words of one staff member, as a "clearinghouse" for the plans and activities of external agencies on the North Slope. In this way, the borough is fulfilling its basic function as "a system to confront a **system**"⁷ and as such, the first task is to get the attention of external agencies, putting them on notice that the borough **cannot** easily be circumvented or ignored, regardless of the practicability of any given objective or demand.

POLICY OBJECTIVES

The borough mayor in 1977 identified three "factors" essential to a "basic understanding" of the North Slope area and its people:

The basis of the Eskimo (**Inupiat**) culture of the North Slope Borough is vested in subsistence pursuits. **In** fact, the absence of subsistence would unquestionably mean the destruction of the **Inupiat** culture.

Natural resource extraction provides the present and only foreseeable future means of local self-determination and an improved level of living for the indigenous peoples of the North Slope.

Environmental safeguards are essential to protect the habitat which **nurtures** subsistence resources while, at the same time, enabling the extraction of natural resources to provide a cash income. ⁸

These, in essence, are the themes of all borough policy on issues of development, taxation, and protection of subsistence-related values. Resource extraction is necessary to provide cash income for improving living standards. In these terms, moreover, "resource extraction" provides the "means of local self-determination," which is the primary purpose of a borough government that can provide services and facilities and regulate development. The borough is thus the critical local instrument for extracting tax revenues, distributing benefits, and regulating development in order to protect subsistence habitat.

Without **development**, then, **there** is no "self-determination." Yet **development** is also perceived to pose threats to a subsistence-based **Inupiat** culture. How effectively are the potential conflicts of objectives avoided or resolved in practice? It is possible only to derive a tentative and approximate answer to this question. Borough responses to developmental opportunities and environmental threats tend to shift and change with perceptions and events, and they do not simply or consistently add up to a single coherent statement of borough goals and strategies. Further, the borough's many statements on development and environmental policy issues are not always necessarily intended or expected to be taken at literal face value. Rather, they often appear to be designed to establish bargaining positions, to indicate broad goals and directions, and to elicit modifications rather than complete transformations of an external agency's plans and activities on the North Slope. The political world is much too complex to yield in any clear-cut or direct fashion to simple pronouncements, and North Slope leaders seem to be quite aware of this.

Subject to further examination in this chapter and the next, we can summarize the criteria that appear to underlie borough policy making in petroleum development and subsistence protection issues-areas:

- e As a general rule, petroleum development that promises to increase tax revenues and other economic benefits on the **North Slope** should be favored.
- **Development** that both promises significant economic benefits and threatens subsistence resources should proceed with appropriate environmental safeguards.
- Development that threatens subsistence resources while promising few or no economic benefits should be strongly opposed.

The borough, in short, asks two basic questions of all proposed **development** activity: Will it pay? and what **will** be its effect on subsistence resources? Having committed itself to a projected \$150 million capital improvements program--with facilities in place and debt service mostly paid before Native corporation lands become taxable after 1991--and **looking** to its economic viability in the longer run, the borough must be pro-developmental in practice if not always in its pronouncements. On the other hand, it can afford to strike extreme postures against development, such as federal OCS leasing, that appear to have high environmental risks and relatively limited local economic pay-offs. Finally, in order to assure that existing and future developments will, indeed, pay off as desired, the borough must persistently seek such changes in state tax laws and regulations that will expand its authority to tax petroleum

industry property, and it must be prepared to spend Substantial time in court with the oil companies.

Petroleum Development and Taxation

Petroleum development provides the tax revenues necessary to sustain a massive capital improvements program and growth in the North Slope Borough government generally. Consequently, in the mayor's words, "Threats to the continuation of mineral resource development in the North Slope Borough are threats to the social and economic advancement of the people of the North Slope Borough."⁹ Further, the borough must continually push against state and oil company **barriers** to higher **levels** of taxation in order to tap the revenue base that petroleum development provides. The borough, therefore, looks to continued development of petroleum resources, and its leaders "spend a phenomenal amount" of time on tax and related financial **issues**.¹⁰

FINANCIAL STAKES AND CONSTRAINTS

By 1977 the assessed value of property in the North **Slope** Borough totaled over \$3.5 billion, an amount second only to Anchorage's \$4.5 billion, among Alaska's local taxing jurisdictions.¹¹ **Virtually** all of the North Slope property values, 98.5 percent, are based on **Prudhoe** Bay and related pipeline facilities owned by the oil companies. This potential tax base accounted for one-fourth of all assessed property values in Alaska municipalities in 1977 and about two-thirds of the value of oil and **gas-**related properties located in municipalities. (See Table 4.) The result is that with only 3 percent of the municipal population in Alaska

TABLE 4. PROPERTY VALUES AND DEBT OF NORTH SLOPE BOROUGH
AND ALL MUNICIPALITIES IN ALASKA, 1977

| <u>Variable</u> | <u>Alaska Municipalities</u> ¹ | <u>North Slope Borough</u> | <u>Borough as Percentage of Alaska Municipalities</u> |
|---|---|----------------------------|---|
| Total assessed property value (in millions) | \$14,000 | \$ 3,570 | 26% |
| Oil and gas property ² value (in millions) | \$5,390 | \$ 3,310 | 61% |
| Oil and gas as percentage of total | 39% | 93% | 238% |
| Total debt ³ (in millions) | \$ 520 | \$ 84 | 16% |
| Total debt as percentage of total value | 3.7% | 2.4% | 65% |
| Population | 397,368 ⁴ | 12,614 ⁵ | 3% |
| Per capita debt | \$1,308 | \$ 6,630 | 507% |
| Per capita value | \$35,320 | \$280,580 | 794% |

¹Includes all boroughs and home rule and first-class cities outside of boroughs.

²Full assessed value of oil and gas exploration, production, and pipeline transportation property (under AS 43.56) in municipalities.

³Total general obligation bonded indebtedness.

⁴Civilian population in municipalities.

⁵Includes 8,800 Prudhoe Bay-Deadhorse population.

SOURCES: Alaska Department of Community and Regional Affairs, Alaska Taxable 1977, pp. 32, 34; North Slope Borough, Official Statement of the North Slope Borough, Alaska, Relating to \$51,000,000 General Obligation Bonds, Series H, June 15, 1977, p. 10.

(at the peak of Prudhoe Bay-pipeline construction activity), the North Slope's property value per capita was nearly eight times greater than that of all municipalities in the state.¹²

The borough has made the most of the limited access it has to that enormous revenue base, given the restrictions of state law. By mid-1977 it had sold \$84 million in general obligation bonds to support its capital improvements program (CIP), giving it about one-sixth of the total bonded indebtedness and five times the per capita debt of all Alaska municipalities. (See Table 4.) With its huge property values, however, the borough's debt-to-value ratio was less than that of all municipalities statewide. The borough's overriding financial problem, then, is that state law does not allow the borough full access to the North Slope property base.

To secure its bonds and pay its debts, the borough depends of course on the oil and gas properties. Between 1975 and 1976, the borough's tax program was first blocked by oil company litigation and then limited by a \$1,000 per capita property tax revenue provision of state law. With the raising of the limit to \$1,500 and a population increase, the borough's property tax revenues jumped from \$7 million in fiscal 1976 to over \$19 million in 1977, accounting for nearly two-thirds of its total general revenues.¹³ (See Table 5.) Concurrently, the North Slope Borough's projected CIP rose from \$61 million in 1974, to \$115 million in 1976, and to \$152 million in 1977. And, as we have seen, by the end of 1977 the borough had sold \$84 million in general obligation bonds for the

CIP. Debt service charges on the bonds increased accordingly: from \$3.8 million in 1977 to \$4.8 million in 1978 and to a projected \$15.3 million in 1979.¹⁴ Although its present obligations are scheduled to be paid off by 1992, there are **still** some \$70 million in CIP projects yet to be funded and there will likely be more projects added to the **CIP** in the future. This, moreover, is on top of the costs of funding expansions in growth of borough government programs generally, and steady increases in the **main-**tenance costs of the **CIP** as projects are completed and brought **on** line.

TABLE 5. NORTH SLOPE BOROUGH REVENUES, 1973-1977

| Fiscal Year | Total Revenues (in 1000s) | Property Tax Revenues | |
|-------------|------------------------------|-----------------------|------------------|
| | | Amount (in 1000s) | Percent of Total |
| 1973 | \$ 550 | \$ 418 | 76% |
| 1974 | 6,160 | 3,550 | 58 |
| 1975 | 11,720 | 5,500 | 47 |
| 1976 | 16,630 | 6,880 | 41 |
| 1977 | 30,000 | 19,180 | 64 |

SOURCES: North Slope Borough, Official Statement of the North Slope Borough, Alaska, Relating to \$51,000,000 General Obligation Bonds, Series H, June 15, 1977; North Slope Borough, Annual Financial Report, fiscal year July 1, 1976-June 30, 1977.

Both the \$1,500 per capita tax limitation and the alternative statutory formula (225 percent of the average per capita assessed valuation in the state times the borough's population) are strongly affected by the borough's volatile population growth and decline, which, in turn, is due to

the vicissitudes of petroleum development activity. The result is shown in Table 6. In a peak fiscal year like 1978, the borough can collect \$19 million in property taxes, but it can expect to realize only \$10 million in 1980 because of the projected decline in population. The table also shows that under the \$1,500 per capita limit the property tax mill rate is a function of combined population and property value trends, and the borough is prohibited from imposing any higher rate. One short-term borough response is to shift from the \$1,500 per capita formula to the alternative property value basis for levying taxes, as was discussed in Chapter III. But this does not solve the borough's longer-run problem. Although the immediate decline may be stemmed, the limits imposed under both approaches act similarly to keep the borough's tax authority in effective check. ¹⁵

TABLE 6. EFFECTS OF POPULATION CHANGES ON NORTH SLOPE BOROUGH FINANCES UNDER THE \$1,500 PER CAPITA STATUTORY LIMIT

| <u>Fiscal Year</u> | <u>January 1 Population</u> | <u>Allowable Property Taxes (in 1000s)</u> | <u>Property Tax Base (in millions)</u> | <u>Equivalent Millage Rates</u> |
|--------------------|-----------------------------|--|--|---------------------------------|
| 1978 | 12,614 | \$18,921 | \$3,539 | 5.36 |
| 1979 | 9,319 | 13,979 | 4,079 | 3.43 |
| 1980 | 7,653 | 10,130 | 4,757 | 2.41 |
| 1985 | 9,116 | 13,674 | 5,083 | 2.69 |
| 1990 | 8,178 | 12,267 | 3,986 | 3.08 |

SOURCE : North Slope Borough, Official Statement, June 15, 1977, Table A-1, p. A-5.

Another response of the borough to the statutory limits, as we have seen, was to impose a tax levy above the per capita rate in order to cover debt service on its bonds, an action that resulted in the Sohio case.¹⁶ If the borough wins the case, it apparently would be able to tax as needed for debt service. But this probably would not end the matter, for future legislatures **could** impose other restrictions on the borough's tax authority and the oil companies could choose again to litigate.¹⁷

Even if the legal barriers to borough taxation were cleared away once and for all (which is not **likely**), the fact remains that the **existing** stream of borough property tax revenues will effectively end when Prudhoe Bay oil production ends, perhaps in twenty-five years. The borough, therefore, must favor and encourage new oil and gas development on the North Slope **at** the same time that it litigates and lobbies for an "unrestricted right . . . to tax property."¹⁸

Existing financial commitments alone--particularly as reflected in the CIP and in five to six hundred borough and school district jobs--prompted one top North Slope official to the conclusion that "We're on a spending pattern that isn't reasonable unless the borough gets a larger share of the resources" of the North Slope.¹⁹ Or, as stated by Mayor Hopson, "I am very concerned about the long term economic impact of oil and gas development upon our Arctic community. We are riding the crest of a high economic wave, and I fear about where it will deposit us, and how hard we will **land**."²⁰

EXPECTATIONS AND OBJECTIVES

The mayor and his advisors expect and, indeed, count on further oil and gas development on the North Slope. And, notwithstanding the mayor's well-publicized criticisms of OCS exploration and development, the borough's opposition has been neither total nor unconditional. In assessing its future economic condition, for example, the borough has explicitly incorporated the following assumption into its financial projections:

"Locally assessed [property values] will decrease after pipeline construction activities and production wells are completed in the Prudhoe area; however, offset increases are due from offshore leasing, Regional Corporation leasing, and National Petroleum Reserve activities" ²¹

Borough officials and advisors have also noted potential benefits from gas line construction, further development of the Prudhoe Bay field, possible exploration and development of major structures in the Arctic Wildlife Range, and, in general, further "extensive oil exploration" and leasing activity by federal and state governments on the North Slope. ^{**}

The mayor has tended to aim most of the borough's complaints about OCS programs at proposed activities in the offshore ice pack and shear zone areas and not at every form or location of OCS exploration activity. ²³

As we have noted, this opposition was triggered by Dome Petroleum's exploration program in the Canadian arctic off the Mackenzie Delta area. Further, it appears that the mayor's real aim is to influence the **terms** and conditions of **OCS** exploration and development programs rather than to stop them. ²⁴ This conclusion is generally consistent with the record reviewed in this report, and it is reinforced by the fact that the

borough expects to benefit economically from OCS onshore support facilities. And, to the extent that it can effectively exercise its taxing powers in the offshore area to the three-mile territorial limit, it also expects to tap offshore facilities as well.²⁵

It nonetheless appears that the borough prefers onshore over offshore development, and it has particularly favored exploration of the National Petroleum Reserve-Alaska (NPRA) and of Arctic Slope Regional Corporation lands. Beyond the currently uncertain tax revenues that might be derived from activities in the petroleum reserve, the mayor has also emphasized economic benefits that might accrue to ASRC and the village corporations. He has called for regional and village corporation involvement in NPRA "at all levels, including drilling and all support operations, and pipeline construction and management." And, as for the borough, he foresees an opportunity for it to provide "revenue generating" utility, security, and health service programs in the prospective oil fields.²⁶ Additionally, the borough has continued to press the North Slope's longstanding interest in expanding its access to natural gas from the reserve to provide village heat and power.²⁷

The borough's overriding interest in the potential economic advantages of NPRA and other onshore petroleum development does not cancel its commitment to environmental protection. But its position seems to be that adverse onshore impacts can be mitigated and managed more effectively than offshore impacts. A federal official with responsibilities in the NPRA exploration program recently noted that while borough officials

have shown concern for protect^{ng} subsistence resources and historical sites, "they haven't tried to **block** exploration in any way." He further observed that "We show far greater concern, are more restrictive in the reserve, than ASRC is outside [the reserve], "2⁸ implying that the borough may look the other way when it comes to corporation lands.

In 1977 testimony before congressional hearings on the federal (d) (2) lands issue, Mayor Hopson made a special plea for a land policy that would facilitate the development of ASRC lands, and he noted that, for all prospective oil and gas exploration and development, "in terms of commercial extraction only small amounts of the land surface will be disturbed and temporarily occupied. "29 And a borough consultant recently underlined the borough's interests, pointing out that the borough "wouldn't do anything to jeopardize" the exploration and development of ASRC lands, such as taking a threatening position on the (d)(2) issue or through use of its potential regulatory authority over corporation lands. 30

We have also noted (in Chapter III) the borough's interest in the selection of state lands at Prudhoe Bay, under state law authorizing all boroughs to select 10 percent of "vacant, unappropriated, and unreserved" lands within their borders. In 1973 and 1974, the North Slope Borough attempted to select nearly 200,000 acres of state land, mostly in the Prudhoe Bay area. Apart from the direct regulatory authority that borough ownership of the lands would afford, the borough also sought revenue from "leases and other disposals of the surface of the selected property. "31

The borough's attitude toward petroleum development emerges roughly as follows:

- Offshore development may be too risky except in nearshore areas and should be resisted for environmental reasons; however, where it occurs, environmental safeguards should be strict and the borough should, as always, attempt to derive maximum economic returns from such development.
- Onshore development is generally to be favored, especially where there are potential tax revenues, local jobs and income, and **local** access to fuel supplies; environmental safeguards should be applied but not so rigidly as to delay or discourage development.
- Development of NPRA and ASRC lands **will** be of particular benefit to the borough and its people, but virtually any onshore development that is reasonably mindful of **subsistence** and other environmental values should be encouraged.

The single, clear exception to the borough's positive commitment to arctic petroleum development is its negative attitude toward the offshore OCS program as articulated by the mayor. This exception should not obscure the fact that the borough is fundamentally dependent on oil and gas development for its economic survival. It should also be noted that the problem with OCS development, from the borough's point of view, is not only that it may be environmentally risky. It is also that offshore development, particularly in federal waters, seems likely to offer the fewest economic returns to local interests. But the borough's basic

response to petroleum development is to assume its desirability and inevitability and then to bargain for, demand, and extract the most favorable terms that it can.

Native Protection

PERSPECTIVE

There is little or nothing that the North Slope Borough can do positively to make oil development happen in the **arctic** on the schedule, in the form, or at the level that it wants. All it can do is hope and wait for developments that might be turned to **its** economic advantage. The **borough's** effective responses occur only after the oil facilities and **equipment** arrive on the North Slope as taxable resources. Then borough leaders and advisors devote the **main** part of their energies to protecting the borough's authority to tax, extracting tax revenues, and spending the funds for capital improvements, borough programs, and general government support.

There is **also** little the borough itself can do to stop arctic oil and gas developments that may cause social and environmental harm and, what is worse, offer few or no economic benefits in return. But the effects of large-scale petroleum development are elusive, complex, and varied, and it's always difficult to predict how benefits and costs will net out for one interest or another. Moreover, the borough is now locked into its new, oil-dependent cash economy, and it is forced to look first to its future economic security and then to its environmental security.

So the **basic attitude** of the borough toward arctic oil development can be a **blend** of fatalism and opportunism. In general, development will occur (or not) regardless of the ambitions and desires of the North Slope Borough, and it will bring uncertain combinations of opportunities and threats. If that is essentially the case, then the most rational response of the borough to petroleum development is to pursue two apparently contradictory courses simultaneously, treating oil development as both an opportunity and as a threat without having to make a "balanced" response. The borough can seek to extract as many economic benefits as possible, and it can **also** demand all of the concessions and conditions, including environmental safeguards, that seem desirable. Both courses can be pursued to their effective political and legal limits because what the borough manages ultimately to accomplish will **neither** make nor break large-scale oil development in the arctic.

An underlying objective in the borough's efforts to protect subsistence resources, traditional land use areas, and other Native values is to extract increasingly greater shares of control over the North Slope region from federal and state agencies. As in the area of oil development and taxation discussed above, the borough is here demanding acceptance and recognition of its local governmental status and authority. The effective limits of the borough's authority in a region formerly the exclusive province of federal and state agencies are still being defined, and the process of defining those limits is as much political as it is legal. The borough is continuously testing the limits of law, pressing into formerly exclusive agency domains, and asserting its prerogatives. Thus

the North Slope Borough's efforts to protect Native subsistence and related values is but a part of its broader campaign to achieve an identity and to be recognized as a legitimate and authoritative presence in the region--a home rule borough government that is "taken seriously" by federal and state governments and by oil companies. As a result, it is difficult to isolate borough "environmental responses" to oil and gas development from the full range of responses it is making to external forces as a developing regional political institution on the North Slope. For this reason, too, it is often difficult to distinguish rhetoric from reality, and pronouncements from operational programs, on the North Slope.

BOROUGH ENVIRONMENTAL PROTECTION POLICY

In early 1977 the head of the borough's newly-established Department of Conservation and Environmental Security presented a formal policy memorandum on North Slope environmental protection, which was apparently approved by the mayor as an official statement of borough administration policy. 32 The memorandum declares that

It is the policy of the North Slope' Borough to recognize the inevitable development of Arctic energy and mineral reserves, and the threats to our environmental security posed by this development. We seek to avoid harmful impact upon its citizens, families and communities resulting from this development. We feel with good cooperation between government and industry, our land can yield its subsurface wealth with tolerable disturbance of our people and our land.³³

The statement then points to the critical environmental threat: "Our greatest concern is caused by Arctic offshore operations. We know of no proven technology through which oil can be safely taken from under the ice that covers the Arctic outer continental shelf." Taking note of

Canadian Beaufort OCS exploration, the statement proposes that a "single Arctic offshore working agreement between Canada and the U.S." would be necessary and that the "**Circumpolar Inupiat** Community" should also be a party to an international coastal management system.³⁴ In addition, the basic statement of policy calls for borough controls "over **surface-**disturbing development to enable protection of the many traditional use values of our land" and ends by naming another threat that borough leaders evidently consider as great or greater than OCS:

. * . it is our policy to guard against permanent immigration to the Arctic. We are opposed to the creation of permanent **oil** field communities, and regard Arctic population growth to be potentially our greatest environmental security problem. Accordingly, we oppose **public** use of the **Fairbanks-Prudhoe** oil pipeline haul road, and other such permanent public access to the **Arctic**.³⁵

The memorandum includes discussion of various proposed "strategies" for carrying out the environmental protection policy, two of which are explored further here: "arctic coastal zone management" and land use controls.

ARCTIC COASTAL ZONE MANAGEMENT

We suggested in Chapter III that the borough's concept of a coastal zone management expansively covers most of its concerns relating to the development of oil and gas resources and the protection of subsistence resources and Native access to them. Perhaps more to the point, "arctic coastal zone management" as developed so far by the borough is more accurately described as a loose series of borough goals, demands, strategies, and tactics rather than as an identifiable program. Under the

broad heading of coastal zone concerns, borough efforts have included the following kinds of Native protectionist activities:

e The mayor's opposition to Canadian OCS exploration, which he highlighted in his 1976 congressional campaign, and his call for an OCS moratorium until a "single set" of international rules were developed and enforced to assure the environmental safety of all OCS programs in the international arctic.

- The **Inuit Circumpolar** Conference of mid-1977 held in Barrow and attended by Native delegates from Canada, Greenland and Alaska; the conference focused on arctic environmental protection issues and the development of an international arctic policy to respond to OCS and related developmental threats.

- Follow-up efforts by the borough to strengthen "alliances" with Canadian Native groups as a means of bringing international political pressure to bear on U.S. and Canadian governments and multi-national oil corporations involved in arctic OCS programs.³⁶

- Contacts with national environmentalist organizations to solicit their support for the borough's OCS position and to establish a Native-environmentalist **alliance** for political support at national and international levels on OCS and subsistence resource protection issues.³⁷

e Statements and related efforts in the face of state game management restrictions to define caribou management as an international problem requiring Canadian and North Slope Native participation through the borough's Department of Conservation and Environmental Security, which combines "the borough's existing game management

. . . [coastal zone management] and environmental protection programs "38

- Contacts with Canadian Native groups, U.S. State Department, and others to "push for changes in the Migratory Birds Treaty to decriminalize duck hunting in the Arctic," again relating this problem broadly to problems of Native control, coastal management, and traditional subsistence rights. 39
- Statements claiming and attempting to justify a "doctrine of aboriginal offshore jurisdiction" in reaction to the federal OCS program and to the International Whaling Commission's restrictions on bowhead whaling; this interest extends even to "development of a legal position regarding Borough jurisdiction beyond the **three-mile limit** which would serve to carry out the intent **of** the Borough's coastal zone management plan and program. 1140

The above examples are fairly representative of the flurries of statements and activities continually emerging from the borough in the broad area of Native protection; particularly when contrasted with the more methodical, sustained, and directly productive efforts that go into the borough's taxation, budgeting, capital improvements, and employment programs, they do not qualify as effectively organized and integrated elements of North Slope Borough government. Rather, they represent an aggressive political testing of borough influence in policy areas beyond the established and more conventional areas of borough government activity where law and precedent provide firmer grounds for North Slope Native claims and demands. In the protectionist area, the borough is increasingly responding more

"conventionally" in its efforts to assert greater control over regional land use plans and decisions by federal and state agencies.

LAND USE CONTROLS

The North Slope Borough's participation in federal and state programs for the National Petroleum Reserve, OCS development, and the **trans-Alaska** pipeline haul road and utility corridor is discussed in detail in Chapter v. Here, we will only indicate the general character of borough responses to land use policy issues associated with these major development programs. In this area, the borough's efforts are apparently becoming integrated into a more stable pattern of borough government activity, and the borough itself is apparently becoming more closely integrated into federal and state planning and decision making processes.

The borough planning department in 1977 commissioned a study of the extent and limits of the borough's regulatory authority over the development and use of federal, state, **village**, and other lands in the region.⁴¹ While the report focuses on the haul road and utility corridor issue, its **analysis** and implications go beyond that single issue to the basis of borough claims to a greater share of control over developments on federal (and state) lands in the region.

