No. 118, Original

In the Supreme Court of the United States

OCTOBER TERM, 1991

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF ALASKA

ON BILL OF COMPLAINT

JOINT STIPULATION OF FACTS

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On January 7, 1991, the United States requested leave of this Court to commence an original action to resolve a dispute between the United States and the State of Alaska concerning ownership of certain submerged lands beneath Norton Sound, near Nome, Alaska. See Motion of the United States for Leave to File Complaint, Complaint, and Brief in Support of Motion, No. 118, Orig. (O.T. 1990). Alaska did not object to the commencement of such an action. See Memorandum of the State of Alaska, No. 118, Orig. (O.T. 1990). On April 1, 1991, the Court granted the United States' motion for leave to file a bill of complaint, and on May 31, 1991, Alaska filed its answer. On June 28, 1991, the Court invited the United States and Alaska to file a stipulation of facts relevant to a decision in this action. The United States and the State of Alaska jointly stipulate as follows:

1. On August 25, 1982, the City of Nome, Alaska, filed an application with the Department of the Army, Alaska District Corps of Engineers (the Corps), for a federal permit, under Section 10 of the Rivers and Harbors Appropriation Act of 1899, 33 U.S.C. 403, and Section 404 of the Clean Water Act, 33 U.S.C. 1344, to construct port facilities, including a causeway with road, a breakwater, and an offshore terminal area facility extending into Norton Sound. See App., *infra*, 1a-10a.

2. On October 20, 1982, the Corps issued a Public Notice of Application for Permit and invited interested persons to provide comments on whether the permit should be granted. See App., *infra*, 11a-16a.

3. On November 22, 1982, the Alaska OCS Region of the Minerals Management Service, United States Department of the Interior, filed an objection to the issuance of a Department of the Army permit on the ground that the City of Nome's construction of the port facilities would constitute an artificial accretion to the legal coast line. It requested that before issuing any permit, the Corps require Alaska to waive any future claims under the Submerged Lands Act, 43 U.S.C. 1301 *et seq.*, based on the construction of the causeway. See App., *infra*, 17a-19a.

4. On April 4, 1983, the Corps requested comments from the Office of the Solicitor, Department of the Interior, pursuant to 33 C.F.R. 320.4(f), concerning the effect of the Nome project on the coast line. See App., *infra*, 20a-21a.

5. On May 16, 1983, the Solicitor responded that construction of the Nome facility would "move Alaska's coastline or baseline seaward of its present location" and that "[f]ederal mineral leasing offshore Alaska would be affected because the state-federal boundary, as well as international boundaries, are

measured from the coastline or baseline." See App., *infra*, 22a. The Solicitor recommended that "approval of the permit application be conditioned upon Alaska executing an agreement or a quit claim deed preserving the coastline and the state-federal boundary." *Ibid.*

6. On July 1, 1983, the Corps transmitted the Solicitor's letter to the Alaska Department of Natural Resources and stated that "in accordance with the attached letter from the Office of the Solicitor * * * a [Department of the Army] permit will not be issued until * * * a waiver or quit claim deed has been issued preserving the coastline and the State-Federal boundary." See App., *infra*, 24a.

7. On May 9, 1984, the Alaska Department of Natural Resources submitted a conditional disclaimer of rights to additional submerged lands that could be claimed by Alaska as a result of the construction of the Nome port facility. See App., *infra*, 26a-31a. The disclaimer provides in pertinent part:

> 1. Subject to paragraph 4 below, the State of Alaska agrees that the coast line and the boundaries of the State of Alaska are not to be deemed to be in any way affected by the construction, maintenance, or operations of the Nome port facility. This document should be construed as a binding disclaimer by the State of Alaska to the effect that the state does not, and will not, treat the Nome port development as extending its coast line for purposes of the Submerged Lands Act, again subject to paragraph 4 below.
>
> 2. This disclaimer is executed solely for the purpose of complying with the conditions recommended by the Solicitor of the Department of the Interior and the Attorney General and main-

> tains the status quo of the baseline and the state-federal boundary. It does not affect property or claims to which Alaska is now entitled. It is not an admission by the State of Alaska or by the United States as to the present location of the shoreline, coast line, or the boundaries of the State of Alaska, and is without prejudice to any contention that any party may now or hereafter make regarding such present location.
>
> 3. This disclaimer is entered without prejudice to Alaska's right to file an appropriate action leading to a determination whether the Corps of Engineers has the legal authority to require such a disclaimer before issuing a permit for a project which might affect the coast line.
>
> 4. This disclaimer becomes ineffective and without force and effect upon a final determination by a court of competent jurisdiction in any appropriate action that the Corps of Engineers does not have the legal authority to require such a disclaimer before issuing a permit for a project which might affect the coast line.

Id. at 30a-31a.

8. By letter dated June 15, 1984, the Department of Justice informed the Corps that the disclaimer satisfied any objections that the Department of Justice and the Department of the Interior might have to the issuance of a Department of the Army permit. See App., *infra*, 32a.

9. On July 9, 1984, the Corps issued a statement of findings supporting the issuance of a Department of the Army permit for the Nome facility. See App., *infra*, 33a-37a. On the same date, the Corps sent a non-validated permit to the City of Nome for signature. See *id.* at 38a. The City Manager of Nome signed and returned the permit, and the Corps issued

the validated permit on July 25, 1984. See *id.* at 39a-49a.

10. The Department of the Army permit has been modified in certain respects since its issuance to reflect changes in the Nome project. See App., *infra*, 50a-51a. As originally permitted, the project was to include a causeway, approximately 85 feet wide, extending approximately 3575 feet seaward from the coast line into Norton Sound. As constructed, the causeway extends approximately 2700 feet seaward from the coast line into Norton Sound. See *id.* at 62a (diagram).

11. On March 11, 1988, the Minerals Management Service of the United States Department of the Interior published a "Request for Comments and Nominations for a Lease Sale in Norton Sound and Notice of Intent to Prepare an Environmental Impact Statement," which solicited public comment on the Minerals Management Service's proposed lease sale for hard-rock minerals, including gold, in the Norton Sound near Nome, Alaska. 53 Fed. Reg. 8134.

12. On April 11, 1988, the State of Alaska submitted comments stating, among other things, that the proposed Norton Sound Lease Sale involved submerged lands subject to its Nome project disclaimer (see para. 7, *supra*) and that the State intended to file a legal action, in accordance with the disclaimer, challenging the Corps' authority to require a waiver of rights to submerged lands. See App., *infra*, 52a-54a. Alaska also requested that the Minerals Management Service delete the disputed acreage from the proposed lease sale. See *id.* at 54a. The Minerals Management Service, meanwhile, prepared environmental analyses and circulated a proposed leasing

notice. See 53 Fed. Reg. 48,045 (1988); 55 Fed. Reg. 24,330 (1990).

13. On May 22, 1990, the State of Alaska provided notice, pursuant to 28 U.S.C. 2409a(m), that it intended to file a lawsuit to quiet title to the submerged lands in Norton Sound that are more than three miles from the natural shoreline but within three miles of the low water line of the constructed, solid-fill Nome causeway. See App., *infra*, 55a-59a. In an attachment to the letter, Alaska described the approximately 730-acre area associated with the 2700 foot causeway as the "Port of Nome" tract. See *id.* at 60a-61a. Alaska suggested that the United States either delete the disputed acreage from the proposed lease sale or enter into an agreement, pursuant to Section 7 of the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1336, and Alaska Stat. § 38.05.027 (1990), that would direct the revenues from the disputed acreage into an escrow account pending final resolution of the ownership issue. See *id.* at 58a.

14. Thereafter, on January 7, 1991, the United States requested leave of this Court to commence this action. The Court granted the United States' motion for leave to file a bill of complaint on April 1, 1991.

15. On June 21, 1991, the Minerals Management Service published a final leasing notice soliciting bids for the Norton Sound Lease Sale. 56 Fed. Reg. 28,656 (1991). On July 23, 1991, the United States and the State of Alaska entered into an agreement, pursuant to Section 7 of the Outer Continental Shelf Lands Act, 43 U.S.C. 1336, and Alaska Stat. § 38.05.137 (1990), directing the revenues from the disputed acreage into an escrow account for payment to the United States or to Alaska, depending on the outcome of this action. The bidding period closed

and no bids were received. The United States and Alaska agree, however, that a live controversy remains in light of their continuing disagreement as to the location of the federal-state boundary and the prospect of future lease sales in the area.