In general, the report finds that the mere fact of federal land ownership and management jurisdiction does not necessarily carry exclusive federal control with it. To determine the extent of relative federal-local shares of control, "the specifics of the situation must be examined,"⁴² and local

government "may exercise control over federal lands to the extent regulation would not be inconsistent with or frustrate clear federal policies and programs." ⁴³ Thus "Determination of when federal regulations 'override' state or local controls involves a balancing of respective actions" and a finding that the interests clearly conflict. ⁴⁴ And "Where there is no overriding federal law or policy, local concerns should be **respected.**"⁴⁵

The report proceeds to identify several provisions of federal land management laws that require federal agency consultation and coordination with local governments, including local rights to notice of impending federal actions, public hearings, and other forms of **local** involvement. ⁴⁶ **It** further points to the legal importance of local comprehensive plans and consistent regulations in order to establish a clear, rational basis and acceptable procedures for any effective local control or participation in federal regulation of **land.**⁴⁷

Given the "coordination and consultation" provisions of law, the legal ambiguities of intergovernmental claims to control, and the importance of establishing positive precedents in specific situations, the report observes that "The ability to cooperate and participate with others as they make decisions about how land is to be used may be more important than the power to control such decisions after they have been **made.**"⁴⁸ **An** essentially similar analysis is made of local-state relationships in the application of local regulations to state owned and managed lands, and similar conclusions drawn. ⁴⁹

The report thus suggests a relatively conservative framework and approach for North Slope Borough government participation in federal and state agency land use plans and programs. It is conservative not in the sense of advising timidity, but in encouraging close examination of legal openings for borough participation, which, in turn, **would** be based as fully as possible on reasonable local objectives and policies and pursued in a cooperative spirit. As noted earlier, the borough apparently is moving in the recommended direction, although not of course to the exclusion of continuing conflict over tax issues and periodically aggressive pronouncements and claims, particularly in the area of subsistence resource protection and regulation.

The North Slope Borough has largely succeeded in winning the attention of federal and state agency officials when its leaders feel that basic interests are at stake. One borough official who works closely with federal and state environmental and resource management agencies acknowledges that the latter have become increasingly quick to take notice of borough claims and complaints and that confrontation tactics still work. But he also sees the value in the more conventional approaches represented in the borough's participation in cooperative intergovernmental planning programs such as for OCS and state coastal zone management.⁵⁰

By the end of 1977, the North Slope Borough was directly represented on federal-state-local planning/advisory groups for National Petroleum Reserve exploration and development and for haul road and utility corridor management. In addition, the borough was participating in a state advisory

group for the development of stipulations for the prospective 1979 joint Beaufort sale, and the borough mayor had been appointed **to** the Alaska Coastal Policy Council. Concerning the last of these, it should be noted that **the** borough was **also** preparing specific land use plans and policies for the coastal area potentially affected by a Beaufort lease **sale** and that this activity was being carried **out** with state financial assistance. **51**

These are some of the current signs that the borough is maturing as an institution and that it is gaining the recognition if not the unqualified acceptance its leaders have sought for it from federal and state agencies. The question is whether these more conventionally institutionalized forms of borough interaction with federal and state agencies will result in pay-offs and incentives sufficient **to** encourage longer term cooperation from the borough.

The state's coastal management program is a case in point. The 1977 state coastal management **act**⁵² provides for the development of district coastal management programs "which shall be based upon a municipality's . . . comprehensive plan . . . or statement of needs, policies, objectives, and standards governing the use of resources within the coastal area of the **district.**"⁵³ Further, the municipality--in this case the North Slope Borough--"shall implement" the program.⁵⁴ But district programs are also subject under the law to state standards and approval and indirectly to federal OCS and other interests as well. This version of coastal management stands in some contrast to the borough's concept of "arctic coastal zone management," and it remains to be seen whether borough, state and

federal officials will be able to bargain effectively with each other within its framework.

Self-Determination

On the North Slope, the drive toward "self-determination" has been based on the consolidation of new power and authority at the regional level through the development of a strongly executive-centered borough government. The borough has served primarily as an instrument for extracting and spending tax revenues derived from petroleum development at Prudhoe Bay and for **claim**ing greater shares of local control over the terms and conditions of the petroleum development on which the borough depends. **Al-**though its potential regulatory powers over land and resources are important, the borough's principal concerns since its incorporation have been to establish and expand its authority to tax and to spend.

The incorporation and growth of North Slope Borough government has been achieved in the face of varying amounts of opposition and resistance, primarily to Native leaders' claims to some substantial share of the region's taxable property base. But the borough has also met resistance to its sometimes equally ambitious **claims** to control of the land, waters, and subsistence resources that are closely associated with traditional Native values. Conflicts with external agencies and interests have thus been central and persistent in the experience of the borough's leaders, who accordingly have been preoccupied with strengthening and exercising the centralized regional authority necessary to defend and extend North Slope claims to self-determination **vis-a-vis** outside authorities and

interests. In this context, "self-determination" means effectively **using** regional governmental authority to exploit and defend against "inevitable" developments impinging from outside, and to do this in the interests of the borough and the people of the North **Slope**.

Villagers' interests have not been ignored as the broader regional process of development has evolved. They are direct beneficiaries of the services, facilities, and jobs that are the major tangible products of the borough's efforts. In borough leaders, they also have aggressive spokesmen defending more traditional Native **values** against perceived outside encroachments. But while villagers are beneficiaries of the region's political development, they are not significant participants in it. They are primarily recipients and consumers of borough government goods. Given their past dependence on even more remote and less beneficent federal and state agencies, this does not necessarily represent a backward step. In material terms, it is clearly an advance.

BOROUGH AND VILLAGERS

A large proportion of North Slope villagers have held jobs with the borough and have therefore benefited in a very direct and immediate sense from their regional government. Further, despite complaints about service delivery, most villagers believe that the borough is working to meet their needs. Many villagers are ambivalent or doubtful about the changes that have occurred in their lives as a result of petroleum development, but they tend to give some credit to the borough for its handling of the oil

companies. The following results from a late 1977 survey of North Slope villagers support each of these findings.⁵⁵

Table 7 shows the major employers of village respondents who were holding cash income jobs at the time of the survey. (56 percent of the respondents held such jobs, and 44 percent were not currently employed.) The single largest employer was ~~the~~ the borough government, which accounted for 35 percent of total village wage employment. Construction projects under the borough's capital improvements program probably supplied many of these borough jobs during the fall period of the survey. Adding ~~in~~ jobs with the borough school district, over half (52 percent) of employed village respondents were currently holding jobs with the borough.

TABLE 7. VILLAGERS' CURRENT WAGE EMPLOYMENT, BY MAJOR EMPLOYER

| | <u>Number</u> | <u>Percentage</u> |
|-------------------------|---------------|-------------------|
| Borough government | 61 | 35% |
| Borough school district | 29 | 17 |
| Private business | 28 | 16 |
| Village corporation | 22 | 13 |
| Federal government | 12 | 7 |
| Other employment | <u>23</u> | <u>13</u> |
| | 175 | 100% |

When asked if they had ever had a job with the North Slope Borough or with a borough contractor, 55 percent of the villagers answered affirmatively. Related questions established that these villagers held an average of three different jobs with the borough for an average total of **35** weeks of

employment, **again** suggesting that many were employed **in** construction work under the borough's **CIP**. On **the other hand**, less than 20 percent **of** the villagers reported that they had **worked** for an **oil** or pipeline company.

Villagers were asked to identify the organization on the **North Slope** which "best meets their needs," selecting one from the **list** shown in Table 8. Given the breadth **of** the question, the relatively high proportion of respondents selecting the borough (38 percent) tends to suggest basically favorable attitudes toward the borough among villagers generally. However, non-Barrow villagers were somewhat more **likely to** name their more immediately-present village corporations, **while** Barrow respondents were more likely to name the borough.

TABLE 8. ORGANIZATION "BEST MEETING" VILLAGER NEEDS

| | <u>Number</u> | <u>Percentage</u> |
|----------------------|---------------|-------------------|
| Village council | 25 | 8% |
| North Slope Borough | 115 | 38 |
| Village Corporation | 54 | 18 |
| Regional Corporation | 21 | 7 |
| State government | 10 | 3 |
| Federal government | 15 | 5 |
| Oil Companies | 3 | 1 |
| None | 14 | 5 |
| Don't know | <u>43</u> | <u>14</u> |
| | 300 | 100% |

Note: Barrow respondents were more likely to choose the borough; final tabulations will be adjusted to show a higher percentage for the borough.

Asked specifically if they thought that the North Slope Borough is “helping to meet your needs,” 66 percent of the villagers answered positively (Table 9). Again, Barrow residents were more likely than other villagers to give this response, but very substantial support for the borough was evident in all villages.

TABLE 9. IS THE BOROUGH HELPING TO MEET YOUR NEEDS?

| | <u>Number</u> | <u>Percentage</u> |
|-------------------|-------------------------|--------------------------|
| Meeting needs | 206 | 66% |
| Not meeting needs | 42 | 14 |
| Don't know | <u>62</u> 310 | <u>20</u> 100% |

Note: Barrow respondents were more **likely** to answer positively; **final** tabulations will be adjusted to show a higher percentage of favorable responses.

In an effort to determine general feelings about the changes that have occurred on the North Slope as a result of **oil** and gas development, villagers were asked to “Think about the big buildings and machines at Prudhoe Bay and the pipeline. Think about the new jobs at **Prudhoe** and jobs on the pipeline. Think about the land that **is** being used and the animals that live on the land. Think about all these things and please tell me whether you think they have been good or bad for the people of the North Slope.” Their responses are shown in Table 10. Many respondents believe, on **balance**, that petroleum development has had bad effects, and their answers to related questions indicated that they had subsistence resource and environmental problems in mind. But about **the** same number felt that petroleum development, **overall**, has been good, and these villagers tended

especially to think of the increased **number** of available jobs. Another large group saw good and bad effects as about equal, but **the** single most common response of villagers (35 percent) was that they did **not** know what to think of the changes overall.

TABLE 10. GENERAL ASSESSMENTS OF NORTH SLOPE PETROLEUM DEVELOPMENT

| | <u>Number</u> | <u>Percentage</u> |
|-------------|--|-------------------|
| Good | 57 | 18% |
| Bad | 67 | 22 |
| Both | 67 | 22 |
| No change | 11 | 4 |
| Don' t know | <u>108</u> <u>310</u> | 35 100% |

The importance villagers attribute to subsistence hunting and whaling is reflected in the fact that respondents in over 40 percent of the region's households report that they obtained half or more of their food from whaling and other subsistence activities in 1977. **At** the same time, over 70 percent think that **they** obtained less subsistence food **in** 1977 than in 1970. Almost half of these respondents mentioned caribou hunting regulations as the major reason for the decline **in** their subsistence take.

The borough mayor thus seems to be striking a very responsive chord among villagers in his recurrent campaigns against state game enforcement authorities. On the other hand, villagers do not perceive the borough (and less so, any other organization) as being particularly effective in a

related area. To the question, "Which of these [listed organizations] is doing the best job of controlling when and where oil and gas development takes place?" villagers responded as shown in Table 11. While the borough was named by 21 percent of the respondents--more than any other organization-- 54 percent quite understandably answered that they just did not know.

TABLE 11. ORGANIZATION DOING "BEST JOB" OF CONTROLLING OIL DEVELOPMENT

| | <u>Number</u> | <u>Percentage</u> |
|-----------------------------|---------------|-------------------|
| State government | 14 | 5% |
| Federal government | 12 | 4 |
| North Slope Borough | 62 | 21 |
| Arctic Slope Regional Corp. | 35 | 12 |
| Other | 6 | 2 |
| None | 8 | 3 |
| Don't know | <u>161</u> | <u>54</u> |
| | 298 | 100% |

Finally, villagers were asked to evaluate how effectively the North Slope Borough was dealing with oil companies on the North Slope, including its use of borough tax authority. Somewhat less than half of the respondents felt that the borough was doing a fair or good job, but just as many did not know (Table 12). There were even higher proportions of "don't know" answers to similar questions about the effectiveness of the Arctic Slope Regional Corporation and the federal and state governments.

TABLE 12. ASSESSMENT OF BOROUGH DEALINGS WITH OIL COMPANIES

| | <u>Number</u> | <u>Percentage</u> |
|------------|---------------|-------------------|
| Good job | 82 | 26% |
| Fair job | 64 | 21 |
| Poor job | 15 | 5 |
| Don't know | <u>151</u> | <u>48</u> |
| | <u>312</u> | <u>100%</u> |

In general, the borough government as an institution has established its presence and value in the minds of North Slope villagers, particularly as a source of jobs and services. Villagers are less certain and probably less informed about the borough's posture toward arctic petroleum development. However, they are very sensitive to environmental issues centering on the protection of subsistence resources and their traditional rights to hunt and to whale. The borough mayor's campaign against state and federal restrictions on subsistence activities is apparently in close tune with villagers' needs and sentiments.

ACCOUNTABILITY

The borough enjoys widespread support on the North Slope, and it has at least the acquiescence of its main potential rival institution, the Arctic Slope Regional Corporation. Within the borough structure, the executive clearly dominates the assembly. The mayor's office, and the personally strong incumbent mayor, definitely control North Slope Borough government, and there is little or no effective organized opposition or even any serious competition within the region.

The mayor at an early date took the lead in calling for the transfer of village powers to the **borough**, in establishing a home **rule** charter commission (which made it possible for the mayor to serve a term in office beyond the established two-term limit), and in setting basic tax policies to meet the revenue crisis of the borough's first two to three **years**.⁵⁶ He and his close advisors in the years since have exclusively developed all important policies for taxation of petroleum and other properties, regulation of development, expenditures for capital improvements and other borough programs, and for protection of subsistence and other resources. There is simply no record of any significant policy initiative from the **assembly**, and on **virtually** all major policy questions, the assembly **ap-**proves **the mayor's** proposals. 57 Although the pattern of executive dominance in policy formulation and initiative is not unique to the North Slope, the extent of the mayor's domination **of** the North Slope Borough does tend to set it apart from **virtually all** other major municipalities in the state.

This is not to imply anything sinister or irregular about the politics of North Slope Borough government. To the contrary, our analysis has identified several major factors contributing to the flow of power to the mayor's office, **irrespective** of Mayor **Hopson's** personal dynamism. The North Slope Borough has had to cope with a series of threats to its legal and financial survival from its beginning, and it has had to respond to state and **national** policy initiatives critically affecting the region's lands and resources. And there is no apparent end in sight to the **crisis-**like character of borough government affairs. These conditions alone are

sufficient to explain the growth and **pre-eminence** of executive authority in any governmental institution.

On the North Slope, the condition of executive domination at the regional **level** is reinforced by other factors as well: the physical isolation and the distances between **small** villages, the traditional dominance of Barrow, the limited pool of experienced and educated leadership, and the preoccupation of potential political rivals with their own regional and village corporation affairs. Finally, villagers have been quick to look **to** the borough administration to meet their basic social service, educational, health, and employment needs, and, more than any other institution in their experience, the North Slope Borough has at **least** begun to deliver. It is significant, too, that the oil companies (and, less so, the state and federal governments), and not the villagers, are supplying the tax dollars to pay for borough programs. There is thus ample incentive for most permanent residents of the North **Slope** to support the borough's taxing and spending policies to the fullest extent possible, and no immediate financial self-interest in opposing or even seriously questioning them. Although officials of the Arctic Slope Regional Corporation may emerge as effective critics, particularly of the borough's tax policies, they have yet to react in more than limited, sporadic, and often personally idiosyncratic ways.

There is no question that North Slope Borough leaders have aggressively defended and represented in many ways the interests of the region's villagers. At this stage of the borough's development, however, it is clear

that the practice of political accountability within the region is a far less important check on borough leadership than are the limits imposed by external institutions having their own authority and **claims** on the region's lands and resources. The next chapter takes a detailed **look** at borough responses to federal and state policies for the North Slope haul road, the National Petroleum Reserve, and outer continental shelf development.



Endnotes

1. Speeches, legislative testimony, press releases, letters, and **similar** borough documents on significant issues almost **always** come from the mayor. Discussions with borough officials, staff, and **consultants** throughout the course of this study consistently reinforced this view of Hopson's status both within the borough structure and in the borough's external relations. Personal observations at borough meetings and conferences also lent support to this estimation.
- 2* This discussion of borough consultants and advisors is distilled from personal contacts with some twenty borough **executive** and administrative officials, assembly members, and consultants between October 1977 and February 1978.
3. Personal contacts with five assembly members, Barrow, October and December 1977 and February 1978.
4. This point was confirmed by a well-placed administrative staff member, personal contact, October 1977.
5. Personal contact, Barrow, December 1977.
6. personal contact, Anchorage, January 1978. These observations were reinforced repeatedly in our personal contacts with borough officials and consultants and in our analysis of borough documents throughout the course of the study.
7. Personal contact, Anchorage, January 1978.
8. "Testimony of Mayor Eben Hopson before the General Oversight and Alaska Lands Subcommittee on Section 17(d)(2) Lands," August 12, 1977, p. 2.
9. Ibid., p. 3.
10. Personal contact with former borough staff member, Anchorage, February 1978.
11. Alaska Department of Community and Regional Affairs, Alaska Taxable 1977, p. 34.
12. If assessed pipeline property values in the unorganized borough were included (about \$3.1 billion), the North Slope Borough would account for about 20 percent of **total** property values and 40 percent of oil and gas exploration, production, and transportation properties **state-wide**. With this adjustment, the North Slope's per capita property value would still be about seven times greater than that for the state as a whole. (Ibid., p. 32-34.)

13. In comparison, the Fairbanks-North Star Borough, with a population some fifteen times greater than the North Slope's Native village population, collected only \$6.7 million in property taxes in 1977, or **only** about one-third of the North **Slope** Borough's collections. Property taxes comprised about one-seventh of Fairbanks' total general revenues of \$49 million. (Personal contact, **R. Jones**, finance director, Fairbanks-North Star Borough, March 29, 1978.)
14. North Slope Borough, Annual Financial Report, fiscal year 1977, pp. 41, 103-4. In comparison, the Fairbanks borough's debt service payments in 1977 were \$4.9 million and the State of Alaska's were about \$60 million (Anchorage Daily News, April 5, 1978).
15. Letter from John R. Messenger, deputy commissioner, Alaska Department of Revenue, to Eben Hopson, mayor, North Slope Borough, March 6, 1978. According to the Department of Revenue, the borough would be allowed to tax only a portion of the assessed property value, but it could do so to a maximum of 30 mills, which is the statutory limit for any municipality. It appears that such a mill rate, when applied to the allowable portion of property **value** in 1979, will yield tax revenues near the amount collected by the borough in 1978.
16. See Chapter III and Appendix A for details.
17. Two major companies recently indicated **their** continuing readiness to do so in view of the borough's expanding **CIP** and the high level, **long-term** costs it implies. (Letters from D.S. Mace, assistant general manager, **Sohio** Petroleum Company, to Eben Hopson, mayor, North Slope Borough, February 7, 1978; and from Harry W. Brown, assistant **Alaska** operations manager, **Exxon** Company, **U.S.A.**, to Mayor Hopson, February 14, 1978.)
18. Letter from Eben Hopson, mayor, North Slope Borough, to Brenda **Itta**, Alaska House of Representatives, March 17., 1976.
19. Personal contact, Barrow, February 1978.
20. "Mayor Hopson's Warning to the People of the Canadian Arctic," Testimony before the Berger Inquiry, September 21, 1976, p. 13.
21. North Slope Borough, Official Statement . . ., June 15, 1977, Table A-6, p. A-10.
22. *Ibid.*, p. 7; also, personal contacts with two borough staff members, a former staff member, and two consultants, Anchorage and Barrow, January-February, 1978.
23. See, for example, "Mayor Eben Hopson's Statement to Alaskan Conservationists Concerned About Offshore Oil and Gas Development in the **Beaufort** Sea" (no date, approximately fall 1976).
24. Personal contact, borough staff official, January 1978.

25. The borough attorney tentatively holds the opinion that the borough's tax authority does extend to the three-mile offshore limit. The legal description of the borough's boundaries does include the **three-mile** territorial sea, but the practical meaning and effect of such "jurisdiction" apparently is not clear.
26. Federal Energy Administration, "Hearings on Pet 4 Exploration, Development, Productions and Related Issues," Barrow, April 10, 1976 (transcript), pp. 274-5. In **1975**, the borough established Service Area No. 10 to provide water, sewer, and solid waste utilities systems in the **Prudhoe Bay-Deadhorse** industrial area, which were also intended to be "revenue generating." By early 1978, it was not clear that any of these facilities would be successfully completed and used. Construction delays, financial overruns, permitting problems, and engineering deficiencies contributed, among other factors, to the project's disarray. (Letter from Ernst Mueller, commissioner, Alaska Department of Environmental Conservation, to Eben Hopson, mayor, North Slope Borough, January 26, 1978; memorandum from Bob Martin, Facility Construction and Operation, Department of Environmental Conservation, to Files, Subject: "North Slope Water and Sewer," September 6, 1977.) The Service Area No. 10 story appears to be a complex case study in its own right, and can be noted only in passing here. A subsidiary of the NANA Regional Corporation, NANA Environmental Systems, Inc., contracted with the borough for construction and management services for the Service Area No. 10 project. The project seems to have met with one minor or major disaster after another from the start.
27. Beyond the reserve, borough officials have even discussed "taking advantage of the ARCO refinery at Prudhoe to meet some of the Boroughs fuel needs." The idea was to achieve "energy independence on a village-by-village basis" and to get fuel for village fuel cells. (Letter from James Marshall, administrative assistant to the mayor, to Tim **Bradner**, BP Alaska, September 22, 1976.)
28. Personal contact with official of Bureau of Land Management, Fairbanks, February 1978.
29. "Testimony before the General Oversight and Alaska Lands Subcommittee," August 12, 1977, p. 5.
30. Personal contact with borough consultant, Anchorage, February 1978.
31. Memorandum from Charles K. Cranston to Eben Hopson, mayor, North Slope Borough, Subject: "North Slope Borough Revenue Authority, with special emphasis on litigation" February 3, 1978 (reproduced as Appendix A below). The state's refusal to recognize the borough's land claims resulted in a law suit, North Slope Borough v. Robert LeResche, presently on appeal to the Alaska Supreme Court.

32. Memorandum from **Billy** Neakok, director, Conservation and Environmental Security, to Mayor Eben Hopson, Subject: "Statement of the Environmental Protection Policy of the North Slope Borough" (no date, approximately March 1977). (Reproduced as Appendix B below.) See Arctic Coastal Zone Management Newsletter, No. 4 (May-June 1977).
33. Neakok memorandum, p. 4.
34. Ibid., p. 4.
35. Ibid., pp. 4-5. See Chapter V below for detailed discussion of the haul road issue.
36. See any of several issues of the Arctic Coastal Zone Management Newsletter for discussions of borough interests and activities.
37. Ibid.; also, "Mayor Eben Hopson's **Statement** to Alaskan Conservationists Concerned About Offshore Oil and Gas Development in the Beaufort Sea" (no date, approximately fall 1976); letter from Eben Hopson, mayor, North Slope Borough, to David R. Brewer, president, Friends of the Earth, Washington, D.C., February 26, 1977.
38. Arctic Coastal Zone Management Newsletter, No. 1 (January 1977) and No. 3 (March-April 1977).
39. Ibid.
40. Arctic Coastal Zone Management Newsletter No. 2 (February 1977); "Mayor Eben Hopson's Address on Government Relations to the 1977 AFN Convention, Anchorage, Alaska," November 11, 1977; Alaska Consultants, Inc., "North Slope Borough Coastal Zone Management Program Considerations," December 1976, p. 28.
41. Conrad **Bagne**, "North Slope Borough Legal Powers and Options on the Haul Road and Adjacent Federal and State Lands," A report submitted to the North Slope Borough Planning Department, November 1, 1977. Excerpts from this report are reproduced as Appendix C below.
42. Ibid., p. 1.
43. Ibid., pp. 5-6.
44. Ibid., p. 9.
45. Ibid., p. 23.
46. Ibid., pp. 23-26 **ff.**
47. Ibid., pp. 32-36.
48. Ibid., p. 1.

49. Ibid., pp. 50-53 ff.
50. Personal contact, Anchorage, February 1978.
- P 51. Personal contact with official of Alaska Department of Community and Regional Affairs, Anchorage, February 1978.
52. Session Laws of Alaska, 1977, Chapter 84.
53. AS 46.35.030.
54. AS 46.35.090(b).
55. The North Slope survey was conducted under the National Science Foundation-supported Man in the Arctic Program (MAP) of the Institute of Social and Economic Research. Conducted between October and December 1977, the survey was based on 80 percent coverage of all households in Point Hope, **Wainwright**, **Anaktuvuk Pass**, **Nuiqsut**, and Kaktovik, and a 50 percent simple random sample of all households in Barrow. (Point Lay and Atkasook were not included in the survey.) The interviews were conducted primarily by North Slope Natives.
- Most (over half) of the 317 adult respondents were male, most were heads of households, and most were between the ages of 18 and 40. Sixteen additional cases will be added to the final data, and tabulations, such as those presented here, will be adjusted as appropriate to account for the smaller percentage of households selected in Barrow. Such adjustments **will** affect the results presented here only where the Barrow response significantly differs from the non-Barrow response to a particular item. Where this occurs, it is noted in the above discussion.
56. "Policies to be Presented to all Villages on the North Slope" (no date, approximately late 1972).
57. Based on review of North Slope Borough Assembly Minutes 1972-1977 and on contacts and observations indicated in note 3 above.



CHAPTER V. PETROLEUM DEVELOPMENT CASES

Introduction

The North Slope Borough was founded on revenues from **Prudhoe** Bay development, but the giant field has a limited life, and borough, state, **federal**, and oil company officials are looking to other areas of the giant municipality as future sources of not only gas and oil but profits and taxes as well.

This chapter looks at how the North Slope Borough has dealt (and is dealing) with several cases of petroleum exploration and **petroleum-**related development in the arctic. Histories of the North Slope haul road, the National Petroleum Reserve in Alaska, and offshore leasing in the Beaufort Sea are briefly described, followed by detailed examinations of how the North Slope Borough--largely through Mayor Eben **Hopson--has** made its voice heard as state and federal officials make decisions about opening the haul road to the public, developing the petroleum reserve, and selling petroleum leases in the Beaufort Sea.

The chapter also looks at several other instances in which the borough--or its villages--have spoken out and attempted to influence development. Finally, the chapter draws some conclusions about what the borough is trying to accomplish as more petroleum development occurs in Alaska's arctic.

North Slope Haul Road

About 272 kilometers (170 miles) of Alaska's newest highway cross the North Slope Borough, linking the remote municipality to the rest of the state by land for the first time--but the borough does not want a public road drawing more people to the arctic.

Built by Alyeska Pipeline Service Company in 1974, the 576-kilometer (360-mile) gravel haul road from **Prudhoe** Bay on the Arctic Ocean to the Yukon River in the Interior was used and maintained by Alyeska during construction of the trans-Alaska pipeline and provided a link with existing roads south of the Yukon. Most of the land the road crosses is owned by the federal governments but the road belongs to the State of Alaska under terms of a federal grant of right-of-way and construction agreements with Alyeska. The state attorney general's office has determined the federal right-of-way was issued for construction of a public highway, and the haul road was built to meet state secondary highway **standards.**¹ With the oil now flowing through the **trans-Alaska** pipeline, the state is scheduled to take over management and maintenance of the road from **Alyeska** in late 1978.

But the North Slope Borough does not want the northern half of the road--from the borough boundary at the Brooks Range to Prudhoe Bay--open to the public. In a December 1977 statement, borough mayor Eben Hopson said, "Public use of the haul road has been opposed by the North Slope Borough. It is our policy to guard against permanent immigration to the Arctic. . . ."

we regard Arctic population growth to be potentially our greatest environmental security problem. We oppose not only public use of the haul road, but **also** any other such permanent access to the **Arctic.**"²

Governor Jay Hammond announced in January 1978 that the state would limit access to the road to industrial users and commercial tour buses until 1983, when a natural gas pipeline from Prudhoe Bay south along the road route and then east into Canada along the Alaska Highway is scheduled to be completed. Hammond said wider public use of the road "might be appropriate" after construction of the **gasline**, but that "I much prefer to crack the road open conservatively and then make adjustments as time, experience and appropriate means of funding will permit." He noted that maintenance of the road crossing a mountain range and hundreds of miles of wilderness terrain will cost about \$13 million the first year the state assumes control and about \$10.5 million annually by 1980. "These figures are put into perspective when one realizes that the total highway budget for all roads in Alaska annually is \$40 million," Hammond added.³ The governor has also said the state is studying methods of charging industry for the use of the road during this period.⁴

The federal government owns all but about the 112 most northerly kilometers (70 miles) of land along the haul road; the state owns the rest. The state will determine ultimate public access to the road stretching to the Arctic Ocean, but the Bureau of Land Management of the Department of the Interior manages the federal lands adjoining most of the route (the "utility corridor").

BACKGROUND

In the early 1970s, the State of Alaska's position was that the haul road would be open to general public use when the oil pipeline was completed.

In "Comments on the Proposed **Trans-Alaska** Pipeline," a 200-page statement prepared by the state Department of Law in 1971, a paragraph on the proposed haul road reads, "During the third year of maximum [pipeline] construction, rest areas can be constructed to accommodate the tourists once the North Slope haul road is open for public use The Department of Highways estimates that over 400 recreational trips per week will be made on the new road on an annual average starting in the summer season following the end of maximum construction **activity.**"⁵

But in 1975 and 1976, Governor Hammond--who had been elected in 1974--took several steps toward **re-evaluating** the state's earlier position that the haul road would be open for unrestricted public use when the oil pipeline was completed. He named commissioners of several state departments and the director of the state Division of Policy Development and Planning to a haul road task force to study effects, costs and benefits of opening the road after pipeline construction and to make recommendations for road policy when the state assumed its management and maintenance. The governor also created the Alaska Growth Policy Council, an eleven-member citizen's council, to hold public hearings and offer recommendations for state policy on issues--like opening of the haul road--affecting future development in the state. And Hammond asked the state attorney general's office to prepare an opinion on "legal constraints on differing management options for the **trans-Alaska** pipeline haul road."⁶

Hearings and Planning

In early 1976, the Alaska Growth Policy Council held public hearings in Barrow, Fairbanks, Anaktuvuk Pass, **Allakaket**, and **Bettles** on the haul road issue. Mayor Hopson of the North Slope Borough told the council:

There are many existing transportation deficits to overcome throughout our borough which should be overcome before the state **begins** to think about spending money to operate and maintain a public highway between Fairbanks and Prudhoe Bay . . . the state's secondary highway program . . . has never **been extended** to our borough communities, and I would think the state's growth policy would be to take care of existing problems in the Arctic before creating new ones . . . the economics of haul road operation and maintenance are highly questionable The question of opening the haul road for public use raises other questions about new pressures on our caribou herds, and about new, non-traditional community development at Prudhoe Bay and along the road . . . we **don't want** to encourage such new community development
"7

In 1976 the growth council made its recommendations to the governor: limit **road** use to "support of oil and gas and hard mineral extraction" in the immediate future and ask the Federal-State Land Use Planning Commission to undertake a comprehensive land-use study of the entire haul road region before setting a long-term policy on road use.⁸ The same year, the **attor-**ney general reported to the governor that agreements with the federal Department of the Interior, the Federal Highway Administration, and **Alyeska** Pipeline Service Company established the haul road as a public highway that would have to be maintained for public use. The legal opinion said closing the road entirely could cost the state the federal grant of right-of-way, make the state liable for repayment of approximately \$30 million in federal funds used in building the road and a bridge across the Yukon River, and expose the state to possible litigation by **Alyeska** for

the loss of the use of the road. But the attorney general said the state could limit access to the road--"properly framed regulations reasonably restricting the use of the road could withstand judicial challenge and afford a high degree of management flexibility to the state without undue exposure to liability"--and that there were legal means of charging industry for use of the road after the state assumed control of it.⁹

In September 1976, the governor announced, ". . . for the short term, the road will be opened just for use by mining and industrial interests" and that this interim policy would be in effect "until the Federal-State Land Use Planning Commission and local governments have developed a rational plan for the sound **and** profitable management of state and federal lands in the area" and until "determination of whether the road will be needed for construction of a gas line." He also noted industry would be charged for the use of the **road**.¹⁰

Before Governor Hammond was elected, the Bureau of Land Management began work on a "management framework plan" outlining tentative proposals for uses and management of federal lands along the pipeline corridor, with emphasis on the undeveloped area north of the Yukon **River**.¹¹ This early set of recommendations for recreational facilities and other land uses was based on the assumption that the haul road would be "open to full **pub-**lic use" when the pipeline was completed, and the BLM **in** early 1975 asked the North Slope Borough and other government agencies to **omment** on the preliminary plan. ¹² **When** Governor Hammond announced his **- nterim** road policy in September 1976, the BLM began revising its plan in light of the

new state policy of limiting public access to the road for some period after the pipeline was completed.¹³

BOROUGH INTERESTS

During 1977--while the state and federal governments studied future uses of the haul road and lands surrounding it--Mayor Hopson wrote a series of letters asking government officials for clarification of haul road policy and stating the borough's position on the road across the arctic. In February 1977, Hopson wrote members of the Alaska Legislature in support of a resolution requiring the governor to present more information on the haul road to the 1978 legislative session. Hopson noted, "Maintenance of the road would promote an influx of tourists for whom no support facilities exist. Arctic travel can be very dangerous during much of the year . . . these dangers could result in an overwhelming increase in service requests made to our **Public** Safety Department which we are not prepared to bear."¹⁴

One member of the legislature replied: ". . . many of us in the legislature do not consider the opening or the closing of the haul road to be a matter for the governor's decision. Instead we regard this as something for the legislature to decide. We **will** of course consider costs among other factors."¹⁵

In May 1977, Hopson wrote Governor Hammond: "It is my understanding that the haul road has continued maintenance characteristics that render it

uneconomical for use of any kind. Has abandonment of the haul road been considered as a policy alternative?"¹⁶

In letters in June and November 1977, Hammond replied, "Because of circumstances and agreements entered into by previous administrations, we are faced with the reality that the haul road can and will not be totally closed," but that "My administration, along with representatives of your planning department, the Federal-State Land Use Planning Commission and various federal agencies are jointly involved in generating recommendations for future use of the road--use based on comprehensive land use planning for the Arctic . . . My staff has, and will continue, to work closely with your planning department."¹⁷

As of late 1977, the BLM issued a pamphlet containing its revised proposals for land use management along the haul road and scheduled a series of public hearings on the new proposals, described by a BLM official as "raw, essentially single use recommendations reflecting . . . technical specialists judgments concerning the resource base available and projected future needs and wants."¹⁸

Eben Hopson commented on these BLM recommendations in letters to Governor Hammond and Guy Martin, Assistant Secretary for Land and Water Resources in the Department of the Interior:

. . . only a comprehensive land use and transportation plan much more developed than the initial BLM effort can suffice as any kind of decisionmaking tool for the haul road area A plan must be developed by all concerned parties and must weigh and evaluate not just individual resources, but highly important considerations such as the borough's

home rule planning powers and concerns, the future of regional corporation lands, the preservation of **the subsistence** life style and economy and the total impact of a new road on one of the last remaining wilderness areas of the nation we strongly recommend putting a halt to further distribution and discussion of the initial BLM report and the immediate establishment of an interdisciplinary BLM, state and borough planning team to thoroughly address the many issues raised by the road and its future use.

In a reply to Hopson's letter, a BLM official noted the bureau had planned to discuss the set of recommendations with borough and state officials before the pamphlet was released to the public but was prevented from doing so through a chain of circumstances that forced early public **distribution** of the brochure. The official added, ". . . the brochure was designed to highlight various recommendations on land use as developed by technical specialists without regard to conflicts **or the** impacts on other resources . . . BLM is not advocating the opening or the closure of the **road.**"²⁰ BLM planners also met with borough officials in Barrow in November, after release of the land-use recommendations.

Secretary of the Interior Cecil Andrus did take a position on opening of the haul road in an October 1977 letter to Governor Hammond: "I believe it may be desirable to utilize the road exclusively for construction purposes if the [gas line] route is approved . . ." ²¹ Shortly thereafter, Guy Martin, Assistant Secretary for Land and Water Resources, directed the BLM in Alaska to postpone public hearings on its land use recommendations and "determine the level of development of plans by other interests, beginning with other federal agencies, the state and local governments" and to consider holding "joint hearings" in 1978 on future uses of lands

along the haul road. **22** In January 1978, the BLM began a series of "planning coordination" meetings with representatives of federal and state agencies and the North Slope and Fairbanks North Star boroughs. The North Slope Borough and the BLM agreed that during 1978 haul road planning a representative of the borough would work with the BLM planners. ²³

BOROUGH PLANNING

While writing to and meeting with federal and state officials during 1977, North Slope Borough leaders were also devising their own plan for **control-**
ling development along the haul road, should the road be opened to the public. In a letter to the borough assembly in November 1977, Mayor Hopson said, ". . . the only way we can get the federal and state governments to listen to us is to use our legal planning and zoning powers as a home rule borough. We have always had the power to zone land and impose standards on roads through our subdivision **powers.**"²⁴

Legal Opinion

Earlier that year, the borough had hired a land-use attorney to write an opinion on the municipality's "powers and options on the haul road and adjacent federal and state lands." ²⁵ In an opinion submitted to the **bor-**
ough in November 1977, the attorney said, "It is unlikely the North Slope Borough can assert its control over the road to the ex" usion of al' other interests. At the same time, those other interests may not totally exclude or ignore the concerns of the **borough.**"²⁶

Regarding the borough's options for controlling development on federal lands within borough boundaries, the attorney wrote:

. . . The "exigencies of the particular case" will determine the relative authority and jurisdiction. States, and local units of government delegated state authority, may exercise control over federal lands to the extent regulation would not be inconsistent with or frustrate clear federal policies or programs. . . .

Determination of when federal regulations "override" state or local controls involves a balancing of respective actions and a preemption like examination. If the federal interest clearly conflicts with the state action or leaves ~~nothing~~ ²⁷ for the state to address, the federal law will prevail.

The legal opinion also discusses aspects of the Federal Land Policy and Management Act of 1976,²⁸ which "reviewed and clarified" the Bureau of Land Management's responsibilities in preparing land use plans for public lands:

. . . Where there is no overriding federal **law** or policy, **local** concerns should be respected. Federal law may become the controlling law, but there is room for negotiation here. Local citizen advisory councils may be established to advise on plans and management decisions. . . .

. . . when public lands are to be sold, the **local** government in the area is to be given at **least** 60 days notice "in order to afford the appropriate body the opportunity to zone or otherwise regulate, or change or amend existing zoning or other regulations concerning the use of such lands prior to such conveyance." This might arguably include leases and conveyances of partial interests in public lands . . . Specifically, the Secretary [of the Interior] is prohibited from making any conveyance of public lands "containing terms and conditions which would . . . constitute a violation of state and local land use plans or programs." **With** the right to notice and prohibition against conveyances in violation of **local** law, the borough should be **able** ²⁹ to stop proposed inconsistent development proposals.

Regarding borough versus state authority on state-owned lands within the borough, the attorney wrote:

. . . The state has delegated a fairly broad range of police powers to local governments. . . .

. . . The statutory granting of zoning power in [Alaska Statute] 29.33.090 is very broad. . . . Zoning may address itself to, among other things, the use of the land, structures located on the land, and distribution of population. A zone or district can be drawn on a map controlling all uses of land within that area. Certain types of uses can be allowed in the zone and all others prohibited. . . .

Conditional use permits are specifically authorized. . . . The conditional or special use permit technique could be utilized to control development along the haul road. A zoning district would be established along the haul road in an area where development is desired or anticipated. This could be up to so many miles on either side of the road. . . .

. . . Efforts to develop in certain areas may be denied until public service facilities are constructed or otherwise planned to be made available.³⁰

On the borough's options for controlling access to the haul road itself, the attorney noted:

The borough does not normally have authority over planned construction of state highways. It may specifically request, however, that it be allowed to assume "responsibilities relating to the planning of transportation corridors" within the borough. [Alaska Statute] 19.10.280. . . .

. . . . Additional borough control may be possible under A.S. 19.20.060, which provides "The department [of transportation and public facilities] and a municipality may enter into an agreement with each other . . . for the financing, planning, establishment, improvement, maintenance, use regulation or vacation of controlled-access facilities or other public ways in their respective jurisdictions." The haul road might be designated a "controlled access facility" to limit the ingress and egress therefrom. This would require significant cooperation with the state transportation department.³¹

The report also notes that "a balancing of interests test" is "arguably the best approach" to deciding if local controls shall have effect on state-owned lands. Under this balancing of interests, "Governmental entities will be subjected to local zoning actions, unless some interest of that entity deserves paramount protection and encouragement. There are no Alaska cases on this matter. Statutes that bear on this are few and of limited **application.**"³²

Resolutions

Based on this legal opinion and the work of the borough's planning commission and planning department, the borough assembly in late 1977 approved a resolution outlining a series of borough policies regarding the haul road and enacted a zoning ordinance amendment creating a "highway related development district" adjacent to the haul road; the amendment specifies how the borough hopes to regulate development along the haul road and any future major roads through the borough. At the same time, the assembly enacted an amendment broadening the borough's authority over subdivision of **land.**³³ In a statement accompanying the resolution and ordinances, the borough planning department noted the ordinances "would not necessarily prohibit opening of the road or various uses along it, but they would give the borough planning commission and assembly early knowledge of such proposals and the power to approve, change or reject various developments."³⁴

Major points in the borough's resolution on the haul road include:

... the Borough Planning Commission respectfully requests that the State of Alaska continue the existing policy of utilizing the Haul Road from the south side of **Atigun Pass**

in the vicinity of Chandalar camp north to Prudhoe Bay only for use by major industrial interests, with appropriate local, State and federal reviews and controls. Any permanent policy should only be adopted after careful and meaningful study and review by all interested and relevant parties, and should include detailed analysis of total road closure options. . . .

The Borough further requests that prior to any reconsideration of any permanent policy, the State initiate a program of development and maintenance of a secondary highway system and adequate airports in each of the Borough communities, starting with adequate road connections from each community airport to the center of town. Adequate year-round roads in each Borough community should be the major priority of the state before expenditure of additional resources is even considered for major roads from outside the Borough communities. . . .

The Borough further requests formal recognition and acknowledgement by the State and federal governments of the validity of local Borough powers and of the fact that the Borough is the dominant governmental entity in the northern portion of the Haul Road, given its zoning, subdivision review and other governmental powers. . . . **Appropriate** action should be taken where necessary to ensure that all major public improvements in the Borough, not only the Haul Road and its adjacent development, are subject to a thorough review by the Borough staff, planning commission and other reviewing bodies with adequate time to change or even stop developments with unjustifiable negative impacts on the Borough. Similar ongoing coordination and review with the Arctic Slope Regional Corporation and relevant village corporations should be provided.

The Borough further requests that the State and federal governments join the Borough, Regional Corporation and adjacent communities and interests to prepare a cooperative, detailed land use and transportation plan not only for the Haul Road area, but all of the Borough. . . . This effort should also include analysis and firm policy suggestions on any and all new communities which might be established in the Borough. . . .

To implement these haul road policies, the borough assembly enacted a zoning ordinance amendment establishing "highway related development" districts along major roadways, specifying "uses permitted by right" and uses that require "special use" permits. Uses permitted by right are:

Maintenance, emergency and service facilities necessary to the state or other public upkeep of the roadway;

Oil and other resource pipelines or transportation systems and necessary operation and maintenance facilities.

Under the borough plan, other uses would require "special use" permits; these permits will be issued for uses which:

Will be clearly dependent upon or related to the operation of the roadway;

Will not damage or threaten wildlife or other natural resources;

Will not damage or threaten historic resources, subsistence lifestyles or significant scenic areas;

Will be for a use for which there is a demonstrated need in the Borough that is not adequately met by other proposed or existing developments;

Will further the clustering of development and not contribute to strip type development;

Will not unduly burden the Borough's ability to meet the needs of its citizens and provide services in a systematic manner;

Will be relatively self-contained, not produce external site impacts, and not overburden functioning natural systems;

Will have minimal visual impacts upon the natural **environ-**ment and the roadway itself;

Will not violate or frustrate any of the policies of the Borough's comprehensive or other **plans**, or provisions of this and other ordinances; and

Will not diminish or alienate any of the values for which a Native Allotment has been issued. ³⁶

Also, the borough amended its subdivision ordinance to read:

. . . It is the intent of the Borough to ensure its interest and rights are protected and adequately considered in any action within its boundaries involving the subdividing of

land and the development and opening of roads and highways. It is the intent of the Borough to assert its rights and interests over all such actions regardless of the owner, private or public of the land or right of way. . . .

This **chapter shall govern** all subdividing or re-subdividing of land," all **development** and dedication to the Borough or other public entity of any street, road or highway on lands within the Borough, and the vacation of any **street, road,** highway easement or right-of-way in the Borough. ³⁷

With the governor's recent announcement that the haul road will be closed to all but industrial traffic and commercial tour buses until the gas line is completed, the test of the borough's regulatory power over state and federal land along the haul road is yet to come. In March 1978, a special committee of the state legislature was considering whether to attempt **to** override the governor's decision and call for opening of the haul road before 1983.³⁸ In a 1976 statement, Governor Hammond said of the controversial gravel road: "The haul road will be opened to the extent Alaskans are willing to pay for it--environmentally, socially and economically. In that process I believe most Alaskans desire first to read the price tags, not simply write blank **checks.**"³⁹ The leaders of the North Slope Borough have shown **they** intend to make themselves heard in the coming years while the costs and benefits of a public highway across the North Slope are being ta'lied.

National Petroleum Reserve in Alaska

BACKGROUND

The North Slope Borough wants tax dollars from and unrestricted subsistence use of the National Petroleum Reserve in the heart of the borough,

but the federal government has not yet decided what to do with the vast reserve once thought to hold more oil than the Prudhoe Bay field.

A region covering 93,437 kilometers (23 million acres) roughly from Point Barrow south to the Brooks Range and from Icy Cape east to the **Colville** River was designated Naval Petroleum Reserve No. 4 by President Warren Harding in 1923. The Secretary of the Navy was authorized to "explore, protect, conserve, develop, use and operate" the reserve, with the provision that Native residents of the area were not to be "disturbed in their aboriginal use, beneficial occupancy and enjoyment of the **lands**."⁴⁰ The reserve remained under the control of the U.S. Navy until June 1977, when jurisdiction was transferred to the Department of the Interior under terms of the Naval Petroleum Reserves Production Act of 1976 (Public Law 94-258). The reserve was then renamed the National Petroleum Reserve in Alaska (NPRA).

Based on early government exploration, the U.S. Geological Survey once estimated there might be 33 billion barrels of recoverable **oil** in the reserve; the neighboring Prudhoe Bay field holds an estimated 10 billion barrels of **oil**. But government exploration in the reserve to date has confirmed only 100 million barrels of recoverable oil, and the USGS currently estimates between 2 and 8 billion barrels of oil may lie in the reserve. There are natural gas wells operating near Barrow, and the USGS estimates there may be as much as 25 trillion cubic feet of natural gas in the reserve.⁴¹ The Department of the Interior is currently exploring for additional petroleum deposits in the reserve.

Borough Interests

Mayor Eben Hopson of the North Slope Borough has said the petroleum reserve, "roughly the size of Indiana," was designated on traditional lands of the arctic Eskimo "without asking us, for it was our land . . . [and] without any compensation."⁴² The reserve covers 40 percent of the borough, and about 80 percent of the North Slope's Eskimo population lives in four borough villages on the reserve. Barrow, the largest Eskimo village in the region, and the **smaller** communities of **Wainwright, Nuiqsut** and Atkasook sit within the reserve. Under terms of the 1971 Alaska Native Claims Settlement Act, these four Native communities selected about 136.5 square kilometers (400,000 acres) of land in the reserve, but the federal government holds subsurface rights to these lands.⁴³

In a 1976 statement to the Federal Energy Administration, Mayor Hopson said one of the reasons for organization of the municipal government on the North Slope in 1972 was "to secure a measure of the control we would have had if the land of [the reserve] had not been taken from us in the first place."⁴⁴ Hopson has said the borough would like all federal lands on the North Slope--including the petroleum reserve--classified as one "wildlife range under conditions allowing unimpeded subsistence gathering and controlled natural resource development," rather than under several federal classification systems.⁴⁵

A more specific borough stand on **petroleum development** in the reserve was outlined by a borough consultant in 1976: ". . . private enterprise development of [the reserve] **should** be encouraged as soon as practicable" to provide a "leasehold interest for the North Slope Borough to tax."