16. In at least nine other instances, prior to issuing a permit for construction of artificial additions to the coast line, the Corps has sought and obtained from a State a disclaimer or other agreement waiving the State's claim to additional submerged lands based on the additions to the coast line. In at least two other instances, the Corps has issued a permit for construction of similar artificial additions to the coast line without obtaining such a disclaimer. A compilation of such permits and disclaimers will be lodged with the Clerk of the Court.

Respectfully submitted.

CHARLES E. COLE
Attorney General
State of Alaska

KENNETH W. STARR
Solicitor General
Counsel for the United States

JOHN G. GISSBERG
Assistant Attorney General
Counsel for the State of Alaska

SEPTEMBER 1991

APPENDIX A

APPLICATION FOR A DEPARTMENT OF THE ARMY PERMIT

For use of this form, see EP 1145-2-1

The Department of the Army permit program is authorized by Section 10 of the River and Harbor Act of 1899, Section 404 of P.L. 92-500 and Section 103 of P.L. 92-532. These laws require permits authorizing structures and work in or affecting navigable waters of the United States, the discharge of dredged or fill material into waters of the United States, and the transportation of dredged material for the purpose of dumping it into ocean waters. Information provided in ENG Form 4345 will be used in evaluating the application for a permit. Information in the application is made a matter of public record through issuance of a public notice. Disclosure of the information requested is voluntary; however, the data requested are necessary in order to communicate with the applicant and to evaluate the permit application. If necessary information is not provided, the permit application cannot be processed nor can a permit be issued.

One set of original drawings or good reproducible copies which show the location and character of the proposed activity must be attached to this application (see sample drawings and check list) and be submitted to the District Engineer having jurisdiction over the location of the proposed activity. An application that is not completed in full will be returned.

1. Application number (To be assigned by Corps)
   JDM Norton Sound 36
   071-0YD-2-820546

2. Date
   25 8 82
   Day Mo. Yr.

3. For Corps use only.
   Received
   Aug. 25, 1982
   7 Sept. '82

4. Name and address of applicant.
   City of Nome
   P.O. Box 281
   Nome, Alaska 99762
   Attn: Ivan Widom, City Manager
   Telephone no. during business hours
   A/C (907) 443-5242
   A/C ( ) ————

5. Name, address and title of authorized agent.

   Telephone no. during business hours
   A/C ( ) ————
   A/C ( ) ————

6. Describe in detail the proposed activity, its purpose and intended use (private, public, commercial or other) including description of the type of structures, if any to be erected on fills, or pile or float-supported platforms, the type, composition and quantity of materials to be discharged or dumped and means of conveyance, and the source of discharge or fill material. If additional space is needed, use Block 14.

This application supercedes 071-OYD-2-800311 and addresses comments regarding that application.

SUMMARY

The proposed port facilities include phase I construction of a 3575′ causeway to reach the 30 foot water depth, a breakwater and 250′ x 800′, 4.6 acre offshore terminal area for short term cargo storage with an 800′ dock structure for barge berths, and a 10 acre upland long term cargo storage area with a maintenance shop and container freight station for cargo handling.

700,000 cubic yards of core materials for the causeway and offshore terminal will be dredge tailings trucked from upland pits within 3 miles of Nome, placed by end dumping. 300,000 cubic yards of filter material and 254,000 cubic yards of armor rock will be quarried at Cape Nome, approximately 15 miles from the project. This material will probably be trucked, using a new by-pass road to be constructed by Alaska DOT/PF* (or alternatively over the sea ice in winter), although the armor rock might be barged if a loading facility at Cape Nome is completed. The filter material will be placed by end dumping. The armor rock will be placed by crane. The dock structure consists of 30′ diameter concrete caissions 31′ on center with grouted connections, supporting a concrete dock wall. Two forklift ramps are provided for dry cargo transfer. Two fuel discharge manifolds, each having

* North Sound 35 #071-OYD-4-820435.

two 8″ diameter and four 6″ diameter pipes, are provided for transfer of diesel and gasoline fuels to an upland tank farm. An 8″ water line with a 3″ recirculation line from the city water supply provides potable water and fire protection. Sewage will be transferred from vessel holding tanks to the city system by pump truck. Portable toilets will be provided at the offshore terminal.