Also, during the period of government exploration "substantial federal assistance [should] be rendered to the borough to overcome the impact from [NPR] activities. " And during all exploration and development, "protection of environmental and human values [should] be fully exercised."⁴⁶

Exploration and Planning Programs

Little petroleum exploration was done in the reserve **until 1944**, when the Navy began "an ambitious exploration and drilling program," making 44 core tests, drilling 36 wells, and gathering 5,600 kilometers (3,500 line miles) of seismic surveys between 1944 and 1953. In 1953, a Navy Survey Board "questioned the **value** of **NPR-4**, due to its access problems and vulnerability," and the exploration work was stopped.⁴⁷ The federal government spent about \$40 million on this nine-year exploration program, and the largest oil field discovered was the **Umiat** field in the southeastern part of the reserve, where the Navy estimated there were 70 million barrels of recoverable oil; several smaller oil fields found within the reserve were estimated to hold an additional 30 million barrels. In 1949, a field with estimated reserves of 25.2 billion cubic feet of **natural gas** was discovered near Barrow. Until 1964, gas from this area--known as the South Barrow gas field--was used to supply Navy installations and Distance **Early** Warning System sites with **fuel**. In 1964, the federal government authorized the village of Barrow to also receive gas from the **field**.⁴⁸

Mayor Hopson has called this period between 1949 and 1964 "a long, frustrating . . . struggle to get permission to hook our homes in Barrow to gas mains that **criss-crossed** Barrow through our back yards. Although it

sounds incredible **today**, the Navy was absolutely implacable in its refusal to let us use our own natural gas to heat our homes"⁴⁹

No major exploration work was done in the reserve from 1953 until **1973**, when "in view of the continuing dependence of the United States on costly imported oil," the U.S. government began taking another look at the petroleum reserve, and in fiscal 1974 Congress appropriated \$7.5 million for a **small** exploration program.⁵⁰ The following year, Congress appropriated more than \$60 million for exploratory work in the reserve, and the Navy established a program calling for drilling of 26 test wells and gathering of more than 16,000 kilometers (10,000 line miles) of seismic surveys by roughly **1980**.⁵¹ As was done in previous Navy exploration of the reserve, the work was to be government-financed, with the Navy contracting for **drilling** and other needed services,

In **late** 1975, with government exploration underway in the petroleum reserve, the federal Energy Policy and Conservation Act was passed. One provision of this act required the Federal Energy Administration to study the petroleum reserve in Alaska and provide Congress with "recommended procedures for the exploration, development and production of [the reserve]; analyses of arrangements for the participation of private industry and capital, including private-industry leasing; [and] recommendations for protecting the economic, social and environmental interests of Alaska Natives residing within [the reserve]."⁵² At about the same **time**, Governor Jay Hammond appointed members of his cabinet to a task force to look at "all issues related to [the reserve] and their relationship to

other North Slope concerns," and **to** make state positions on possible development of the reserve known to federal officials.⁵³

Federal Energy Administration representatives came to Alaska in early 1976, meeting with state officials and holding public hearings in Anchorage, Fairbanks, and Barrow. In August 1976, the federal agency issued its report, finding "Overall, FEA favors private sector conduct of [reserve] exploration, development, production and transportation activities for reasons of efficiency," although "A government exploration program should be continued during the period required to implement a leasing plan." Also, the FEA concluded there were "substantial benefits to be realized from timely development of [reserve] petroleum resources."⁵⁴

The federal report also projected several possible development scenarios and looked at effects on the state as a **whole** and on the North Slope in particular of development of a **500-million** barrel, a 1-billion barrel, and a 3-billion barrel oil field in the petroleum reserve:

Under private development the State would-realize fiscal gains of [between] \$150 million . . . and \$500 million. Under complete government development . . . the **state** if uncompensated by the federal government could suffer a net fiscal loss . . . of [between] \$40 million and \$160 million. . . .

. . . In the North Slope Borough . . . population additions of **500** [to] 2,400 . . . could be expected. . . . If, on average, it cost local governments \$900 to support each additional resident, then . . . local population increases [could cost between] \$30 million and \$120 million. Increased tax revenues and transfers from federal and state governments to local jurisdiction were not estimated. However, they would undoubtedly ease these cost impacts⁵⁵

In general, the federal report noted:

The federal government should consider ways to assure that the state and the North Slope Borough governments are assisted in offsetting negative net economic impacts **resulting** from [re-serve] development

. . . Appropriate measures for mitigating potential adverse environmental and socioeconomic impacts **should** be implemented. Specific measures regarding the mitigation of adverse environmental and socioeconomic **impacts** are premature at this time. Further study is **needed.**⁵⁶

NAVAL PETROLEUM RESERVES PRODUCTION ACT

Even as the Federal Energy Administration was gathering information for its report to Congress on methods for and effects of development in Alaska's reserve, another federal act concerning **Naval** Petroleum Reserve **No. 4** became law. In April 1976, the Naval Petroleum Reserves Production Act was passed, separating the naval petroleum reserve in Alaska from the three other naval reserves in the United States and prohibiting development in the Alaska reserve until several wide-ranging studies had been completed. The act shifted jurisdiction for the reserve in Alaska from the Department of the Navy to the Department of the Interior and redesignated the giant reserve as the "National Petroleum Reserve in Alaska," to be used "as consistent with the total energy needs of the Nation, and for other purposes." The other three naval petroleum reserves in the United States remained under the control of the Secretary of the Navy and were designated to be used "as needed for national defense purposes."⁵⁷

The North Slope Borough lobbied in Washington, **D.C.** in support of the act and hailed its passage as a sign that "local municipal intervention can influence national energy policy to accommodate local needs."⁵⁸ The

borough hoped the shift from military control to the jurisdiction of a civilian agency would result in leasing of lands in the reserve to private industry for petroleum exploration and development, thus providing the borough with taxable property in the reserve. A borough consultant noted in 1976 that if the federal government carried out its own exploration and development program in the reserve "with [its] own equipment, directly contracting for services such as drilling rather than by leasing lands for exploration and development, then there will be no leasehold interest for the North Slope Borough to **tax.**"⁵⁹

Aside from the possible tax benefits to be gained by the switch to the Interior jurisdiction, the borough saw the Interior Department as the preferred agency to administer the act and manage the surface resources in a way "sympathetic to the needs and desires of our **people.**"⁶⁰ In a letter to Jack Horton, then Assistant Secretary of the Interior, Mayor Hopson explained the borough's additional reasons for supporting the act:

Our efforts for passage of this act and our relationship to it are premised upon the maintenance and enhancement of the best elements of our age-old culture. Much of our cultural heritage accrues to us from the relationships of our people **while** engaged in subsistence pursuits. . . .

The borough must be able to assure its people that their fish, game, productive berry-picking areas, fish camps, archeological and historical sites of cultural significance, and their free access to these subsistence resources and sites will not be inhibited. Otherwise, a way of life will be drastically altered, **and** to all intent and purpose a culture will be **des-**
troyed.⁶¹

When putting together the 1976 act, federal lawmakers included some provisions borough lobbyists had supported, and Mayor **Hopson** has said, "The

borough was even encouraged to submit its position in legislative language, some of which remains in the act. "6²The act calls for **wide-** ranging land-use studies of the reserve's resources, examination of systems for development of petroleum deposits in the reserve, and continuing petroleum exploration, but the legislation expressly prohibits actual development in the reserve until Congress takes further action. In the only exception to this ban on development, the act not **only** allows but requires the Interior Department to assure Barrow and nearby government facilities a continuing natural gas supply. The Interior Department is also required to establish regulations for surface management of lands in the reserve and to determine if impact funds are to be provided to any local communities adversely affected by the government's exploration and study programs. 63 These provisions of the 1976 act of special interest to the borough are discussed in greater detail below.

Surface Regulations

The 1976 act calls for establishment of surface regulations for the reserve:

With respect to any activities related to the protection of environmental, fish and wildlife, and historical or scenic values, the Secretary of the Interior shall assume all responsibilities as of the date of the enactment **of** this title. . . . The Secretary may promulgate such rules and regulations **as he** deems necessary and **appropriate** for the protection of such values within the reserve. 64

The Interior Department's Bureau of Land Management in Alaska was assigned **responsibility** for drawing up regulations for surface management of lands

in the reserve, and in the summer of 1976, the BLM issued draft regulations and invited comments from the North Slope Borough.

In a June 1976 letter to the state director of the BLM, Mayor Hopson wrote, "The North Slope Borough's major concern is the maintenance of traditional uses of the National Petroleum Reserve by North Slope Natives," and, that "as written, [the draft regulations] deny the right of Natives to pursue their subsistence activities 'without authority.'" Hopson asked that the final regulations place no restrictions on subsistence activities in the reserve.⁶⁵

In its final regulations--which were approved by the Acting Secretary of the Interior in May 1977 and will remain in effect at least until studies in the reserve have been completed--the Bureau of Land Management noted:

Biological resources can be depleted gradually to a point of endangering future productivity without the depletion being recognized to the untrained eye. Therefore, the Secretary's discretion must be maintained to exercise management when necessary. Adequate provision has been included . . . to protect the needs of subsistence users.⁶⁶

And the surface regulation itself reads:

To the extent consistent with the requirements of the [Naval Petroleum Reserves Production Act] and after consultation with appropriate Federal, State and local agencies and Native organizations, the authorized officer may limit, restrict, or prohibit uses of and access to lands within the reserve

Except for petroleum exploration which has been authorized by the act, use authorizations must be obtained from the authorized officer prior to any use within the reserve

Except as may be limited, restricted or prohibited by the authorized officer . . . use authorizations are not required for . . . subsistence uses (e.g. hunting, fishing and berry picking) 67

Natural Gas

Another provision of the 1976 Naval **Petroleum** Reserves Production Act deals with the question of natural gas for Barrow, a question which was for many years a point of contention between the U.S. Navy and the residents of Barrow.

Until the reserve is transferred to the jurisdiction of the Secretary of the Interior, the Secretary of the Navy is authorized to develop and continue operation of the South Barrow gas field, or other such fields as may be necessary, to supply gas at reasonable and equitable rates to the native village of Barrow and other communities or **installations** at or near Point Barrow, Alaska . . . After such transfer, the Secretary of the Interior **shall** take such actions as may be necessary to continue such service 68

Of this provision, Hopson has said, "In working with Congress . . . we were able to write language into [the act] . . . that obligated Interior to guarantee us continued access at Barrow to our natural gas, and at prices that reflect just the cost of lifting the gas . . . I feel that wherever feasible, our arctic communities **should** be connected to gas as part of the cost of oil and gas development. . ."⁶⁹ In a statement to the Federal Energy Administration in 1976, Hopson said, "We would like Interior's exploration schedule to be organized . . . to provide natural gas to **Nuiqsut, Wainwright** and Atkasook as soon as **possible**."⁷⁰

In late March 1978, the Interior Department announced it had drilled a "producible" natural gas well on the East Barrow gas field in the northern

part of the reserve and that this new well would be used to supply fuel to Barrow and government installations nearby when reserves in the South Barrow gas field were **depleted**.⁷¹

Exploration

Aside from the exception for the production of natural gas for Barrow, the naval reserves act prohibits development in NPRA until further action by Congress, but **calls** for continuing petroleum exploration.⁷² When the Interior Department assumed control of the petroleum reserve, Interior's U.S. Geological Survey took over the exploration program begun by the Navy. The Navy had planned to drill 26 test wells and gather more than 16,000 kilometers (10,000 line miles) of seismic surveys in the reserve and in 1975 and 1977 issued environmental impact statements on this proposed exploratory work. The U.S. Geological Survey is continuing the program as set up by the Navy, with Husky **Oil** as its main contractor. Husky **Oil's** main construction contractor is Arctic **Slope** Alaska General Construction Company, a partnership between a construction firm and the Arctic Slope Regional Corporation. The federal government also has an agreement with four North Slope village corporations and the regional corporation, outlining procedures to be used by government exploration workers needing access across lands within the reserve on which village corporations hold surface rights.⁷³

In fiscal 1978, the U.S. Geological Survey plans work on nine oil and gas test wells and gathering of about 3,200 kilometers (2,000 line miles) of seismic surveys. In March 1978, work on five wells was underway in

the reserve, with five drilling crews of about 50 persons each. At the same time, five construction crews of about 60 persons each and four seismic crews of about 40 persons each were in the reserve, for a total exploration work force of about 700. The main base of operations for the exploratory work is Camp Lonely, at Pitt Point about 260 kilometers (100 miles) southeast of Barrow.⁷⁴

Land-Use Study

The naval reserves act also calls for a study to determine "the best overall procedures to be used in the development, production, transportation, and distribution of petroleum resources in the reserve."⁷⁵ This study is to be completed in January 1980 and is being carried out by the Office of Minerals Policy and Research Analysis and the U. S. Geological Survey out of Washington, D.C.

The act also requires another study, a broad-ranging land-use study that Mayor Hopson has called "the most important section of the act to the borough."⁷⁶ This section (105(c)) states:

The Secretary of the Interior shall establish a task force to conduct a study to determine the values of, and best uses for, the lands contained in the reserve, taking into consideration (A) the natives who live or depend upon such lands (B) the scenic, historical, recreational, fish and wildlife and wilderness values (C) mineral potential (D) and other values of such lands.

Any such task force shall be composed of representatives from the government of Alaska, the Arctic slope native community, and such offices and bureaus of the Department of the Interior as the Secretary of the Interior deems appropriate, including, but not limited to, the Bureau of Land Management, the United States Fish and Wildlife Service, the United States Geological Survey, and the Bureau of Mines.⁷⁷

The task force called for in this section was formed soon after the act was passed and is made up of the chiefs of seven Interior agencies in the state and representatives of the State of Alaska, the North Slope Borough, and the Arctic Slope Regional Corporation. Chairman of this group is the state director of the Bureau of Land Management. This task force is overseeing work begun in 1977 by seven work groups and a core planning team; the work groups are made up of employees of seven Interior agencies, and the core planning team is made up of federal employees and representatives of the State of Alaska and the North Slope Borough. The work groups are collecting information on resources in the reserve, and from this information the planning team will develop land-use recommendations--subject to review and approval by the task force--by April 1979. The recommendations will be sent to the Secretary of the Interior, who will present them to **Congress.**⁷⁸

These recommendations to Congress "will provide a framework within which legislation relating to land use designations and administration can be formulated. It will identify needs for detailed resource management plans . . . transportation corridor plans or multiple use plans . . . [and] identify requirements for additional or continued studies and/or **inventory.**"⁷⁹

The borough's representative on the core planning team has said the borough administration would ultimately like to see "the entire area [federal lands on the North Slope] under one classificatory system" that would allow "maximum control of development while insuring continuation

of the present land use and occupancy systems. "8° Mayor **Hopson** has said he would like all federal lands north of the Brooks Range classified as a wildlife range 81

Borough Land Use Planning. In 1976, the borough began work on its own land use plan for the entire North Slope, work described by the borough planning director as an effort to "map every aspect of the past use of the land, every aspect of the present use of the **land**, and then make some projections about what we feel are important considerations for future use. This would provide the basis for a land-use **policy** statement that takes into consideration food chains . . . [and] lifestyles . . . "8²

As an initial step toward this land use plan, in 1976 the borough began making "traditional land use inventories" of areas around villages. In June 1977, interested in this work by the borough, the planning team of the federal land-use study contracted with the North Slope Borough to provide the planning team with reports on the "subsistence, recreation, and historic and cultural values in the petroleum reserve from the Native point of view. "8³ Representatives of the National Park Service--one of the seven Interior agencies involved in the federal land use study--began work with the borough in the summer of 1977. In November 1977, the park service and the borough submitted reports to the federal planning team on present land use and historic sites in the areas of **Wainwright** and **Nuiqsut**. The North Slope Borough also submitted its previously compiled "traditional land use inventories" for areas around those villages.

In submitting the reports, a park service researcher noted, "It was thought that the areas which are significant to the people today because of historic value, land use potential or present subsistence practices could be accurately located and defined to insure that the interests of the **local** people are best represented in future plans for the North **Slope.**"⁸⁴ The borough newsletter has said these joint borough-planning team studies represent the only element of the federal reserve land-use study "that goes directly to the permanent indigenous residents of the land for its data and **perspectives.**"⁸⁵

In submitting the **Wainwright** traditional land use inventory to the federal planning team, the borough also included a copy of a formal resolution adopted by the borough planning commission concerning the **Wainwright** inventory. This resolution reads in part:

The land use areas shown in the Inventory are essential for the maintenance of a subsistence economy which provides work the people **desire and** for which they have exceptional skills, and provides alternatives to a total cash economy and a possible dependence on a welfare economy

Many of the sites identified in the Inventory are located on lands which will be administered by **the** Secretary of the Interior through the Bureau of Land Management.

Any action by the BLM, including subsequent inventories, land use plans or regulations, which potentially affects land uses and sites identified in the Inventory, should take into consideration the past and present uses shown in the Inventory. BLM should further consult with the people from the village of **Wainwright** to insure an opportunity for procedural due process and to avoid conflicts between those who depend on the land and those who administer its use. Land use changes should consider the terms and conditions of the people of **Wainwright.**

The proposed BLM surface management regulations should include protection of the sites and land uses shown in the inventory.⁸⁶

Impact Assistance

In a final section of interest to the North Slope Borough, the Naval Petroleum Reserves Production Act authorizes the Secretary of the Interior to provide federal assistance to local communities, if the Secretary judges the government exploration and study programs are causing the communities "an unfair and excessive financial burden."⁸⁷

The Department of the Navy discussed potential impacts of the exploration program on residents of the reserve in its environmental impact statement issued in May 1977, and the continuing exploration work--essentially the same as that outlined by the Navy--is being carried out under this environmental impact statement. The document says in part:

Impacts on trades and services will be extremely limited by lack of opportunity for project personnel to visit Native communities

. . . Impact on public services and facilities will be minimal because both base camps and exploratory well sites will be located away from existing communities the introduction of project workers from outside the [reserve] is not expected to lead to increased demands on state and local law enforcement agencies . . . base camps and drilling sites will be located away from existing communities. Educational facilities within the North Slope Borough should not be affected by the exploration program. It is not anticipated that exploration workers will relocate dependents to the North Slope. Barring a major catastrophe, project-related use of the . . . hospital at Barrow would be avoided . . .

. . . Large pieces of equipment will be barged to Lonely, Barrow or perhaps Wainwright . . . a modest increase to the annual barge traffic currently operating along the Arctic coast and should not significantly affect it.⁸⁸

In a comment on this environmental impact statement, a borough spokesman noted that the North Slope is an extremely underdeveloped area and that

"Given such underdevelopment, **it** is possible that major **oil** and gas **exploration** . . . could pass through the area, cause inflation, labor force instability, and environmental change **or** degradation, and leave little in the way of **real** economic growth **behind.**"⁸⁹

Earlier, in a 1976 letter to the Assistant Secretary of the Interior, Mayor Hopson wrote, "The commitment of borough manpower to the [federal land-use study] and in the review and monitoring of exploration activities **will** constitute an impact since it will detract from the borough's performance in other areas. Of course, added pressure **on** utilities, transportation systems and other portions of community infrastructure, can not help but have some **impact.**"⁹⁰

Looking beyond the exploration stage to possible effects of actual petroleum development in the reserve, the borough has taken the position that federal funds **should** be provided to help correct existing deficiencies in village transportation systems, utilities, and services before the borough can be expected to deal with any impacts from federal development of the petroleum reserve. The borough planning director told the Federal Energy Administration in 1976, "The requests that the villages have with respect to existing deficiencies are not large . . . so **if you're** spending nine million dollars [for example] on an airport that is supporting oil development . . . take a look at village airport **needs.**"⁹¹

In February 1978, Secretary of the Interior Cecil **Andrus** told the U.S. Senate that the Interior Department had budgeted \$181 million for petroleum

exploration in Alaska's reserve in fiscal 1979 but that no significant petroleum deposits had been discovered since the government's exploration program was renewed in 1975. Andrus said that if no significant reserves are found in 1978 and 1979 the Interior Department might not be willing to make such a large appropriation for drilling in the reserve in 1980.⁹² Meanwhile, the North Slope Borough is operating under the assumption that commercial deposits of oil and gas will be found in the reserve--and the Eskimos of the North Slope are making known what they expect from the lands they feel were taken from them when the reserve was established by President Harding in 1923.

Beaufort Leasing

The federal and state governments plan to sell petroleum leases in near-shore areas of the Beaufort Sea in late 1979, in a region the U.S. Geological Survey has estimated may hold up to 3.9 billion barrels of oil and 6 trillion cubic feet of gas.⁹³ But the mayor of the North Slope has frequently maintained that the oil industry does not yet understand the forces of arctic ice and that onshore development of petroleum resources is preferable until better techniques for taking oil and gas from below arctic waters have been devised.

In February 1978, the State of Alaska and the federal Department of the Interior signed an agreement setting the stage for the first joint federal-state offshore lease sale in the United States, to be held in a 2,640 square kilometer (650,000 acre) area of "nearshore polar subsea lands" between the National Petroleum Reserve and the Arctic National

Wildlife Range. The proposed **sale** area extends roughly 11.1 kilometers (7 miles) offshore in waters up to **20** meters (60 feet) deep; the state controls **68** percent of this area and the federal government an additional 19 percent. The remaining **13** percent **falls** between shore and a series of small, state-owned barrier islands about 9.6 kilometers (6 miles) offshore, and both the federal and state governments claim jurisdiction over that portion of the proposed sale **area.**⁹⁴ This ownership dispute will probably be settled in court; the February agreement **calls** for any **lease** sale revenues from this contested area **to** be placed in escrow pending resolution of the **dispute.**⁹⁵

BACKGROUND

Since **1974**, the state and federal governments have separately considered offering petroleum leases in the Beaufort Sea; the state has previously sold some offshore petroleum **leases** in the Beaufort and **Chukchi seas**, but there have been no such federal lease sales off the arctic coast. The state controls waters up to 5 kilometers (3 miles) offshore, and the federal government controls waters beyond the 5-kilometer (3-mile) limit, on the Outer Continental Shelf (**OCS**). In three lease sales held before September 1969, and in September 1969, when the State of Alaska sold petroleum leases on the **Prudhoe** Bay field, some leases in nearshore areas off the arctic coast were sold to **oil companies.**⁹⁶

In early 1975, state officials reported there were ten seismic crews doing exploratory surveying in nearshore areas of the Beaufort and that an exploratory **well** had been drilled on one of the **Niakuk** Islands off

Prudhoe Bay. '7 By July 1978, exploratory wells had also been drilled on a man-made gravel island in the delta of the **Sagavanirktok** River, on **Flaxman** Island east of Prudhoe Bay, and on the beach at Point Thompson southwest of **Flaxman**. Oil and gas finds have been reported at the **Flaxman** and Point Thompson wells, and in mid-1978 a second Point Thompson well was being drilled, with plans for a third exploratory well in the Point Thompson area. Twenty-six oil companies have interests in the Point Thompson wells, with Exxon Company USA acting as operator. An exploratory well was also drilled on an artificial ice island in Harrison Bay in the **winter** of 1976-1977 and is considered the only "offshore" **exploratory well** that has been permitted in U.S. Beaufort waters. The state Division of Oil and Gas Conservation--which issues permits for exploratory wells on state lands under petroleum leases--considers **wells** drilled on natural and man-made gravel islands as "onshore" because permanent drilling surfaces could be maintained on such gravel **islands**.⁹⁸ (The ice island project is discussed in detail below.)

The Beaufort Sea is covered with ice much of the year and has been **called** "one of the world's most hostile environments for oil exploration and development." ⁹⁹ Waters along the Beaufort continental shelf are generally open from roughly late July to early fall, but the length of this open season varies from year to year and is influenced by wind and other weather conditions. Scientists divide ice in the Beaufort into three zones: **landfast** ice, shear zone ice, and polar pack ice. Landfast ice, ice held fast to the shore and therefore relatively immobile throughout the winter, forms from the shore out to waters up to about 25 meters (75 feet) deep and is

often 2 meters (6 feet) thick. In deeper waters along the continental shelf, shear zone ice forms; this ice is mobile and is affected by currents, tides, winds and **polar** pack ice further offshore. In a 1976 article, Science magazine reported this mobile Beaufort ice is "subject to active shearing and the formation of formidable pressure ridges so thick and massive as to scour the sea bottom in waters up to 45 meters (144 feet) deep. " Seaward of the continental **shelf** is the polar pack ice, which, depending on weather conditions, affects movement of the shear ice. Overall, scientists emphasize the "severity and unpredictability" of Beaufort Sea ice. ¹⁰⁰

An estimated 163 species of birds--most of which are migratory--are found along the arctic coast in the summer season. About 22 land and 15 marine species of mammals live along the arctic coast or in the waters of the Beaufort and **Chukchi** seas. Some of these animals, including caribou and whales, are also migratory, wintering in more southerly regions and spending the short summer season in the arctic. Scientists believe there are about 71 species of fish in the **Beaufort** and Chukchi seas. ¹⁰¹

BEAUFORT PLANNING

Borough Interests

In early 1977, the North Slope Borough issued a "Statement of the Environmental Protection Policy" of the borough, including a **summary** of the borough's position on nearshore and Outer Continental Shelf petroleum exploration and development:

The borough's policy [is] to oppose all Arctic OCS operations until safe and responsible extraction technology [can] be designed and tested. At the same time the borough [has decided] to support . . . efforts to consolidate state and federal near-shore explorations as a safe first step in U.S. Beaufort **off-shore operations.** 102

Since 1975, Mayor Eben Hopson of the North Slope Borough has issued a series of statements to state and federal officials and the public on the question of petroleum leasing in the U.S. Beaufort and on offshore **exploratory** work already underway in the Canadian Beaufort. He has emphasized the arctic Eskimos' dependence on whales and other marine life and has spoken out most often against the dangers of petroleum exploration in the shear ice zone on the federal Outer Continental Shelf, noting, "We **Inupiat** are the experts on the ice. We know of no proposed **or** proven oil production technology able to withstand the dynamics of the Arctic ice. Until such technology exists it seems foolish and irresponsible to drill for oil on the Outer Continental Shelf of the Beaufort Sea." 1103

Hopson has also spoken of the costs to state and local governments of federal OCS development and has said that the federal government "should be required to deal with the **socio-economic** impact of OCS development upon coastal communities before harmful impact happens This will involve a special revenue sharing program for coastal states and municipalities financed as part of the cost of development." 1104

The borough mayor has also looked critically **at** exploration work proposed for nearshore areas of the Beaufort, although favoring exploration in

these regions over OCS exploration. He has said of arctic offshore exploration in general:

The biggest danger in Arctic coastal zone resource development is ignorance of the realities of the Arctic environment. The industry is underestimating the environmental dangers of the Arctic ice cap I have advocated the negotiation of some kind of international Arctic treaty governing all offshore oil and gas development along the Arctic coast. I feel that industry should be held to a single set of rules in all Arctic offshore operations. ¹⁰⁵

Federal Planning

In 1974, following the Arab embargo on oil shipments to the United States and a subsequent sharp increase, in the cost of imported oil, the federal Department of the Interior announced the initiation of "Project Independence," a program designed to ultimately make the United States independent of foreign oil sources. Part of this program called for stepping up petroleum exploration on the Outer Continental Shelf, with nine OCS lease sales scheduled for waters off Alaska between 1975 and 1978. A Beaufort Sea OCS lease sale was set for the fall of 1977. ¹⁰⁶

Looking toward this scheduled federal Beaufort sale and possible future state petroleum lease sales in the nearshore Beaufort, the U.S. Army Corps of Engineers in 1974 compiled a "background study" of resources along the arctic coast and in 1975 issued a draft environmental impact statement based on the background study. The Corps of Engineers issues permits for all structures to be located "on, under or over navigable waters of the United States," including petroleum exploration and development structures in offshore areas under state or federal mineral leases. ¹⁰⁷

The Corps' 1974 background study of the arctic coast found:

The Natives of the Arctic are generally unaware of the potential for offshore development in the Beaufort and **Chukchi** seas areas. They have been neither informed nor consulted development activities and attendant pollution may adversely affect the animals of the sea, which are very important to the Native's lifestyle, their culture and their livelihood

. . . Revenues [accruing to the North Slope Borough] will not be directly affected during early stages of development.. Establishment of support facilities will, however, have positive local and regional effects. . . . Revenues collected will be mainly a result of taxation of property and equipment **on** offshore. (Tax status of offshore structures is unknown.) . . . **108**

After the release of the Corps' draft impact statement based on this background study, Mayor Hopson wrote the Corps that "The draft statement is unacceptable from our point of view," noting the statement lacked specific descriptions of proposed development activities and that "Taxation options open to the North Slope Borough constrain the actual revenue collections and will be inadequate to provide a standard of living commensurate with impending **changes.**"**109**

Hopson went on to say:

The statement itself presents the best evidence for the deferral of permits for structures along the Arctic coast The statement repeatedly acknowledges that additional studies are needed within the biological and geological disciplines and on ice factors. . . .

. . . The Arctic Slope, as an entity, continues to be endangered by the stereotypic image that it is a barren wasteland of ice and snow, and the rapid development of its resources should, therefore, pose no threat. Environmental impact statements . . . must emphasize **110** that . . . the Arctic abounds in marine and land wildlife.

Hopson ended this 1975 letter to the Corps of Engineers with one of his first statements on what the borough wanted when offshore development occurred:

Local participation in the determination of **likely** social and environmental impacts

Access to affordable energy fuel for domestic consumption within the North Slope Borough

A 10-year federal financial participation plan around which the federal government can ~~budget~~ ^{get} for economic assistance in the management of the impacts.

In April 1976, the first federal OCS sale off Alaska--a sale criticized by the state government for not taking sufficient account of environmental considerations--was held in the Gulf of Alaska. But in August 1977, before the planned Beaufort OCS sale, the Department of the Interior announced a revised schedule of federal OCS lease sales, slowing the pace of the 1974 plan and calling for a Beaufort lease sale in December 1979. Secretary of the Interior Cecil Andrus said the new schedule had been drawn up "in close consultation" with state and local governments and that "Development of several of the frontier areas of the OCS off the coast of Alaska, such as the Beaufort Sea, pose significant technological challenges . . . we **will** proceed with these sales only if there is existing technology for exploratory operations and it is reasonable to assume that technology for development will be available at the appropriate **time.**"¹¹²

State Planning

At about the same time the Corps of Engineers was preparing its impact statement for the arctic coast, Governor Jay Hammond was considering

whether to lease state lands in nearshore areas of the Beaufort as a means of raising needed revenue for the state.¹¹³ Hammond called for an environmental assessment of effects of petroleum leasing in the Beaufort and for public hearings on a possible lease sale in the Beaufort.

The state's draft environmental assessment of effects of a Beaufort lease sale was released in April 1975 and discussed the possibility that combined petroleum developments on the North Slope--including the **trans-Alaska** pipeline, a natural gas pipeline from Prudhoe Bay, and nearshore petroleum development--could create a "permanent settlement" of as many as 15,000 persons at Prudhoe Bay:

The primary responsibility for providing services to a permanent settlement would fall . . . to the North Slope Borough

. . . . Even though Beaufort Sea nearshore development might **generate** up to \$500 million in taxable property, the North Slope Borough would only be able to tax that property on the basis of population rather than on services required This level of revenue [might] not be sufficient to support the sudden massive operating and capital **cost increase** associated with the creation of a new community.¹¹⁴

Therefore, the assessment went on to say, because of limitations on the borough's revenue-generating power, the state would have to assume much of the cost for such a permanent community and that "existing information on the state and local costs of a new community development in Alaska must be carefully considered before any policy decisions on the creation of a permanent settlement at Prudhoe Bay are **made.**"¹¹⁵

The environmental assessment also drew general comparisons of the Beaufort coast with other coastal areas which might be considered for petroleum

leasing:

Other areas such as Lower Cook Inlet, Bristol Bay, Yakutat, etc., are more productive of the animals economically important to humans than the Beaufort Sea. However, Beaufort areas produce ringed seal, Arctic fox, and waterfowl, all of which are essential to the furtherance of a dying culture.

Ecological damage can be expected to have longer lasting effects in the Beaufort than in other areas of the state.

Existing developmental technology and support systems are less thoroughly developed and tested for Arctic areas.

Our ability to predict damage to the Beaufort ecosystem and therefore to safeguard against it is poorly established relative to other areas. ¹¹⁶

Following release of the environmental assessment, the state held public hearings in Anchorage, Fairbanks, and Barrow. At the Barrow hearing in May 1975, Mayor Hopson testified that in general "We do not object to any development providing that adequate precautions are adhered to" and went on to suggest that if the state's purpose in offering petroleum leases in the Beaufort was to raise revenue, then in the long run it might be more profitable for the state--and the North Slope Borough--to work toward private exploration and development of the federal petroleum reserve that was at that time controlled by the Department of the Navy, rather than to look to petroleum development in the **Beaufort.**¹¹⁷

By late 1975, Governor Hammond had decided against offering leases in the Beaufort primarily as a means of raising revenue for the state; instead, the state legislature established a tax on petroleum reserves at **Prudhoe**

Bay, a tax to be credited against future oil and gas production.¹¹⁸ The governor was now interested in delaying the scheduled federal OCS lease sale in the northeast Gulf of Alaska and raised the possibility of state-federal cooperation on a Beaufort sale in exchange for postponement of the Gulf OCS sale. In a September 1975 letter to an environmental group, Hammond wrote:

I am trying to establish a policy structure which will at least delay Outer Continental Shelf development in the northeast Gulf and other key marine areas of Alaska . . . and will-work toward Federal-State cooperation in Outer Continental Shelf areas where development may be proper. I believe the Beaufort fits into the latter category.¹¹⁹

But the governor added, "We are not going into the Beaufort blindly and haphazardly, nor have we any intention of allowing industry to do so The basic problem is one of information gaps, through which risks and uncertainties flow. It was my conclusion, after hearing from all concerned, that the risks would not be unacceptable and that the uncertainties can be hedged and reduced."¹²⁰

In May 1976, Mayor Hopson wrote the governor that state officials may have misinterpreted Hopson's remarks at the 1975 hearings on Beaufort Sea leasing and clarified that while "we are not opposed to safe and responsible oil and gas development within our borough, . . . we are not at all sure that such technology exists to enable safe and responsible offshore oil development. . . . given our confidence in each project, we will not oppose offshore exploration and development."¹²¹

The following month, the governor replied to Hopson's letter, noting that he was pleased to have Hopson's "most recent expression of opinion **re-garding** this sale" and that state officials had felt "both the borough and the Native corporations [had] testified in favor of a sale" during the 1975 Barrow **hearing**. Hammond went on to say that "no final decision has been made regarding scheduling of a **[Beaufort]** sale," and that when the sale was held it would be "in the public interest" and "maintain high standards of public participation in the resource allocation process."¹²²

The state ultimately decided against a 1976 Beaufort sale and continued working toward a joint federal-state lease offering in the nearshore Beaufort.

OFFSHORE BEAUFORT EXPLORATION

In early 1976, while speaking out on planned federal and state lease sales in the Beaufort, Mayor Hopson also looked at plans for the first offshore exploratory well in the nearshore of the U.S. Beaufort and at Canadian plans for deepwater exploratory drilling in the open waters of the Canadian Beaufort.

Union Oil Ice Island

One of several companies that bought petroleum leases in Harrison Bay west of Prudhoe in 1969, Union Oil in 1973 began planning an exploratory well to be drilled from an artificial ice island in the shallow bay. In the spring of 1975, the company applied for necessary permits to drill the exploratory well, which would be considered the first offshore well

in the American Beaufort.¹²³ Permits for this offshore work were required from the Corps of Engineers and the Department of Natural Resources' Division of Oil and Gas Conservation, as well as approval from several federal and state agencies looking at environmental considerations.¹²⁴

In November 1975, Mayor Hopson wrote to the chief of the Corps of Engineers in Alaska, noting "We do not want you to grant permission to drill one single exploratory well anywhere off our coast until we understand **all** of the implications" and asked the Corps in particular not to grant a permit to Union Oil until the borough had learned more about the proposed ice island work.¹²⁵ Hopson also asked Alaska's Senator Ted Stevens to question the Corps about the ice island project, and in February the Corps of Engineers wrote Stevens:

The ice island concept is a new one and has caused some concern among environmental groups, some federal and state resource agencies and residents of the Beaufort Sea area However, the Alaska Department of Fish and Game has endorsed Union's proposals. [Union Oil] has succeeded in resolving the objections raised by these parties with the exception of Mr. Hopson. . . .

. . . . Because [Hopson's] objection occasioned a delay in **processing** the application, Union Oil has determined to postpone drilling until next winter. . . . The company has scheduled a meeting with Mr. Hopson to discuss the North Slope Borough's concerns. . . ."¹²⁶

The following month, Mayor Hopson notified Senator Stevens that oil company representatives had met with the borough, and "Based upon the information presented to us, it is my opinion that Union Oil's Harrison Bay project has been well-designed. . . . If offshore drilling on our side of the Beaufort Sea is inevitable, the Union Oil project would seem to be a

safe and well-planned first step. . . . But it's the first step in a direction in which we feel great apprehension." Hopson added that he would notify the Corps of Engineers that the borough had no "specific objection" to the ice island plan, but wanted approval of the project tied to cleanup of an area near Point Lay where a Union seismic crew had worked the previous year. ¹²⁷

At the same time Hopson was writing Stevens, the borough attorney notified Union Oil that ". . . though fraught with environmental problems, [the project] can go forward without any objection by the North Slope Borough," noting again that the borough wanted cleanup of seismic work at Point Lay. ¹²⁸

But in May 1976, Hopson changed his position and notified the Corps of Engineers that he wanted the Corps to withhold all permits for exploration in the **Beaufort--including** the permit for Union Oil's ice island--in an attempt to force the oil industry to call off planned exploratory work in the open waters of the Canadian Beaufort Sea (discussed in detail in the following **section**).¹²⁹

In the winter of 1976-77, Union Oil obtained permits to create an artificial ice island in 4 meters (12 **feet**) of water in Harrison Bay and **car-**ried out exploratory drilling from the island between December 1976 and April 1977, when the company moved its drilling equipment off the ice; the ice island broke up later in the spring. ¹³⁰ The January 1977 borough newsletter reported the ice island project was "relatively safe . . . in

a shallow, sheltered ice-fast nearshore area on a carefully constructed ice island designed to contain the results of a blowout should one occur," and a later newsletter **called** the project "**successful.**"¹³¹

Canadian Beaufort Drilling

In April 1976, the Canadian government gave Dome Petroleum, Ltd., permission to drill two exploratory **wells** 45 kilometers (28 **miles**) and 80 kilometers (50 miles) offshore from the Mackenzie Delta during the short **summer-fall** open water season. Although the Canadians had previously done exploratory drilling from natural and man-made islands in the nearshore waters of the Mackenzie Delta off Canada's Northwest Territories, these two exploratory wells--in waters 26 meters (80 feet) and 60 meters (180 feet) deep--would mark the first deepwater petroleum exploration in the **Beaufort.**¹³²

The Canadians had given "approval in principle" to the project in 1973 and called for a \$12 million environmental assessment of the plan.¹³³ In early 1976, Hopson protested the planned deepwater exploration to Canada's Secretary of State for External Affairs, **Allan MacEachen.** Secretary MacEachen told Hopson the Canadian government had "considered the concerns expressed by Canadian and U.S. Native communities" before approving the Dome project and had established "special safety precautions," including a minimum of two **drillships** in the Beaufort to **provide back-up** if needed, continuous federal monitoring of the drilling, equipment to prevent well blowouts, and a requirement that drilling stop on September 15 to allow operators about a month before the ice moved in to **drill** a relief well should a blowout occur.¹³⁴

In protesting the Canadian plan, Hopson maintained Canada's environmental assessment of the project was inadequate; that currents would deposit any oil spill in Canadian Beaufort waters on U.S. arctic shores and that such a spill could "destroy the delicate food chain upon which all life in the arctic **depends**;" that the oil industry had circumvented U.S. environmental standards by drilling in Canadian waters; and that **an** international treaty outlining a single set of standards for offshore drilling in the arctic should be negotiated among arctic coastal nations before such drilling **be-**
gan.¹³⁵

Throughout the first half of 1976, **Hopson** wrote letters to federal and state officials asking them to try to prevent Canadian open water drilling; he asked Governor Hammond and the Corps of Engineers to "suspend all cooperation with the oil industry" in plans for offshore drilling in U.S. Beaufort waters until the planned Canadian drilling was **postponed.**¹³⁶

In July 1976, the Washington Post reported that the U.S. State Department had reviewed Canada's environmental assessment of the project and had called for "urgent discussions" with the Canadians. The Post **said** the United States had asked Canada to use "utmost caution" in the drilling and that the two countries had set up joint committees to discuss oil **spill** liability and possible U.S. Coast Guard help **in** the event of a **well** blowout or oil **spill.**¹³⁷

Stanley **Doremus**, deputy assistant secretary in the Department of the Interior, told the Post the possibility of a blowout occurring in one of

the Canadian exploratory wells was "reasonably low" but that if a blowout did occur in the fall when the ice was moving into the Beaufort, "You might have a continuous oil spill for as long as a year because the ice would prevent drilling a relief hole." **Doremus** said if an oil **spill** occurred in the Canadian Beaufort "The likelihood of oil coming ashore in Alaska is pretty high, since the currents and the winds take everything westward . . . oil doesn't break up and disperse as rapidly in cold water. "138

An official with the Canadian embassy told the Post just before the start of the deepwater drilling that the decision to **allow** the project had been "difficult" but "Canada is short of oil. We have become net importers, whereas three or four years ago we were heavy exporters. "139

Two deepwater exploratory wells were drilled in the Canadian Beaufort in the 1976 summer season, and in June 1977 the Canadian government gave Dome Petroleum approval for an additional three-year exploratory program, subject to the same safety standards required the previous year. In the 1977 summer season, three **drillships** found gas at three sites in the open waters of the **Beaufort**.¹⁴⁰

COASTAL MANAGEMENT PLANNING

State Planning

During the period 1974-1977, when the state and federal governments were considering holding petroleum lease sales in the Beaufort, the State of Alaska--with federal funding--was working toward establishment of a

statewide "coastal management program" to guide future development not **only** along the arctic coast but along all of Alaska's coastline. Several state agencies worked toward setting **up** coastal management guidelines and standards, and in 1975 the state legislature considered a coastal management bill that would have given the state government a very strong role in coastal management planning, almost to the exclusion of regional interests; this legislation did not **pass**.¹⁴¹

In fiscal 1977, the state received about \$1 million in federal funds for coastal management planning. State officials decided to make about \$200,000 of this money available to local governments to aid in **development of** regional coastal management plans. The Department of Community and Regional Affairs oversaw allocation of funds to local governments, including the North Slope Borough. The borough is under contract to the Department of Community and Regional Affairs to establish a coastal management program, concentrating first on the region between the National Petroleum Reserve and the Arctic National Wildlife Range, where the planned 1979 federal-state Beaufort nearshore lease sale is to take place. The borough is also under contract to the department to prepare a socio-economic impact study of the planned Beaufort sale.¹⁴²

In June 1977, the state legislature passed revised coastal management legislation. The Alaska Coastal Management Act calls for local **governments** to draw up their own coastal management plans, subject to state approval, and for establishment of an Alaska Coastal Policy Council to

formulate statewide guidelines for coastal management, taking into consideration interests of individual coastal regions.¹⁴³

The coastal policy council--made up of representatives of seven state agencies and nine representatives of coastal regions around the state--released its draft of "Standards of the Alaska Coastal Management Program" in January 1978. Public hearings were held on the draft, and in late March the policy council submitted a final set of coastal management guidelines to the state legislature and the attorney general's office.¹⁴⁴

Borough Planning

Mayor Hopson represents the North Slope Borough on this statewide coastal policy council, but before the 1977 act setting up the council became law, the North Slope Borough had inaugurated its own "coastal zone management program." In late 1976, the borough announced the establishment of a coastal zone management program, a broad program under the office of the mayor and the borough planning department, aimed at coordinating all the borough's efforts toward controlling onshore and offshore development in the borough into a far-reaching plan. This coastal zone management program was to be a means of dealing with "environmental security problems"--a wide array of borough concerns, including protection of land and sea subsistence resources. Borough planners envisioned the program growing into an "international Arctic regional program" that would involve the oil industry and all the nations of the arctic coast in setting up a coastal management program for the entire arctic.¹⁴⁵

As a step toward this international arctic cooperation, Mayor Hopson and borough planners in 1976 began organizing an "Inuit Circumpolar Conference," to be held in Barrow and to attempt to draw delegates from Canada, Greenland, and Siberia. This international conference was to be "a means of dealing effectively with the important international questions relating to Beaufort Sea development and its impact upon the Inupiat" and as a move toward "organizing international [coastal zone management] cooperation able to deal with the Beaufort Sea as a single ecological system in which all offshore operations would be held to a single set of rules."¹⁴⁶

The Inuit Circumpolar Conference was held in Barrow in the summer of 1977, drawing delegates from Canada and Greenland. At this conference, the delegates established a committee to draw up a charter for an international Inuit organization and passed resolutions in support of "continued circumpolar community organizational work" in transportation, game management, housing, resource development, and education.¹⁴⁷

LEASE SALE PLANNING

Following announcement that the federal and state governments would hold a joint lease sale in the Beaufort in late 1979, both governments issued a "call for nominations and comments" on proposed tracts in the 2,640 square kilometer (650,000 acre) nearshore area.¹⁴⁸ This call for nominations and comments is one of a series of steps to be taken by government before any acreage is put up for sale in 1979; there are several points at which the borough may comment on federal and state plans. By April 24, oil companies are to notify the governments which tracts they are interested

in bidding on, and federal **and** state agencies and **local** governments--including the North Slope Borough--can offer information to influence which tracts will ultimately be offered for **sale**.¹⁴⁹

Federal Planning

After receiving comments and nominations on the proposed federal sale tracts, the Department of the Interior will prepare a draft environmental impact statement on those areas which seem most probable for leasing; comments will be solicited and hearings held on this draft before preparation of the final impact statement. Also, when federal lease tracts are actually sold, buyers will sign "notices **of** support," requiring leaseholders to supply the local government with information on planned operations; the borough can protest these planned operations to the Interior Department's U.S. Geological Survey, which oversees development of lease **tracts**.¹⁵⁰

Federal planning for a Beaufort petroleum lease sale actually began in late 1974, when the federal government decided to accelerate its OCS leasing schedule. The Interior Department's Bureau of Land Management then began conducting a broad range of **so** economic and environmental studies in areas to be affected by planned offshore leasing. The National Oceanic and Atmospheric Administration is under contract to the BLM to conduct scientific studies of coastal areas; this work includes studies of geological hazards; ecosystems and typical biology of areas; physical oceanography; behavior of hydrocarbons in water; sources of disturbance to local ecosystems; and effects of various elements of petroleum

development on **local** ecosystems. In fiscal 1978, the Department of the Interior is spending \$8 million on scientific studies of the Beaufort Sea; \$19 million was budgeted for these studies in several coastal areas of Alaska this year. Interior plans to spend about \$7 million for scientific studies in the Beaufort area in fiscal 1979.¹⁵¹

State Planning.