A breach in the causeway with a 98′ long prestressed concrete bridge is provided at the 8′ water depth. The bridged opening has been requested by the Alaska Department of Fish and Game to permit migration of juvenile fish along the shoreline. A secondary benefit of this breach is the shoreline accessibility provided for small boats without the hazard of rounding the head in deeper water.

The opening is located at the most acceptable depth to meet Alaska Department of Fish and Game requirements and also minimize maintenance dredging from littoral beach accumulation.

Phase II construction consists of a 100′ x 400′ mashalling yard with two 400′ x 60′ piers to provide 8 berths for oil rig service vessels. 220,000 cubic yards of dredge tailings from upland sites would be placed by end dumping. The pier structure consists of 57′ diameter steel sheet pipe cells 63′ on center, supporting concrete dock walls. Cathodic protection and epoxy coating corrosion protection are provided for the steel

piling. Water, fuel, and electrical services will be provided.

NEED FOR PROJECT AND ALTERNATIVES CONSIDERED

The City of Nome, Alaska, serves as a trade, service, and transportation center for much of northwest Alaska. According to the 1980 census, approximately 11,200 people live within the Nome service region, with a population of over 3200 in the immediate Nome area.

Due to its remote location (over 500 air miles from Anchorage or Fairbanks), the city is heavily dependent on waterborne shipments of consumable and durable goods, construction materials and equipment, and gasoline, heating oil, and other petroleum products. Cargoes destined for Nome are currently barged in during the five month (June to October) ice-free season.

The existing port facility is located at the mouth of the Snake River within the Nome city limits. Built and maintained by the Corps of Engineers in the estuary of the Snake River, the harbor is characterized by a seventy-five foot wide entrance channel and a two-hundred-fifty foot by six-hundred foot turning basin. The entrance channel and turning basin require annual dredging by the Corps to maintain an operating depth of approximately eight feet. The north revetment of the turning basin cur-

rently functions as the only dock in Nome Harbor.

Due to the shallow draft and limited width of the entrance channel and turning basin, the existing port can only accommodate relatively small barges and tugs. Ocean-going vessels currently anchor in forty to fifty feet of water one mile from shore, and cargo is lightered to the protected harbor.

The lack of adequate port facilities represents a major deterrent to development of the region. The extra handling required to lighter cargoes adds significantly to the costs of transporting cargoes to Nome. The proposed project would greatly reduce these costs, as well as play a major role in the economic development of Northwest Alaska.

The location and type of structure proposed in this application have been analyzed during separate prefeasibility and feasibility studies. Alternatives considered and eventually rejected included: (1) expansion of existing harbor basin; (2) a causeway situated at Cape Nome; (3) a causeway further west of the city; (4) a shorter causeway with dredged channel.

CONSTRUCTION ON PERMAFROST

Onshore storage areas situated on permafrost will be constructed over a pad of nine foot fill consisting of dredge tailings, designed to provide a thermal blanket. A 24-foot wide roadway on a 32-28-foot wide em-

bankment will connect the causeway to the onshore facilities and existing city roads. Where necessary due to permafrost conditions, road construction will include excavation and backfilling with dredge tailings as described above.

OIL SPILL PROTECTION

Fuel discharge manifolds at the barge dock will have sumps sized to meet Coast Guard and ADEC regulations. Pipelines (two 8″ and four 6″) will be buried within the causeway and road embankment. Design flow rate for an 8″ line is 2000 gpm and for a 6″ line is 1000 gpm. At the bridge (high point in the pipeline), a 6000 gallon containment vessel will be suspended between girders under the pipelines.

A sensor triggering an adudible alarm at the pumps would be activated by a float in the event of a break during pumping. Prior to operation of the facility, an oil spill contingency plan will be filed with ADEC.

[Diagrams omitted]

7. Names, addresses and telephone numbers of adjoining property owners, lessees, etc., whose property also adjoins the waterway.

Alaska Gold Co., P.O. Box 640, Nome, AK 99762 Att'n: Dennis Campion Tel. (907) 443-5272

Bureau of Indian Affairs, P.O. Box 1108, Nome, AK 99762 Att'n: Paul Sterling Tel. (907) 443-2284

8. Location where property activity exists or will occur.

Address:
End of West Limit Street

Street, road or other descriptive location
None

In or near city or town
Alaska 99762
County State Zip Code

Tax Assessors Description: (If known)

Map. No.	Subdiv. No.	Lot No.
26-27	11S	34W
Sec.	Twp.	Rge.