In 1977, the state Division of Minerals and Energy Management of the Department of Natural Resources began drawing up a revised set of oil and gas "releasing procedures" for state-owned lands. Public hearings were held on these proposed regulations in March 1978, and they have been submitted to the commissioner of the Department of Natural Resources for approval. The regulations **call** for the state's leasing procedures to be consistent with the state's coastal management plan and approved management plans of individual coastal regions. Other provisions of the regulations call for social, economic, and environmental studies of proposed sale areas; public hearings on proposed sales; and establishment of an advisory committee for each sale to advise the head of the Department of Natural Resources on "lease sales, stipulations and other matters" This advisory council is to be made up of representatives of various state agencies and representatives of borough or local governments "most affected by the sale."¹⁵²

Such an advisory committee for the Beaufort lease sale was formed in early 1978, and three representatives of the North Slope Borough attended the first committee meeting in **February.**¹⁵³

Borough Influence

The borough has taken the position that its jurisdiction extends 5 kilometers (3 miles) **into** the Beaufort Sea, and the official incorporation description of the borough draws boundary lines out to the 5-kilometer (3-mile) limit. An attorney with the state attorney general's office has said that if no state law explicitly reserves nearshore jurisdiction for the state, the borough may be able to make a case for some jurisdiction in state-controlled waters of the Beaufort, depending on which areas of power the borough attempts to **exercise**.¹⁵⁴

How much the North Slope Borough will be able to influence petroleum exploration and development along the arctic coast remains to be seen. The U.S. Geological Survey has estimated that the continentals **shelf** of the Beaufort Sea between Point **Barrow** and the Canadian border could hold 15 billion barrels of recoverable oil and 41 trillion cubic feet of **gas**.¹⁵⁵ In early April, the state announced a five-year schedule of offshore petroleum lease sales in areas around the state. The first sale is tentatively slated for October **1978** in the Point Thompson. area on the **Beaufort**, adjacent to the site of existing exploratory wells. And the state plans another offshore sale in Beaufort waters in April 1982.¹⁵⁶

Questioned in late 1977, many borough leaders agreed with Mayor Hopson's stand on offshore leasing but felt **Hopson's** statements on offshore development had had little effect on actions of the state and federal governments to **date**.¹⁵⁷

In a late 1977 letter to a state official, Mayor Hopson said the borough intended to continue stressing "the care that must be taken to preserve the traditional subsistence values of our land and ocean as oil is taken from under the **ice**. . . . We do not seek anymore than **I** feel all Alaskans should have as offshore decisions are made in Alaska's . . . waters.]]"¹⁵⁸

Other Cases

BEAUFORT-CHUKCHI SEISMIC SURVEYS

In early 1976, the Department of the Interior's U.S. Geological Survey began notifying state and federal agencies in Alaska of its intention to conduct seismic surveys through the use of explosives in the Beaufort and **Chukchi** seas off the coast of the North Slope Borough during the coming summer season. The Geological **Survey** noted this seismic work was part of "marine geophysical investigations" the agency was responsible for **carry-**ing out to "provide timely and accurate data for Federal, State and public use on the resource potential of U.S. offshore public **lands**."¹⁵⁹

The agency prepared an environmental assessment of this action, holding that the planned work "did not constitute a major Federal action" and therefore did not require preparation of an environmental impact statement under terms of the National Environmental Protection Act (NEPA) of 1969.¹⁶⁰ The environmental analysis outlined "precautions to be taken to avoid or minimize harm to marine animals and minimize the extent of fish **kill**."¹⁶¹

The Alaska Department of Fish and Game protested the planned work, noting, ". . . we believe the use of 19 tons of high explosives in an area hosting animal life, some species of which are endangered, is unreasonable" and asked that the planned work "be delayed for one year to allow analysis through the NEPA process."¹⁶²

The National Marine Fisheries Services (NMFS) of the National Oceanic and Atmospheric Administration also commented on the proposed seismic work, notifying USGS that although the fisheries service appreciated the "extensive, sincere effort being made to avoid or minimize environmental damage" during the seismic surveys, that if the work was carried out as planned USGS could find itself in violation of federal laws prohibiting the "accidental taking (killing or disturbance)" of certain marine mammals.¹⁶³ The fisheries service went on to say, "While the NMFS is not in a position to prohibit . . . the blasting part of the program, we also, unfortunately, cannot remove the burden of what constitutes an illegal activity. A violation of these laws requires enforcement by NMFS."¹⁶⁴

The Alaska Department of Fish and Game also notified the North Slope Borough of the planned seismic work. The borough then asked Alaska's U.S. Senators Mike Gravel and Ted Stevens to question USGS about the proposed work and to request USGS not to go forward with the plan until the interests of the North Slope Borough had been taken into account.¹⁶⁵

The borough also wrote the USGS directly. The borough asked that, in the future, USGS inform the borough in advance about proposed offshore

surveying so the borough could comment on plans and "communicate the information to our village residents along the coast." The borough also asked the USGS to prepare a full environmental impact statement before going ahead with the plan and went on to say that the use of explosives "would not only entail a fish kill which is significant in relation to the subsistence nature of resource utilization in this area, but the attendant disruption of marine mammal patterns poses a substantial impact upon the interrelationship of local residents with their environment." ¹⁶⁶

In September **1976**, the borough learned that the USGS--spurred "at least in part" by an inquiry from Senator Mike Gravel--had postponed its planned work for one year. ¹⁶⁷ Early in 1977, the director of the USGS told Senator Stevens--in response to an inquiry from Stevens on **behalf** of the borough--that "as a result of concerns expressed by representatives of several agencies, the 1976 field program was postponed." ¹⁶⁸ The head of the USGS went on to say, ". . . we are pursuing new technology that may enable us to conduct the seismic program partly with nonexplosive sound sources, thus further reducing the potential environmental **hazards**." ¹⁶⁹

Also **early** in 1977, the associate director of the USGS notified the North Slope Borough that "In view of our current work load and financial limitations, we have decided . . . to limit our **summer** of 1977 Alaskan seismic surveys **to** reflection profiling using nonexplosive sound sources," but held open the possibility that explosives might have to be used in future seismic work if results obtained with other methods were not "adequate to assess the oil and gas potential of the continental **shelf** rocks offshore

from Point Barrow." The letter went on **to** say that if, **in** the future, the **use** of explosives appeared necessary, the **USGS** would "request comments from the North Slope Borough. "¹⁷⁰ "

A representative of the USGS reported in **April** 1978 that seismic work without the use of explosives had been carried out off the arctic coast during the 1977 summer **season.**¹⁷¹

ARCTIC WILDLIFE RANGE EXPLORATION

In March 1978, the North Slope Borough village of Kaktovik protested congressional legislation that would open the way for oil and gas exploration in the northwest part of the Arctic National Wildlife Range, in an area that includes portions of the calving grounds of the Porcupine caribou herd.

The U.S. Congress is now considering a Carter administration proposal that would place 400,000 square kilometers (92.5 million acres) of land in the state under national **park**, wildlife **refuge**, wild and scenic **rivers**, and national forest systems. The proposal calls for enlargement of the existing 35,562 square kilometer (9 million acre) Arctic National Wildlife Range--which falls largely within the North **Slope** Borough--into a 53,000 square kilometer (13 million acre) "Arctic Wilderness" that would be part of the National Wilderness Preservation System and closed to petroleum **exploration.**¹⁷²

gathering and controlled natural resource development." Hopson went on to say:

Natural resource extraction provides the present and only foreseeable future means of local self-determination and an improved level of **living** for the indigenous peoples of the North Slope.

. . . it would be sheer folly to impose a lands policy which would prohibit access to the few potential commercial deposits which may be developed aside from **Prudhoe** Bay. . . .

This is . . . a plea for a **lands** policy that will enable the exploration, designation and development of what will probably be a relatively small number of commercial deposits of non-renewable resources. "180

But in the same presentation to the congressional committee, Hopson stressed the need for "environmental safeguards" that would "protect the habitat which nurtures subsistence resources" and noted that specific areas of critical wildlife habitat **should** be excluded from exploration activities. He also called for "an international agreement with Canada" for effective protection of wildlife of the **region.**¹⁸¹

In thus supporting both petroleum exploration and habitat protection, Hopson implied that an acceptable balance between the two can be achieved on the North Slope.

Two congressional committees have yet to consider the proposed opening of the Arctic Wildlife Range to petroleum exploration before the bill comes to a general vote. 182 And if the bill becomes law, it remains to be seen whether the North Slope Borough will side with **Kaktovik** for protection of wildlife habitat or against Kaktovik in view of potential borough revenues from resource development in the vicinity of the Porcupine caribou calving grounds.

The **Kaktovik** letter also supported creation of **an** American-Canadian wilderness range to protect wildlife since "caribou, bears, birds and other animals cross these boundaries without notice. . . ."¹⁷⁷

In a late March statement, Secretary of the Interior Cecil Andrus called the proposed "Arctic Wilderness" an area with "perhaps the most unique and fragile values of all our proposals" as well as the one which "is under the greatest pressure for other uses," recognizing that geological exploration has identified an area east of Prudhoe as "promising for **oil** and gas." Andrus added that ". . . known wildlife values in the refuge [outweigh] the possibility of a petroleum strike there. The highest and best use of this land is not exploitation of its finite resources but perpetuation of its renewable **resources.**"¹⁷⁸

Previously, Andrus had said, "If sometime down the road we are so desperate for petroleum that we are willing to pay what I would consider the highest price man can pay for oil and gas, then we may . . . open the **Arctic Wildlife Range** to exploration. But I simply don't believe we are that **desperate.**"¹⁷⁹

There is no evidence that the North Slope Borough has taken a position on the specific legislation now before Congress, but in testimony before the House General Oversight and Alaska Lands Subcommittee in August 1977, Hopson spoke in favor of designation of all federal lands on the North Slope in one classification system that would allow "unimpeded subsistence

such development would offer the borough several advantages: taxable development property; large numbers of temporary workers to be counted on the borough's census rolls and thereby increase the borough's taxing limits; sites far removed from villages and thus probably not placing a strain on existing borough services; workers confined to development enclaves with services most likely provided by oil companies rather than the borough; workers spending time off outside the borough and thus not adding hunting and fishing pressures.

- Developments that might harm fish and wildlife habitat and produce uncertain revenues are opposed by the borough. Mayor Hopson has emphasized repeatedly that offshore exploration, for instance, could take a heavy toll of marine mammals and fish. And at the same time, it is not clear how much the borough could tax offshore facilities and accompanying onshore support sites (given state limits on borough taxing power).
- The borough opposes developments that might create permanent non-Native communities on the North Slope and views the haul road as a potential danger. Any significant number of people deciding to make their permanent homes along the haul road could not only place pressures on fish and game resources, but threaten Eskimo control of the regional government.
- The borough wants North Slope resources to be developed in phases, thus assuring the borough of a steady stream of revenues. Mayor Hopson has supported onshore over offshore exploration **and** development, holding that adequate technology for taking oil from

below arctic ice does not yet exist and that serious exploration of potential onshore reserves--as in the petroleum reserve--should be done before it is necessary to move exploration **off-**shore. Also, Hopson has called for a federal **land** policy that would leave the door open for future exploration of potential reserves, rather than the establishment of federal reserves closed to resource exploration.

- The borough wants any developments near villages to provide villages access to natural gas for fuel.

The above points have been made repeatedly by Mayor **Hopson**, and whether residents of **individual** villages support these general policies is yet to be seen. The only major petroleum developments on the North Slope now are the **Prudhoe** Bay complex and the trans-Alaska pipeline, far removed from village sites, and instances where individual villages have had to make decisions about petroleum exploration and development near their homes have thus far been few. As discussed earlier in the chapter, residents of Kaktovik have recently opposed opening of the Arctic National Wildlife Range to petroleum exploration, but the borough has not yet taken a position on this specific case.

Earlier, the village of Kaktovik faced the petroleum development question when deciding whether to support the proposed Arctic Gas pipeline route that would have passed near the village. After consultation with officials of the Arctic Slope Regional Corporation, the Kaktovik village corporation decided to support placement of an Arctic Gas staging area

on Barter Island so the village could receive natural gas from the project. **Kaktovik's** city council and village corporation formed a planning commission to meet with Arctic Gas representatives; as a result of these meetings, Arctic Gas agreed **to shift** its proposed route from along the resource-rich coast 48 kilometers (30 miles) inland. **Kaktovik** residents were also concerned about the possible effects of several thousand workers in the vicinity of the village. The North Slope Borough was aware of Kaktovik's support of the Arctic Gas route but took no official position on gas line routing. There was no official borough-village communication on the question, and the borough did not attempt **to** intercede. Mayor **Hopson** announced personal support for the **Alcan** route in the fall of 1977.¹⁸³

In another incident, residents of Point Hope on the **Chukchi** Sea protested in the summer of 1977 when they learned the Arctic Slope Regional Corporation and Chevron USA had made plans to begin exploratory drilling on village corporation **lands** near Point Hope. After a public protest meeting at Point Hope, the regional corporation decided against the planned drilling; village residents were upset that they had not been consulted about the planned drilling and feared the work would disrupt subsistence resources in the area. There is no evidence that the North Slope Borough took sides in this dispute between the village and regional corporations.¹⁸⁴

With several petroleum developments pending on the North Slope, it remains to be seen how much the borough will get of what it wants and whether individual villages will choose to support or oppose borough policies when exploration and development move near their homes.



Endnotes

1. Memorandum from attorney general's office to Robert **LeResche**, director, Division of Policy Development and Planning, Subject: "North Slope Haul Road," September 7, 1976, p. 2.
2. Anchorage Daily News, December 23, 1977. In April 1978, Tundra Tours of Barrow, a subsidiary of the Arctic Slope Regional Corporation, asked the Alaska Transportation Commission to grant the firm rights to provide tour bus service on the haul road after **Alyeska** turns the road over to the state. (Anchorage Daily News, April 14, 1978.)
3. Anchorage Daily News, January 19, 1978.
4. U.S. Department of the Interior, Bureau of Land Management, notes of corridor planning coordination meeting, Anchorage, January 1978.
5. State of Alaska, "Comments on the Proposed **Trans-Alaska** Pipeline," prepared under the direction of the Department of Law, July 30, 1971, p. 111.
6. Memorandum from attorney general's office to Robert LeResche, **September 7, 1976**, p. 1.
7. Eben Hopson, address to the Alaska Growth Policy Council on the disposition of the Fairbanks-Prudhoe Haul Road, Barrow, March 15, 1976.
8. Alaska Growth Policy Council, "The North Slope Haul Road: A Summary of Issues and Options," April 7, 1976, recommendations.
9. Memorandum from attorney general's office to Robert LeResche, September 7, 1976, pp. 19, 3.
10. Jay Hammond, "North Slope **Haul** Road: Interim Policy Statement," September 1976.
11. "Chronology of Land-Use Planning for Pipeline Corridor Washington Creek to Sagwon Bluffs, 1971-77," David E. **Wickstrom**, area manager, Yukon resource area, Fairbanks district office, **Bureau** of Land Management; "Pipeline Corridor Management," Bureau of Land Management, second draft, December 5, 1975.
12. Minutes, fifth meeting, Alaska Growth Policy Council, Anchorage, November 10-11, 1975; "Pipeline Corridor Management Framework **Plan:**" List of Contacts, Bureau of Land Management (undated).
13. "Chronology of Land-Use Planning. . .," David E. **Wickstrom**.
14. Letter to Don Bennett, Alaska House of Representatives, from Eben Hopson, North Slope Borough, February 1977.

15. Letter from Charles Parr, **Alaska** House of Representatives, to Eben Hopson, March 9, 1977.
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VI. CONCLUSIONS

This study has dealt generally with how petroleum development has affected government in the North Slope region and how the North Slope Borough has responded to the opportunities and problems accompanying that development. We have focused on key issues of taxation, development, and environmental protection and related interactions of the **borough** and external organizations. We have also looked within the region, examining some basic political and economic relationships of the borough with the eight North Slope villages and with the Arctic Slope Regional Corporation.

The conclusions presented in the first part of this chapter are confined strictly to the North Slope case. In the second part we attempt to draw some general implications, based on the North Slope experience, for other rural Alaska regions.

The North Slope Case

CHARACTER OF THE BOROUGH

The story of the North Slope Borough is highlighted by borough leaders' aggressive pursuit of tax revenues, authority, and recognition, often in the face of outside opposition and resistance. Prudhoe Bay oil made North Slope Borough government financially feasible and economically and politically expedient for the Native people of the region. Establishing a borough for the whole North Slope was the most effective means available for gaining direct local access to the enormous tax base at Prudhoe Bay. Once established, the borough could also assert North Slope Natives' claims to

some share of control over the region's land, water, and subsistence resources, beyond the rights granted them under the Alaska Native Claims Settlement Act. Since the borough's incorporation, its officials have devoted very substantial energies to asserting and defending their tax and regulatory powers.

The combative, aggressive styles of North Slope **leaders** during the land claims movement carried over to their borough formation and development efforts. The initial reluctance of the state administration to act on the incorporation petition, and the oil companies' legal challenges first to the incorporation action and then, in a series of suits, to borough taxation of oil properties, contributed to a growing "**seige** mentality" among borough officials, centering in the office of the mayor. This condition has been further reinforced by a series of federal and state initiatives impinging on the North Slope and to which borough leaders are compelled to respond: OCS leasing plans, national interest (d)(2) land legislation, National Petroleum Reserve exploration, pipeline-haul road corridor planning and management, and subsistence hunting and whaling restrictions.

Through all of this, borough officials have also been attempting to follow through on promises of borough government to North Slope villagers. Basic objectives of incorporation included gaining control of public educational programs and providing new facilities, services, and jobs in all North Slope vil **l**ages. These objectives are **being** real **zeal**, but not without additional problems of financing and management, particularly in the

capital improvements program. The **CIP** is dependent on an assured **flow** of **oil** property tax revenues, which has been subject to blocks **and** restrictions and remains in jeopardy.

North Slope Borough government has not yet stabilized into a "normal local government" pattern; financially and in its external relations, its **vulnerabilities** continually force **it** into **reactive**, "crisis government" modes.

POLICY ISSUES **AND** EXTERNAL RELATIONS

Borough government has enabled North Slope leaders to influence and to participate in federal and state decision making as never before **in** the region's experience. In this sense, the North **Slope** Borough clearly is serving as an effective means of enhancing regional self-determination. But self-determination and dependence are not mutually exclusive **conditions**, as borough leaders undoubtedly know. The more they press and expand their claims on North **Slope** resources, the greater becomes their relative vulnerability to federal, state, and oil company decisions. The borough's dependence on oil property tax revenues is the outstanding case, where borough access to its major source of funds is directly subject to state tax laws and regulations, **oil** company **legal** action, and federal and state leasing, exploration, and development policies.

The most important **limit** on borough taxation **of** oil properties is not oil company opposition but state government laws and regulations. The state government's interest in assuring some measure of statewide tax and revenue equity transcends the North Slope Borough's interest in gaining

unrestricted authority to tax the greatest concentration of oil company properties in Alaska. This **basic** state interest, which persists through changes of administrations and legislatures, was the primary reason for the state's initial reluctance to support borough incorporation, and it remains the reason for state administrative and **legislative** limitations on the borough's authority to tax.

Economic security is of **necessity** the borough's first priority and environmental security the second. But since the North Slope Borough is not responsible for oil and gas development and has little influence over whether, when, and where such development occurs on federal and state lands, it can afford to press both its development-taxation and its environmental protection demands to their limits, often in apparent contradiction and without consistency or balance.

In practical effect, the borough's demands for environmental protection are not incompatible with its encouragement of petroleum development that offers potential economic benefits to the borough and its people. Except for federal OCS development, which may have a smaller potential payoff for the borough than developments elsewhere in the region, borough officials have not sought seriously to impede exploration and development activities on North **Slope** lands. The borough instead appears to be doing two things: First, it is seeking protection particularly of subsistence resource habitats and specific Native traditional use lands--protection that can be accommodated without significantly deterring oil exploration or development activities on the National Petroleum Reserve, on regional

corporation lands, or at Prudhoe Bay and in adjacent areas. Second, it is making claims to some share of control over federal and state lands and waters, regardless of whether oil exploration and development activities are directly involved. For this reason, it is often difficult to distinguish the borough's environmental protection responses from its broader political responses to federal and state actions affecting the North Slope region.

Notwithstanding the aggressive and sometimes strident and extreme **character** of borough claims, there are indications that borough relations with state and federal governments are taking more moderate and conventional forms as well. There are signs, too, that state and federal officials are responding to the borough's plea to be "taken seriously." The borough has claimed some success, for example, in lobbying in Congress (on National Petroleum Reserve legislation) and the state legislature (on municipal tax law amendments), effectively **fr**inding and cooperating with influential allies in the process. Currently, the borough is directly represented in several intergovernmental advisory groups, including the State Coastal Management Council, a federal-state haul road and corridor planning group, the National Petroleum Reserve land use study task force and planning team, and a state Beaufort Leasing advisory committee. And, in part due to federal and state laws mandating local involvement, the borough participates routinely in various federal and state development and environmental permitting processes affecting North Slope lands and waters.

In general, it appears that the North Slope Borough is progressively becoming integrated into an evolving federal-state-local intergovernmental system for the region. This development, however, is **still** in an unstable, nascent stage, which corresponds to the borough's own present phase of development as a political and governmental institution.

WITHIN THE REGION

North Slope oil and gas development has stimulated the formation and growth of a regional government that has used oil property tax revenues to provide an unprecedented level of new jobs, facilities, and services to the Native people of the North Slope. Further, borough activities in the villages, particularly capital improvement projects, have contributed to a new and higher **level** of organized public involvement in village affairs. Village council governments, however, already displaced in part by village corporations, have been further eclipsed by these developments. Villagers now look to borough leaders in Barrow to deliver jobs, services, and facilities and to exercise the local government powers transferred to them by the village councils.

Local government authority has largely been consolidated at the regional level, and **it** is exercised by the borough's top executive officials and their advisors. The institutionally and **personally** strong borough **executive**, centered in the mayor's office, is relatively autonomous and can chart the borough's course unencumbered by significant internal institutional or political checks.

The borough executive may well represent basic interests of the Native villagers, but, outside of Barrow, villagers are minimally represented in the borough structure. Villagers "participate" in borough affairs primarily as employees (in capital improvement projects) and consumers of borough goods.

The only significant taxpayer resistance that borough officials so far have faced comes from the oil companies. But borough officials are not **responsible** to them as elected officials are to a voting constituency. Oil companies on the North Slope are outside institutional adversaries, not borough citizens.

Within the borough structure, the assembly has yielded to the executive on all major matters, foregoing the usual legislative checks on executive power. To some extent this is an institutional response to the exigencies of crisis government responding to external threats and opportunities.

The Arctic Slope Regional Corporation is potentially the major regional institutional check on borough government, but it has not yet acted consistently or aggressively in this role. There is instead a pattern of non-interference, mutual accommodation, and even of cooperation between the two organizations, notwithstanding personal conflicts and other surface tensions between some of their officials. It is likely, however, that their institutional differences will grow, particularly as borough taxation increasingly impinges on corporation activities. There are already signs of corporation resistance to borough tax policies affecting

the oil exploration programs in which the corporation is engaged both as a land owner and a business contractor.

Another **intra-regional** check on borough government could come from permanent settlements of non-Native residents associated with longer-run arctic petroleum development. Although this has been avoided at Prudhoe Bay, such settlements are not necessarily precluded in the future. Borough leaders view this as one of the most serious potential threats to Native control of regional government on the North Slope, and thus to **Inupiat** "self-determination."

For the present, borough executive leaders are limited and checked primarily by external rather than internal political and institutional factors--by oil companies filing suits in the courts, by state and federal laws reserving tax and regulatory powers over North Slope lands and resources, and by federal and state agencies interpreting and administering these laws.

Other Regions

The North Slope represents an extreme and in many ways unique case of the interaction of petroleum development and regional institutional development in Alaska. It is obvious that without **Prudhoe** Bay or its equivalent there would be no North Slope Borough or its equivalent today. **Prudhoe** Bay is the overriding factor in the North Slope Borough experience, and any attempt to discuss potential institutional changes in other Alaska

regions in the light of the North Slope case must first recognize the far-reaching implications of that fact.

Thus, insofar as future petroleum development may be a significant factor affecting institutional change elsewhere, its effects will be qualified in the first place by the level, timing, and location of specific discoveries and the development and support activities that follow. At a minimum, future petroleum and other resource developments would need to offer significant taxable properties that could not be tapped directly for **local** benefit except through creation or expansion of a local government taxing jurisdiction. Similarly, they would have to present social and environmental threats that could effectively be countered with new or stronger **local** government planning, zoning, and other land use controls and other regulatory authorities. Moreover, even if either or both of these conditions were met, basic characteristics of the region would strongly affect **local** institutional responses. **Among** these characteristics are:

- The existing institutional development of the region, including the relative statuses, roles, and interests of regional corporations, non-profit associations, village corporations, and village and city governments;
- Characteristics of the region's existing political leadership structure associated with these institutions, including patterns of factionalism and alliances, and the number and diversity of potential leadership pools;

- The number, **sizes**, distribution and proximity of community settlements within the region, including the existing level and distribution of community facilities and services;
- The patterns of **land** tenure and resource ownership, including state, Native corporation, and other lands subject to varying management regimes; and
- The balance of Native and non-Native population in a region.

These are a few of the more obvious differences among regions potentially subject to future resource development activities that could affect patterns of regional institutional change. Given these limits to generalization, we will confine brief comments to state and federal policies potentially affecting Alaska **rural** regions. Assessment of the effects of such policies and other factors on regional **institutional** change would require detailed studies of individual regions.

State policies directed to achieving greater degrees of tax and service equity statewide are potentially the most important factors affecting **local** government institutional change in Alaska's rural regions. Even in the North Slope case, where **intra-regional** Native responses are so prominent, the state's interest was and remains a dominant factor affecting the North Slope Borough's terms of access to the Prudhoe Bay tax base. Within this broader context of state tax and service equity considerations, and of related state policies for local government organization, state and federal resource development policies **will also** affect regional institutional responses and change.

Resource development activities can bring increased environmental threats as well as augmented tax **bases** to regions and communities. Rural leaders, therefore, may respond not only positively to capture new tax bases (even if they represent only a fraction of **Prudhoe Bay's**), but **also** defensively to threats **to** subsistence habitat and outside intrusions into previously isolated Native village areas. In such cases, new local government authority and jurisdiction may be necessary to tax and to impose zoning and other local land use controls in affected areas.

It is significant that, on the North Slope, the borough was incorporated concurrently with establishment of the Arctic Slope Regional Corporation. Elsewhere in rural Alaska, regional corporations are the dominant institutions, and they have preempted key political and economic leadership roles. Thus, the regional corporations are increasingly capable of controlling or at least strongly influencing their regions' future course of institutional development. As for-profit institutions with major land holdings and investments, they undoubtedly will take a critical view of new taxing jurisdictions and authorities in their regions.

A major obstacle to the formation of organized borough governments **in** Alaska's rural regions since statehood has been the absence of adequate property tax bases to support education and other local government programs. The state government, however, has taken several steps to remove this obstacle through establishment of Rural Education Attendance Areas (**REAA's**), a commitment to provide for rural high school programs **in** some , 126 bush villages, and moves toward 100 percent funding of public education

operating costs statewide. In addition, state-municipal revenue sharing has grown, and it is likely that state funding for education and other local government activities will increase in the future as petroleum revenues flow into **the** state treasury. As a result, rural areas are facing progressively lower relative costs of incorporating as boroughs or as first-class cities, which are legally obligated to cover a local share of educational costs as well as provide support for other government functions.

At the same time, regional corporations and federal and state resource development and leasing agencies are gradually introducing new forms of revenue generating activity into rural regions. To the extent that such regions develop tax bases--while also benefiting from 100 percent state funding of the capital and operating costs of education as **well** as from other state services--urban interests will demand that the rural areas begin to assume a greater part of the tax burden. Indeed, several bills have been introduced in the state legislature over the years which **would** impose property taxes in the unorganized borough. Other related **bi**lls have proposed to mandate various forms of borough organization in rural areas, just as Alaska's urban boroughs were forced into existence by the Mandatory Borough Act of 1963. It is likely that proposals for state taxation of property in the unorganized **borough** and for mandatory borough organization will continue to be made. And pressures to enact them will mount as urban interests perceive growing taxable resources and activities in presently unorganized areas of the state.

Thus, the push for greater equity in the distribution of tax burdens is added to the **pull** of prospectively increasing tax bases and growing state funding for education and other local government programs. The North Slope Borough is an extreme case of the "pull" effect, in which the state limited the **local** taxing authority. In the future, state government **will** continue its attempts at balancing tax burdens and service benefits and determining appropriate combinations of state and local access to the tax bases associated with resource development. The outcomes of these continuing policy processes are likely to have profound, long-term effects on **local** government institutional responses and change in Alaska.



APPENDIX A

Memorandum: North Slope Borough Revenue Authority,
With Special Emphasis on Litigation

Prepared by Charles K. Cranston
For Mayor Eben **Hopson**, North
Slope Borough

February 3, 1978

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M E M O R A N D U M

DATE : February 3, 1978

TO: Eben Hopson, Mayor
North Slope Borough

FROM : Charles K. Cranston

RE : North Slope Borough Revenue Authority,
with special emphasis on litigation.

You have asked us to prepare for you a short memorandum outlining the problems which have arisen concerning the North Slope Borough's revenue generating authority. I believe the best way to approach this is to give a summary of the litigation in which the North Slope Borough has been involved insofar as it affects basic issues pertaining to the North Slope Borough's revenue generating authority. In presenting this summary of litigation, I have discussed those cases which affect the revenue generating capability of the North Slope Borough as a whole. I have omitted reference to any case which affects only a specific levy of tax on a specific group of taxpayers. In my opinion, the latter type of case is not one which raises serious issues pertaining to the North Slope Borough's revenue authority.

(1) Mobil Oil Company, et al vs. Local Boundary Commission, 518 P ed 92 (1974). This was an action brought by a group of oil companies doing business in Prudhoe Bay challenging the legality of the North Slope Borough incorporation. Among the issues involved were whether the property of largely non-resident owners could be subjected to regulation and taxation by the North Slope Borough. The Supreme Court ruled in favor in Borough incorporation thereby subjecting the property of various **leesees** in the Prudhoe Bay area to taxation by the North Slope Borough.

(2) Mobil Oil vs. North Slope Borough (Superior Court, Fourth Judicial District, at Fairbanks). This action was consolidated with approximately twenty-four other separate lawsuits brought by almost every oil company owning property in the Prudhoe Bay industrial area subject to the property tax of the North Slope Borough. At issue was the validity of that portion of the 1972 and 1973 property tax levy of the North Slope Borough upon the lessees' interest in oil and gas leases at Prudhoe Bay. Among the factors upon which the value of the lessees' interest was based was the value of the oil and gas reserves at Prudhoe Bay. The amount of the levy was within then existing statutory limitation of thirty mills, AS. 29.53.050. The oil company challenge was based principally on the then existing oil and gas gross production tax. The oil companies argued that the gross production tax imposed by the state was in lieu of all other taxes imposed by a municipality upon oil and gas properties.

There was never a final judicial determination of the question, although the Superior Court in Fairbanks, the Honorable Warren W. Taylor, Jr. , issued a preliminary injunction prohibiting the North Slope Borough's levy of the tax upon oil and gas reserves. The case was ultimately settled by payment from the oil companys to the North Slope Borough in the amount of three million dollars, plus an additional two million dollars to be credited upon five successive years' taxes.

Largely as a result of the issues raised in Mobil Oil Company vs North Slope Borough, the Alaska legislature met in special session in October and November of 1973. As a result of that special session, AS. 43.56 was enacted. In addition certain amendments were added to AS. 29.53. This legislation affected the revenue ability of the North Slope Borough in three principal areas :

(a) AS. 29.53.045 (b) and AS. 29.53.050(b) imposed a limitation upon the ability of a municipality to levy a property tax. The limit then imposed was \$1,000.00 per capita (since amended to \$1,500.00 per capita). In addition, an alternate formula was provided establishing a limit on the total assessed valuation upon which a municipality could levy. In practical effect, these limitations were directed solely at the North Slope Borough since no other Alaska municipality was then, or is now in any danger of approaching the statutory limitations;

(b) AS. 43.56.030(2) (A) imposed a limit upon the sales tax which could be levied upon oil and gas exploration production and pipeline transportation property. That limit **was** and is still \$1,000.00 for each sale of said property;

(c) In addition, AS. 43.56.020(a) exempted from local property taxes the following:

Property rights attached to or inherent in the right to explore for or produce oil and gas; oil and gas leases or properties whether producing or not; oil or gas in place; oil or gas produced or extracted in the state; the value of intangible drilling expenses and exploration expenses.

As a result of the 1973 legislation, there has been a continuous dispute between the North Slope Borough on one hand and the oil companies on the other relative to the validity of taxes imposed by the North Slope Borough upon oil and gas exploration, production and pipeline transporatation property.

(4) North Slope Borough vs Atlantic Richfield Company; Sohio vs North Slope Borough (Superior Court, Third Judicial District - Pending decision by Alaska Supreme Court) .

These consolidated actions arise under AS. 43.56 and AS. 29.53 and involve the interpretation of certain provisions of the legislation and acted by the 1973 special session. The North Slope Borough's position is that the limitations contained in AS. 43.56

and AS. 29.53.045 and .050 are limitations upon revenue generated to fund the Borough operating budget. The Borough has not considered and does not now consider the limitations applicable to revenues raised to pay debt service on its general obligation bonds. To sustain this position, the Borough relies on AS. 29.53.055 and AS. 29.58.180(a). Those sections in summary provide that taxes may be levied without limitation as to rate or amount for the purpose of paying debt service upon a municipality's general obligation bonds.' In 1976 the North Slope Borough levied in excess of the statutory limitations contained in AS. 29.53.045 and .050. The excess levy, 2.26-mills was for the purpose of funding general obligation bond debt service of the North Slope Borough. There was an immediate challenge to this levy by **Sohio**, Atlantic Richfield, and other oil companies doing business within the North Slope Borough. Judge **Kalamarides** rendered a decision unfavorable to the North Slope Borough. He ruled that AS. 29.53.055 did not permit a debt service levy in excess of the limitations of AS. 29.53.045 and .050 except in cases of default or pending default. The legislature in 1977 subsequent to Judge **Kalamarides**' decision adopted Chapter 94 SLA 1977. That legislation amended AS. 29.53.055 and AS. 29.53.180(a) by providing that a municipality may levy an excess of the limitations contained in AS. 29.53.045 and AS. 29.53.050 regardless of default or pending default in order to pay debt service on its general obligation bonds. In a subsequent decision, Judge **Kalamarides** held the 1977 amendment unconstitutional.

The case was appealed to the Alaska Supreme Court, has been argued, and is at presently awaiting decision by that court.

(5) B.P. Alaska va. North Slope Borough, (Superior Court, Third Judicial District) . Since" the revenue generating ability of the North Slope Borough was severely limited by AS. 43.56 and its companion legislation AS. 29.53, the North Slope Borough reimposed NSB. 3.32, the Sales and Use Tax, effective December 1, 1976. NSB 3.32.010(T) defined a sale upon which the sales tax is imposed, with some exceptions, generally in terms of a unit of property or an hour of service. Based upon that ordinance in December, 1976 and January, 1977 sales tax levies were made upon B.P. Alaska in - an amount in excess of \$900,000.00. B.P. Alaska made a sales tax return for the months in question for an amount under \$20,000.00. In dispute is the meaning of AS. 43.56.030(2) (A)which limits the taxes on the retail sale or use of oil and gas exploration production and pipeline transportation property to the first \$1,000.00 of each sale." B.P. Alaska, Inc. generally contends that a sale is based upon a monthly invoice regardless of the amount of the invoice or the number of items appearing on the invoice. The North Slope Borough contends that a sale is based upon each unit of property described in the invoice or upon each hour (or sometimes day) of labor for which an invoice is rendered. The matter is presently pending before the Superior Court, Third Judicial District. A briefing schedule is about ready to commence and the case should be submitted to the court by the summer of 1977.

(6) North Slope Borough vs. LaResche, (Superior Court, Third Judicial District: awaiting decision before Alaska Supreme Court) .

The issue in the case does not involve taxation. However, it does affect the revenue generating ability of the North Slope Borough since it involves the right of the Borough to select 10% of vacant, unappropriated and unreserved state land pursuant to AS. 29.18.190. The North Slope Borough in 1973 and 1974 made its land selections under that statute. To date, no selection application within the Prudhoe Bay industrial area has been approved. The Borough filed suit seeking a mandatory injunction compelling the Commissioner of Natural Resources to convey to it the land selected. There was an unfavorable decision in the State Superior Court which has been appealed to the State Supreme Court. Because of its inability to obtain its selection within the Prudhoe Bay area industrial area, the North Slope Borough has been deprived of revenue which it would otherwise obtain from leases and other disposals of the surface of the selected property.

The foregoing represents a summary of all litigation in which the North Slope Borough is, or has been, involved which affects its revenue generating abilities. If you have any further questions or require clarification of any matter of which I have discussed, please do not hesitate to contact me.

APPENDIX B

Memorandum: Statement of the Environmental Protection Policy
of the North Slope Borough

From Billy Neakok, Director, Conservation
and Environmental Security
To Mayor Eben Hopson
North Slope Borough



DR'S OFFICE
T. 211
MINISTRATION & FINANCE
T. 210
ILIC WORKS DEPT.
T. 249
NNING DEPT.
T. 244

NORTH SLOPE BOROUGH
P. O. BOX 69
HARROW, ALASKA 99723
907-852-2611

ASSESSING
EXT. 230
HOUSING AGENCY
EXT. 245
HEALTH AGENCY
EXT. 241
ACCOUNTING
EXT. 237

MEMORANDUM

TO: Mayor Eben Hopson

FROM: Billy Neakok, Director
Conservation and Environmental Security

SUBJECT: Statement of the Environmental Protection Policy
of the North Slope Borough

Our Assembly president, Oliver Leavitt, has asked for a statement of Borough environmental protection policy. This memorandum has been prepared to respond to that request.

BACKGROUND:

One of the reasons for the organization of the North Slope Borough in 1972 was our need to protect our land against the harmful results of Arctic energy fuel development. We did so with the full knowledge that our Arctic Slope Regional Corporation would become actively involved in the oil and gas business.

Organizing an Arctic regional home-rule government from scratch has been demanding upon our community, but its complexities have not distracted us from the task of defending the environmental security of our land and people.

The evolution of the Borough's environmental protection policy began in the spring of 1960, when the people of Barrow engaged in the peaceful direct-action demonstration against the enforcement of Migratory Bird Treaty's ban on our subsistence duck hunting. This incident, the Barrow "Duck-In", reflected popular mood that resulted in our region's leadership in the Alaska Native Land Claims Movement in the 1960's, and in the development of regional government in the 1970's. While we were politically powerless during the initial exploration and development of the Prudhoe Bay field, Borough organization enabled us to deal with further development.

Perhaps the first significant event in the evolution of Borough environmental protection policy was the Borough's

land selections at Prudhoe Bay. Under State law, our Borough government is entitled to select up to ten percent of **State-**owned lands within our jurisdiction. Our first selections in 1973 under this entitlement were made to enable our government to control the use of gravel at Prudhoe Bay. It is our policy to regard gravel as surface estate and as a critically important environmental factor. Unfortunately, this initial effort to assert local control over the environment was opposed by the State of Alaska and resulted in litigation that continues.

In 1974, we were presented with national decisions to conduct Arctic Outer Continental Shelf (**OCS**) lease sales, and speed up the exploration and development of Naval Petroleum Reserve No. 4 (**NPR-4**). We began hearing from the **Inuvialuit** about Canadian offshore oil and gas operations in the Beaufort Sea. We interceded in the Union Oil East Harrison Bay ice island exploration project, and arranged for Union oil engineers to come to Barrow to explain this project to the Borough's staff, Planning Commission, and Assembly.

In 1975, the **Borough** interceded in the enactment of national Naval petroleum reserves legislation that transferred **NPR-4** (now **NPR-A**) to the civilian control of the Department of the Interior. We caused language to be included in this legislation that established the **NPR-A** Task Force to enable equal participation of the Borough and Arctic Slope Regional Corporation in comprehensive **NPR-A** land use planning.

The Borough's successful Washington, **D.C.** **NPR-4** lobby laid the foundations for the decision to establish a full-time Washington, **D.C.** Legislative Liaison program earlier this year.

While we began closely monitoring plans for offshore operations in the U.S. **Beaufort**, we continued to hear disturbing reports of Canadian Beaufort Sea projects and, in the summer of 1975, we made a decision to establish good communications with our people in Canada and Greenland in order to keep informed of all Arctic offshore operations. This led to plans to host a conference of our community leaders from Canada and Greenland.

In January, 1976, you were asked by the **Inuvialuit** of **Inuvik**, Northwest Territories, to intercede with the Canadian government against plans to permit the oil industry to begin Arctic **OCS** operations in the Canadian Beaufort Sea, and subsequent work led the Borough to adopt the policy that Canadian Beaufort Sea **OCS** operations were of direct concern to the people of the Borough.

MEMORANDUM CONTINUED

In March, 1976, the Borough conducted a pre-conference planning meeting attended by Inupiat land claims leaders from Canada and Greenland. We met to plan an agenda for the first Inuit Circumpolar Conference (I.C.C.) that was scheduled for November, 1976. This Conference was later re-scheduled for the week of June 13, 1977.

In June, 1976, the Canadian cabinet granted final approval of the first Beaufort Sea OCS explorations and the Borough undertook to bring these operations to national attention. Because information had been circulated that these operations were approved after a five-year environmental impact assessment program, the Canadian Beaufort Sea study resulted in scientific recommendations that final approval be withheld pending the development of improved and proven Arctic OCS technology. The Borough's policy was to oppose all Arctic OCS operations until safe and responsible extraction technology could be designed and tested. At the same time, it was decided to support State efforts to consolidate State and Federal near-shore explorations as a safe first step in U.S. Beaufort offshore operations.

The Borough's Planning Department began to document traditional/historical use of Beaufort coastal zone lands that might be impacted by offshore and NPR-A operations with a view to eventual designation of industrial development and historic use zones.

In December, 1976, the Borough decided to initiate an Arctic Coastal Zone Management Program (CZM) as an inter-departmental project of the Mayor's office and the Planning Department. The I.C.C. was viewed as a CZM activity aimed at organizing international CZM cooperation able to deal with the Beaufort Sea as a single ecological system in which all offshore operations would be held to a single set of rules.

In the summer of 1976, it became clear to the Borough that the Arctic Gas pipeline route had strong national political support in both the U.S. and Canada, and the Mackenzie Valley route became an environmental protection and CZM problem.

Borough sensitivity to the fact that pipelines may contribute to environmental problems was heightened by the 1976 Western Arctic caribou herd crisis. Widespread worry about the impact of Trans-Alaska oil pipeline construction upon normal caribou herd migration appeared to have been justified when the State suddenly placed sharp restrictions upon subsistence caribou hunting, citing a sudden reduction in the size of the herd. The Borough responded to the

crisis by establishing, with the help of the Arctic Slope Regional Corporation, a Borough Game Management Committee, and we began to plan improved game management as an important step in the evolution of our environmental protection policy.

In February, you made the decision to take an important step to secure Assembly approval of the creation of the Borough's new Department of Conservation and Environmental Security. Concurrently, you also established the Borough's new Washington, D.C. Legislative Liaison, and engaged a highly regarded, politically knowledgeable Washington, D.C. law firm to assist in the development of sound national Arctic policies.

POLICY STATEMENT:

It is the policy of the North Slope Borough to recognize the inevitable development of Arctic energy and mineral reserves, and the threats to our environmental security posed by this development. We seek to avoid harmful impact upon its citizens, families and communities resulting from this development. **We feel** with good cooperation between government and industry, our land can yield its subsurface wealth with tolerable disturbance of our people and our land.

Our greatest concern is caused by Arctic offshore operations. We know of no proven technology through which oil can be safely taken from under the ice that covers the Arctic outer continental shelf. The Borough is anxious to actively cooperate in Arctic offshore technology research and development.

Cooperation is the key to the Borough's environmental protection policy. We believe this cooperation must be **circumpolar** in scope and character, and it must be led by the five Arctic coastal nations. Our most immediate need for this level of cooperation relates to Beaufort OCS operations begun by the **oil** and gas industry in the Canadian Beaufort. We look for **the** organization of a single Arctic offshore working agreement between Canada and the U.S.; a single **tri-lateral** coastal zone management system; tri-lateral, because there is need for a strong Arctic energy partnership between the United **States**, Canada, and the **Circumpolar Inupiat** community. We seek the security assured by *one law in the Arctic, one Law of the Sea.*

Within our jurisdiction, we seek sufficient control over surface-disturbing development to enable protection of the many traditional use values of our land. To gain this **control, we will** negotiate where we can, but legislate where we must.

MEMORANDUM CONTINUED

Our Borough environmental policy recognizes our responsibilities of public stewardship over the national Arctic values of our land. Thus, it is our policy **to** guard against permanent immigration to the Arctic. We are opposed to the creation of permanent oil field communities, and regard Arctic population growth to be potentially our greatest environmental security problem. Accordingly, we oppose public use of the Fairbanks-Prudhoe oil pipeline haul road, and other such permanent public access to the Arctic.

STRATEGY:

Introduction:

The DCES will use a four-point strategy to carry out the Borough's environmental protection policy: Arctic Coastal Zone Management in cooperation with State, **local and Canadian governments**; Surface Disturbance Management aimed at the protection of **environment** and conservation of traditional land use values; Game Management to improve Arctic game management **through the use** of modern technology and traditional hunting skills; and Arctic Environmental Research Management to lead and organize a sustaining program of **national** and international scientific research and cooperation able to deal with the Arctic as a **whole** from our own point of view.

1. Arctic Coastal Zone Management:

Environmental security problems posed by Arctic offshore operations will be handled by the Arctic Coastal Zone Management Program (CZM). International cooperation will be essential to successful Arctic Coastal Zone Management. This cooperation must include strong industrial participation. As a result, our Arctic Coastal Zone Management Program will be operated as an international Arctic regional program.

Because of the international character of environmental security problems posed by Arctic offshore operations, our Arctic Coastal Zone Management Program will be operated as an international program.

As a means to organizing international cooperation necessary to our environmental security, the Borough has organized the First **Inuit Circumpolar** Conference with the hope that the **Inupiat Circumpolar** Assembly will be organized as an on-going federation of all regional **Inupiat** communities in North America. The **Inupiat Circumpolar** Assembly would negotiate with the governments of Greenland, Canada and the U.S. for agreements necessary for successful Arctic Coast Zone Management, and the protection of international Arctic environmental security.

The organized participation of the **circumpolar Inupiat** community in Arctic Coastal Zone **Management** is necessary for safe and successful Arctic offshore operations, so our Borough's own CZM program **will** be organized as a prototype model designed for possible use by our people **in** Canada and Greenland as they develop home-rule government.

2. Surface Disturbance Management:

Surface Disturbance Management will **be** aimed at the protection of traditional, cultural, and existing land use values in the face of the development of oil, gas, coal and mineral reserves with the Borough. When **fully** operational, our Surface Disturbance Management Program will enable Borough planners and field workers to work with each exploration or development project to insure **minimum** surface disturbance, maximum value conservation, and environmental security. Surface Disturbance Management **will** necessarily require close cooperation with State and Federal agencies to avoid duplication of effort, and to **insure** good enforcement of State and Federal regulations governing Arctic **Slope** resource development.

Working closely with the Planning Department and with the Arctic Slope Regional Corporation, we will begin to develop a computerized Land Use Management Information System for effective site-specific management and protection of our **land**. This information will include oral, as **well** as documented historic use; animal census; history of surface disturbances; estimated resource values; capital improvements; etc., for each section of land within the North Slope Borough.

3. Game Management:

Even though the State of Alaska is charged with the exclusive responsibility for game management and is not a power exercised by the North Slope Borough, the DCES will build a complete Borough-wide Game Management Program to supplement, and cooperate with, Federal and State game management programs. The Borough's Game Management Program will join professional with traditional game management techniques to improve our management of caribou, for instance. Joining with the **Inuvialuit** of the Canadian Western Arctic, we will maintain close surveillance of the entire Western Arctic caribou herd. Through all of this we will be able to replace management theory with documented knowledge of the herds' size, locations, age, and general health. This knowledge will enable more rational caribou management than **is** possible today. We **hope** to pioneer the role of local government **in** North American Arctic game management. And, our Game Management Program will enable our best hunters to

earn money by using and improving their hunting knowledge and skills upon which our game management will be based.

The decriminalization of Arctic subsistence hunting of migratory birds will be pursued as part of our Game Management Program. We will work to provide for subsistence hunting in the U.S./Canadian Migratory Birds Treaty, just as such provision was made in the recently signed U.S./U.S.S.R. Migratory Birds Treaty.

Through its Game Management Program, the Borough will cooperate with the work of the International Whaling Commission to conserve stocks of our Bowhead Whale, and the other whale species used by our people.

4. Arctic Environmental Research Management:

The DCES will undertake to organize an Arctic Environmental Research Management agenda necessary for the protection of our international Arctic environmental security. Among the objectives of this agenda would be the formulation of:

- a. Minimum **criteria** for acceptable environmental impact statements.
- b. on-going analysis of environmental safety of Arctic energy industrial technology.
- c. On-going research and surveillance of the developing Law of the Sea of the Arctic.
- d. Game biology and management research.
- e. Organization of international Arctic scientific research programs in which modern scientific method is joined with the memory of **Inupiat** oral history, the store of **empirical** knowledge verbally transmitted by the **Inupiat** from generation to generation.
- f. Development of the "energy park" concept as an option for land classification and management within the Borough. The energy park concept would result in a thorough assessment of subsurface values, and controlled development for the purpose of safe resource extraction, and the ultimate classification of lands as a single Arctic coastal wildlife refuge, and an international environmental security zone.



APPENDIX C

Excerpts From: North Slope Borough Legal Powers and Options on the
Haul Road and Adjacent Federal and State Lands

Prepared for the North Slope Borough
Planning Department
By Conrad **Bagne**

November 1, 1977



Introduction

The completion of the Trans-Alaska Pipeline and potential opening of the adjacent Haul Road raises many issues. It is unlikely the North Slope Borough can assert its control over the Road to the exclusion of all other interests. At the same time, those other interests may not totally exclude or ignore the concerns of the Borough.

This report discusses a number of options available to the Borough in regulating the Road and development that may occur near to it because of the increased ease of access. In doing so, the jurisdiction of local governments over various types of land--federal, state, village, etc.--is considered. It also highlights a number of decision-making processes involving such lands that should be monitored and participated in. The ability to cooperate and participate with others as they make decisions about how land is to be used may be more important than the power to control such decisions after they have been made.

An aggressive stance by the Borough over use and development of the Haul Road is recommended. Several changes in Borough land use control mechanisms are proposed to enable the Borough to make its presence and desires known, and ultimately to control the decisions being made., Above all, the Borough should not allow its position on the future development of the area to go unheard, Unfortunately, the interest

and authority of the Borough local government has not been adequately considered by others traditionally in the position of making decisions. This includes the federal government as well as private development interests. Hopefully, all can work together in the future for the best interests of the people of the North Slope Borough, the State of Alaska and the Nation.

Local Authority

The state's police power, and its delegated exercise by respective borough or other local governments, extends over all lands within its boundaries. This includes lands of the federal government, of state and local government themselves, reservation lands (with some exceptions) , and privately-held property. The extent of the local control may be limited by federal or state actions, but the specifics of the situation must be examined.

The importance of local control and planning in the area of land use development and environmental protection has been historically emphasized and relied upon by state and federal governments. Protection of the public welfare has been delegated very heavily to local governments. The federal National Environmental policy Act of 1969, 42 U.S.C. § 4321 et seq. , recognizes the importance of local and state govern-

ments. This is also reflected in the Environmental Quality Improvement Act of 1970, 42 U.S.C. §4371 to 74, which states that the primary responsibility for enhancement of the national environment through control of pollution, water and land resources, transportation, and economic and regional development rests with state and local governments. 42 U.S.C. §4371 (b)(1) and (2). other federal acts, 16 U.S.C. §1451 to 1464, and executive orders, e.g. , E.O. No. 11752, also support this.
.**...*** . . .

Proprietary Authority

The federal government's authority over its land may be proprietary or legislative in nature. Proprietary authority may be found in the "Property Clause" of the U.S. Constitution, Article 1, section 3, clause 2. Legislative authority may extend from the reservation of authority by the federal government in the admission of a state to the union, or from a cession by a state of authority to the federal government. The federal authority may be controlling over attempts to assert state powers under the Supremacy Clause, Article VI, clause 2, or a state may simply have given away or ceded all its authority to act.

The federal government's power over land it owns extends mostly from the "Property Clause" of the U.S. Constitution; Article IV, Sec. 3, Clause 2 provides:

The **Congress** shall have power to dispose of arid
make all needful rules and regulations respecting
the territory or other property belonging to the
United States.

Though the federal government does not have a general "police power," that having been reserved to the states under the tenth amendment, the property **clause** gives it a "power over its own property analogous to the police power of the several states. " **Camfield v. U.S.**, 167 U.S. 518, 525 (1897). This power extends to the land, wildlife living thereon, and non-federal areas adjacent to public lands. The U.S. Supreme Court had occasion to review the Camfield decision and reaffirmed that case's holding that:

[T]he Property Clause **is** broad enough to permit federal regulation of fences **built** on private land adjoining public land when the regulation is for the protection of federal property. . . . the power granted by **the Property Clause** is **broad** enough to reach beyond territorial limits. **Kleppe v. New Mexico**, 426 U.S. 529, 538, 96 S.Ct. 2285, 2291 (1976).

While this authority is "without limitations" and its "furthest reaches . . . not definitely resolved," states are not totally powerless as to federally owned lands within their boundaries. The "exigencies of the particular case" will determine the relative authority and jurisdiction. states , and local units of government delegated state authority, may *exercise* control over federal lands to the extent regulation would not be inconsistent with or frustrate clear federal policies and programs. Thus , it is necessary' to determine

if the federal government has chosen to exercise its powers and the degree to which local or state regulation might be in conflict.,..

.....

Determination of when federal regulations "override" state or local controls involves a balancing of respective actions and a preemption like examination. If the federal interest clearly conflicts with the state action or leaves nothing for the state action to address, the federal law will prevail.

This does not mean that the simple existence of federal regulations will necessarily prevent application of state controls. State regulations that are more stringent may be permitted unless Congress evidenced an intent to the contrary. Analysis of federal exercise of authority to determine if there has been a preemption of legislative authority involves consideration of several factors. Concurrent state action will be allowed where there is no clear Congressional intent to displace state regulations, there is no such implied intent, or compliance with both state and federal requirements is a physical impossibility....

...0 **-* .-***

The federal government may acquire legislative jurisdiction over federal lands by "cession" or consent of the state to a yielding of the state's police powers. This authority is separate from the federal government's power under the Property Clause and from jurisdiction retained when a state joined the union. Cession involves the situation where a state relinquishes its sovereignty or police powers over land that has been acquired by the federal government. This is a "derivative legislative power" and may be acquired " from a state pursuant to Art. 1, §8, cl. 17 of the Constitution by consensual acquisition of land, or by non-consensual acquisition followed by the State's subsequent cession of legislative authority over land.".....

considering legislative authority of the federal government over its property in Alaska, there, would appear to be no general cessions made by the state in the area of the North Slope Borough's jurisdiction nor significant acquisitions pursuant to Art. 1, sec. 8, cl. 17--except for the Naval Petroleum Reserve. Section 4 of the Alaska Statehood Act was amended by the Alaska Omnibus Act to specifically clarify that the federal government did not retain "absolute jurisdiction" over all public lands in the state. 48 U.S.C. prec. §21 note. A study prepared in 1969 for the Public Land Law Review Commission by the Department of Justice indicated there were no lands in Alaska claimed to be subject to exclusive legislative jurisdiction of the federal government. Approximately

25 million acres were listed as subject to partial or concurrent legislative authority. See Federal Legislative Jurisdiction, App. B--Jurisdictional Status of Federal Lands, Table 3--By State and Agency (May 1969).

The amended Statehood provision **limits** "absolute jurisdiction and control" to native lands or lands held by the United States in trust for such natives. 48 U.S.C. prec. §21 note. However, *even* "absolute" control is not meant to be exclusive, and would not totally prohibit local/state laws from being applied. *Kake Village v. Egan*, 369 U.S. 60, 71 (1 9 6 2) :

[A]n examination of past statutes and decisions makes clear . . . that the words "absolute jurisdiction and control" are not intended to oust the State completely from regulation of Indian "property (including fishing rights)." "Absolute" in §4 carried the gloss of its predecessor statutes, meaning undiminished, not exclusive.

Indian and native lands may be trust lands, tribal or individual (allotments) , or fee patent lands owned outright. Fee held lands will be treated as other private properties and is the apparent result in the ANCS Act. The static's jurisdiction over tribal trust lands or individual allotments held in trust by the federal government is more complicated. Public Law 280, 28 U.S.C. §1360(a), provides that for certain states, including Alaska, ". . . those civil laws of such State or Territory that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory."

There is some question whether this includes local land use controls as "civil laws of such State . . . of general application." A recent decision of the Ninth Circuit, *Santa Rosa Band of Indians v. Kings County*, 532 F.2d 655 (9th Cir 1975) , holds that zoning is not such a civil law. Furthermore, '28 U.S.C. §1360(b) prohibits state "encumbrance" of trust lands. Zoning has been construed in some cases to be an encumbrance and therefor prohibited. See Santa Rosa, supra. Finally, the regulations adopted pursuant to Public Law 280 concerning local zoning, 25 C.F.R. §1.4, state that such zoning does not apply "to tribal or allotment lands held in trust by the federal government, unless approved by federal authorities.

The application of local zoning to trust lands is still unclear and the judicial decisions are mixed. The Regulations noted above have been criticized for lack of statutory support.

Federal Lands Transferred to Alaska Natives

The jurisdiction of the state and local units of government extends over lands granted to Alaskan natives under the Settlement Act. These lands may be treated as any other private holding of land once patented to individual natives or groups, or village or regional corporations. The ANCS Act declares that the settlement is to be made "without establishing any permanent racially defined institutions,

rights, privileges or obligations, without creating a reservation system . . . and without adding to the categories of property and institutions enjoying special tax privileges or to the legislation establishing special relationships between the United States Government and the State of Alaska." 43 U.S.C. §1601(b). Aside from easements potentially reserved by the Secretary across native lands,* the only general restriction affecting the state is a prohibition on taxation of undeveloped native lands until 1991. However, lands that are leased or developed may be taxed-- "municipal taxes, real property taxes, or local assessments." The tax exemption provision is somewhat ambiguous and may be interpreted in several ways. See Price, et al., "The Tax Exemption of Native Lands Under"Section 21(d) of the Alaska Native Claims Settlement Act," 6 UCLA-Alaska Law Review 1 (1976).

As noted previously, the exclusiveness of federal jurisdiction over federal property may be determined by express or implied intent to allow or not allow local laws to be applied. This intent can be found by examining the statutory authority for federal management agencies and the major federal land classifications. Much of the public lands are under the management responsibility of the Department of Interior's

*43 U.S.C. §1616(c) provides that areas withdrawn for utility and transportation corridors across public lands may not be selected by Natives or the state.

..... " . . . ** ----- = - * * -

Bureau of Land Management; the second major classification of federal lands, the National Forests, are managed by the Department of Agriculture's Forest Service. The authority and responsibility of the BLM was recently reviewed and clarified by a new organic act--Federal Land Policy and Management Act of 1976, Pub. L. 94-579, Oct. 21, 1976, 90 Stat. 2743. The Forest Service's authority was also recently modified by Congress.

The BLM Act directs the Secretary of the Interior to inventory and develop land use plans for all public lands under his jurisdiction--except OCS lands and reservation lands. Of particular importance in this process is the consultation and participation of the public and state/local government. 43 U.S.C. §1712(c) (9) provides that the Secretary shall:

. . . coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of other Federal departments and agencies and of the States and local governments within which the lands are located. . . . [and] keep apprised of State, local, and tribal land use plans; assure that consideration is given to those State, local, and tribal plans that are germane in the development of land use plans for public lands . . . assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans, and shall provide for meaningful public involvement of state and local government officials. . . . Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act. "

Thus the plans prepared for federal lands will address local/state concerns. The extent of the "consistency" with local plans is not well spelled out. It is clear, however, local authority has not been totally preempted. Where there is no overriding federal law or policy, local concerns should be respected. Federal law may become the controlling law, but there is room for negotiation here. Local citizen advisory councils may be established to advise on plans and management decisions, and are to include local elected officials.

43 U.S.C. 51739(a).

The Act is even stronger on following local pollution control regulations. The BLM plans are to:

provide for compliance with applicable pollution control laws, including State and Federal air, water, noise, or other pollution standards or implementation plans. . . . 43 U.S.C. §1712(c)(8).

This provision calls for compliance, without any qualifiers. State/local pollution regulations must be followed. Pollution controls are often difficult to distinguish from other controls implementing a local land use plan. The Act is not very detailed here, perhaps the regulations will address this. The exact nature of local plans to be considered is not spelled out well either. The Act speaks of planning and management programs, as well as plans, so policies and objectives of the Borough may be asserted even though a formal comprehensive plan evidencing the policies may not yet be fully adopted.

The Act does define the term "public involvement":

[T]he opportunity for participation by affected citizens in rulemaking, decisionmaking, and planning with respect to the public lands, including public meetings or hearings held at locations near the affected lands or advisory mechanisms, or such other procedures as may be necessary to provide public comment in a particular instance. 42 U.S.C. §1702(d).

Also, when public lands are to be sold ("offering for sale or otherwise conveying"), the local government in the area is to be given at least 60 days notice "in order to afford the appropriate body the opportunity to zone or otherwise regulate, or change or amend existing zoning or other regulations concerning the use of such lands prior to such conveyance." 43 U.S.C. §1720 [§210 of Act]. This might arguably include leases and conveyances of partial interests in public lands, as the term public lands is defined in the Act to include any interest in land. 43 U.S.C. §1702(e) [§103 of Act]. The use of easements, permits and leases, among other devices, is specifically allowed as a means of managing public lands. 43 U.S.C. §1732(b). Patents or other documents of conveyance may include such terms "necessary to insure proper land use and protection of the public interest." 43 U.S.C. §1718. Specifically, the Secretary is prohibited from making any conveyance of public lands:

containing terms and conditions which would, at the time of the conveyance, constitute a violation of any law or regulation pursuant to State and local land use plans or programs. 43 U.S.C. §1718.

With the right to notice and prohibition against conveyances in violation of local regulations, the Borough should be able to stop proposed inconsistent private development proposals. The local Borough regulations might be incorporated into the conveyance itself. This would give the added advantage of having the potential resort to federal enforcement of those conditions. 43 U.S.C. §1733. The Borough could still enforce its regulations and attempt to stop alleged violations

The powers of the Borough in the area of land use planning and control are quite typical, with the exception that adoption of controls is made mandatory. The state has delegated a fairly broad range of police powers to local governments. Initially through its planning commission? the Borough Assembly is to adopt land use and zoning regulations including a zoning map. N.S.B. Charter §8.010-.020. The basic document for establishment of land use controls is the community's comprehensive plan. This plan, with its various policies and substantive elements on land use, transportation, etc., sets the framework for making land development decisions and should determine which regulations are to be adopted. Though the plan has no direct regulatory effect, zoning must be adopted in "accordance" with this comprehensive plan. N.S.B. Code §19.04.010. This means the two documents

must be consistent. The zoning must be designed to ensure protection of the plan's stated policies and accomplishments of its goals. Zoning that would inhibit or frustrate these goals and policies is invalid and should not be consciously adopted.

Temporary zoning regulations may be established as interim controls while the community's various plans are being completed. Without adoption of formal plans, the zoning must obviously proceed on its own. The interim controls are only that--temporary--and the appropriate plans and policies must be prepared and formally adopted. As long as the plans and permanent controls are being studied and developed with reasonable deliberation and in good faith, the interim controls will stand. As time passes, however, the interim nature of the temporary controls weakens their validity. Several years to develop a plan is not unreasonable, and the time may be considerably longer as the situation increases in complexity.

The statutory grant of zoning power in A.S. §29.33.090 is very broad as is the Borough Charter. N.S.B. Charter §8.010-020. Zoning may address itself to, among other things, the use of land, structures located on the land, and distribution of population. A zone or district can be drawn on a map controlling all uses of land within that area. Certain types of uses can be allowed in the zone and all others prohibited. Limitations or requirements for the amount of

land necessary for a project, density of development, and design constraints on the height or location on the property of structures may also be included in this zoning provision. The stated uses of a zoning district are typically allowed by right if the stated requirements are met. There is no provision for discretionary review of any proposal; it is a yes or no situation. More detailed conditions and a modicum of discretion are made possible by the conditional use permit procedure.

Conditional use permits are specifically authorized. . A.D. §19.33.084(d) (3). Use variances are prohibited. A.S. §29.33.110(c). Conditional use permits are provided for in A.S. §19.33.084(d) (3) and in N.S.B. Code §212.160(c) (3), to be issued by the Planning Commission. The conditional or special use permit technique could be utilized to control development along the Haul Road. A zoning district would be established along the Haul Road in an area where development is desired or is anticipated. This could be up to so many miles on either side of the Road, or mapped in detail on the basis of development potential or known problems along the Road. Once mapped, development could not take place in this zone until certain specified conditions were satisfied. An application for the permit would have to be made by the land owner or developer, and this application would be reviewed by the Borough planning commission, or other authorized decision-maker, to determine if the conditions would be

met and ensure the proposed action would be in the Borough's best interest. The specified conditions could relate to expected environmental impacts, dangers to Borough's inhabitants, policies in Borough plans, or most any matter of concern to development in the area.

This would differ from the simple by right zoning classification in that the latter use may be developed without the necessity of applying for a permit and meeting certain, conditions precedent to development. Use of the special permit does necessitate commitment of resources to administer and issue the approvals. Some conditions may also require an ongoing monitoring to ensure compliance which could also require time and personnel to make inspections or complaints by others as to violations might be awaited. before taking any action. A bond or fee to cover cost of monitoring might be required. It is also possible to impose a time limit on the special permit, thus necessitating reapplication and review of the activity after a certain amount of time has passed.

Review of the permits is presently by appeal to the Borough Assembly acting as a Board of Adjustment. N.S.B. Code §19.32.030 (A) (3). Additional review would be by resort to the courts, Two important elements of the statutory section delegating zoning authority to the Borough are authorization to use contract zoning and a provision that

zoning may "stimulate systematic development of transportation, water, sewer, school, park and other public facilities."

A.S. §29.33.090 (c) (6) . Code language is similar to this latter language. N.S.El. Code §19.04.010. It should be sufficient to provide for timing of development in accordance with the availability of public services. Efforts to develop in certain areas may be denied until public facilities services are constructed or otherwise planned to be made available.

This would allow for establishment of broad, districts or sectors within which development might be allowed and areas where it would be discouraged or not allowed. Districts might be established around Barrow and Prudhoe Bay as areas permitting development, with more specific zoning use districts then delineated within the general district. Another district or sector might be established along the Haul Road up to a distance of so many miles. Development could be allowed in this area, but prohibited outside the sector. The area might be further separated into more traditional zoning districts for various types of residential, commercial or industrial uses. The remainder of the Borough outside areas designated as development sectors would not be available for development until general policies on areas suitable for such development were modified.

...*... ..*.** *

Historically, states and other political subdivisions of the state have asserted that they are immune from local land use controls. Immunity has often been absolute for any governmental function, agent of the state, or for an entity with the power of eminent domain. All of these theories or bases for immunity have been criticized as substituting "distracting surrogates for reasoned adjudication." See Note, Governmental Immunity from Local Zoning Ordinances, 84 Harvard Law Rev. 869 (1971). That note argues for something more in the nature of 'a balancing test between one governmental development concern and another governmental regulatory interest. A balancing of interests test is set forth in Orange County v. City of Apopka, 299 So.2d 652 (Fla. 1974). This is arguably the best approach. Governmental entities will be subjected to local zoning actions, unless some interest of that entity deserves paramount protection and encouragement.

There are no Alaska cases on this matter. Statutes that bear on this are few and of limited application. However, a recent statute for public works would seem to indicate support for the balancing of interests test. A.S. 535.10.030 states that projects of the state department of public works "shall comply with all local planning and zoning ordinances." A waiver may be granted from the local regulations upon review of the governor where an "overriding state interest is involved."

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Even lands owned by the state that are not being used for construction of public works projects should come under local control unless an overriding state interest might be shown. It may be argued that the statutory enactments are consenting to local control only in the specified situations, and that otherwise state exemption prevails. The assumption that all state actions and lands are exempt unless otherwise provided by statute, however, begs the question. The preferable balancing type of test would seem to have gained legislative approval and be worthy of wider application. A conclusive answer on this is not possible at this time.

There is also a provision to permit local management of state lands--comparable to a cession or retrocession at the federal/state level. A.S. §38.05.027. This would permit the state to agree to local--village or municipality--management or development programs for state resources. This might further enhance local borough management and planning efforts. It might also be combined with federal retrocession of authority to the state, to establish local management programs over federal lands as well.

Finally, before any state lands may be "classified, reclassified, sold, leased or otherwise disposed of, including the renewal of a lease entered into after September 22, 1976," notice must be given to all municipalities within six miles of the property. A municipality--through its governing body, executive officer or planning agency--may request that the state consult with it. The state's legal responsibility does

not, however, go beyond consulting. The administrative regulations on outright sale provide that no land "within or adjacent to" a municipality (apparently written before the 1976 amendment of A.S. 338.05.305) may be sold until the proposed use of the land has been studied and reviewed jointly by the director and local authorized planning agencies. 11 A.A.C. 54,110. The statutory provision would apparently apply to permits under A.S. §38.05.330 and right of way leases under A.S. §38.35.010 to .230. Administrative regulations of the department of natural resources provide that local zoning regulations are to be part of any contract for sale of state lands. 11 A.A.C. 54,450, and 11 A.A.C. 56.470. State land leases are also to be subjected to local zoning and a zoning violation is declared to be a violation of the lease, 11 A.A.C. 58.700.

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The Borough does not normally have authority over planned construction of state highways. It may specifically request, however, that it be allowed to assume "responsibilities relating to the planning of transportation corridors" within the Borough. A.S. §19.10.280. This section provides the procedures to be followed in making this request. The Borough does have authority to provide streets and transportation services and regulate their usage under its Charter or Chapter 48 of Title 29.

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The ownership patterns along the road may also influence the Borough's ability to exercise control over roads being constructed "to tie into the Haul Road . As discussed previously, the Borough may assert -jurisdiction over all lands within its boundaries, though some controls might be found to be pre-empted if contrary federal regulations were asserted. The Haul Road lies within an utility corridor over federal lands. **Policies** on this corridor and classification under 17d(2) of ANCSA may affect options here. The Borough should attempt to control all roadways that access onto the Haul Road, under joint agreement with the state and as an exercise of its own Felice powers.



LIST OF PERSONS CONTACTED



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Barrow

NORTH SLOPE BOROUGH

Jake Adams, presiding officer, borough assembly, February 9, 1978.

Lloyd Ahvakana, director, administration and finance, October 14, 1977.

Nelson Ahvakana, member, borough assembly, December 13, 1977.

Joe **Akpik**, member, borough assembly, October 13, 1977.

George **Amaogak**, borough assessor, October 12, 1977.

Herb **Bartel**, planning director, December 13, 1977.

Arnold Brewer, Sr., member, borough assembly, December 15, 1977.

Eugene Brewer, deputy director, public works, October 11, 1977.

Kavasji Dadachanji, deputy director, administration and finance, acting comptroller, December 14, 1977.

Earl **Finkler**, planning consultant, October 13, 1977; February 6, 1978.

Eben Hopson, mayor, December 14, 1977.

Edward Hopson, member, borough assembly, October 13, 1977.

Oliver Leavitt, former member, borough assembly, December 14, 1977.

Kim **Moeller**, director, public safety, October 12, 1977.

Billy Neakok, director, conservation and environmental security, December 13, 1977.

Elise Patkotak, director, health and social services, February 7, 1978.

Don Renfroe, superintendent, school district, February 7, 1978.

Alice Solomon, member, borough assembly, December 15, 1977.

Harry Stotts, director, public works, October 11, 1977.

OTHER

Charlotte Brewer, magistrate, October 13, 1977.

Robert Dupere, financial consultant, North Slope Borough, February 7, 1978.

Nate **Olemaun**, mayor, Barrow, October 13, 1977.

Arthur **Panigeo**, executive director, **Inupiat** Community of the Arctic Slope, February 8, 1978.

Joe **Upicksoun**, president, **Inupiat** Community of the Arctic Slope, October 12, 1977.

Point Hope

Nick Hank, **Tigara** Corporation, January 4, 1978.

Amos Lane, member, borough planning commission, January 5, 1978.

Lenny Lane, member, borough assembly, December 15, 1977.

Daniel **Lisburne**, executive vice president, **Tigara** Corporation, January 4, 1978.

David Stone, village manager, January 4, 1978.

Rex **Tuzroyluk**, borough game management commission, January 5, 1978.

Anchorage

Jon **Buchholdt**, special assistant to mayor, North Slope Borough, February 27, 1978.

Max Brewer, chief, USGS NPRA operations, March 30, 1978.

William **Civish**, sales coordinator, BLM, Alaska Outer Continental Shelf Office, January 19, 1978.

Ralph Derbyshire, planning consultant, North Slope Borough, January 30, 1978.

Pat Dobey, petroleum manager, Division of Minerals and Energy Management, February 15, 1978.

Ken Holden, USGS, conservation division, April 13, 1978.

Dave **McGillivray**, Corps of Engineers, environmental division, January 19, 1978.

Jim Reeves, state attorney general's office, April 14, 1978.

Mark **Singletary**, regional attorney, Atlantic Richfield Company, February 10, 1978.

Don **Stone**, construction management consultant, North Slope Borough, January 25, 1978.

Lonnie Smith, state Division of Oil and Gas Conservation, April 14, 1978.

Tom Smythe, borough planning consultant, February 15, 1978.

Mark Stephens, Department of Community and Regional Affairs, February 14, 1978.

Glenn Svendsen, Derbyshire and Associates, January 9, 1978.

Robert **Worl**, borough liaison to NPRA planning team, January 23, 1978; February 19, 1978.

Fairbanks

Paul Bateman, Department of Environmental Conservation, February 10, 1978.

Gerald **Black**, area field representative, Bureau of Indian Affairs, February 7, 1978.

Liz Cook, Alaska Department of Labor, February 10, 1978.

Bill Copeland, Fairbanks director, Alaska Division of Lands, February 6, 1978.

Scott Grundy, habitat protection, Department of Fish and Game, February 3, 1978.

Chris **Guinn**, land management officer, Alaska Division of Lands, February 10, 1978.

Frank Madison, Bureau of Indian Affairs, February 8, 1978.

Bill Morgan, Department of Environmental Conservation, February 10, 1978.

Fenton Rexford, former member, North Slope Borough assembly, January 12, 1978.

John Santora, Fairbanks coordinator, BLM-NPRA, February 8, 1978.

Mike Smith, ecological services, U.S. Fish and Wildlife Service, February 10, 1978.

Dave Wickstrom, area resource manager, Bureau of Land Management, February 6, 1978.

Other

John Chenoweth, legislative affairs, Juneau, July 26, 1977.

John Schaeffer, president, NANA Regional Corporation, Kotzebue, January 6, 1978.

Kenneth Rosenstein, former North Slope Borough attorney, Juneau, February 14, 1978.

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Because of the nature of the sources used to document this report, the "References Cited" section differs from the standard bibliographic style of the BLM-OCS report series. In this report, the "References Cited" is divided into sections by organizational source (federal, state, borough, private) and type of document (letters and memos, reports, others) with individual items listed chronologically within the sections. This structure allows the reader to find: 1) kinds of sources used; 2) full information on individual citations; 3) chronological samplings of correspondence, reports, and other documents the North Slope Borough, the federal and state governments, and private organizations have issued concerning petroleum and related developments in the borough since its incorporation.



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