9. Name of waterway at location of the activity.
Norton Sound

10. Date activity is proposed to commence. June 1988

Date activity is expected to be completed. October 1986

11. Is any portion of the activity for which authorization is sought now complete? ☐ YES
☒ NO

If answer is "Yes" give reasons in the remark section. Month and year the activity was completed ————————. Indicate the existing work on the drawings.

12. List all approvals or certifications required by other federal, interstate, state or local agencies for any structures, construction, discharges, de-

posits or other activities described in this application.

Issuing Agency Type Approval

Identification No. Date of Application

Date of Approval

13. Has any agency denied approval for the activity described herein or for any activity directly related to the activity described herein?

☐ Yes ☒ No (If "Yes" explain in remarks)

14. Remarks (Checklist, Appendix H for additional information required for certain activities).

15. Application is hereby made for a permit or permits to authorize the activities described herein. I certify that I am familiar with the information contained in this application, and that to the best of my knowledge and belief such information is true, complete, and accurate. I further certify that I possess the authority to undertake the proposed activities.

/s/ Ivan L. Widom
Signature of Applicant or
Authorized Agent

The application must be signed by the applicant; however, it may be signed by a duly authorized agent (named in Item 5) if this form is accompanied by a statement by the applicant designating the agent and agreeing to furnish

upon request, supplemental information in support of the application.

18 U.S.C. Section 1001 provides that: Whoever, in any manner [*sic*] within the jurisdiction of any department or agency of The United States knowingly and willfully falsifies, conceals, or covers up any trick, scheme, or device a material fact or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing the same to contain any false fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both. Do not send a permit processing fee with this application. The appropriate fee will be assessed when a permit is issued.

APPENDIX B

PUBLIC NOTICE OF APPLICATION FOR PERMIT

[LOGO]

US Army Corps
of Engineers

Alaska District
Alaska District
Regulatory Functions Branch
P.O. Box 7002
Anchorage, Alaska 99510

Public Notice Date: 20 October 1982
Expiration Date: 22 November 1982
Reference Number: 071-OYD-2-820546
Waterway Number: Norton Sound 36

Interested parties are hereby notified that an application has been received for a Department of the Army permit for certain work in waters of the United States, as described below and shown on the attached plan.

APPLICANT: City of Nome, P.O. Box 281, Nome, Alaska 99762

LOCATION: Sections 26, 27, T. 11 S., R. 34 W., K.R.M., Nome, Alaska

WORK: To place approximately 1,477,000 cubic yards of fill to construct an offshore storage area and roadway system, an offshore storage area-barge berthing facility, and an earth-filled pier connecting the onshore and offshore facilities.

Approximate dimensions for the proposed structures are as follows:

a. A 3,575′ long x 85′ wide (crown) x 16′ above sealevel (ranging from 16′ to approximately 50′ deep) pier, which would be protected with approximately 10-15′ of armor rock; side slopes would be 1.5:1;

b. a 250′ wide x 800′ long x 40′ deep general cargo storage that would be constructed at the seaward terminus of the pier; a 15′ layer of armor rock would protect the 1.5:1 side slopes, the dock structure would consist of 30′ diameter concrete caisons, 31′ on center with grated connections;

c. a 520′ long x 100′ wide marshalling yard would connect the proposed barge docking facility and a future phase II oil rig service marshalling area adjacent to "b" above;

d. a 1200′ long x. 450′ x 9′ deep (10 acre) onshore storage pad west of the pier road; a 26′ crown width road, with 4:1 side slopes would surround the storage pads; and

e. a 2400′ long x 52′ wide x 9′ to 16′ (variable) deep road system would connect the offshore storage area to the pier; the following components comprise this road system;

1. The western spur would be approximately 260′ long x 16′ wide x 8′-11′ (variable) deep, with 4:1 side slopes;

2. the northeastern spur would be approximately 530′ long x 40′ wide x 6′ deep with 2:1 side slopes; this spur would run from the NE Terminus to a central tangent point;

3. a 140′ long x 16′ wide x 6′ deep spur, with 2:1 side slopes, running SE from the NE spur (in "2" above) to the beach;

4. a 400′ long x 52′ wide x 4′-10′ (variable) deep road, with 4:1 side slopes, from the shoreline to the SE corner of the proposed onshore storage pad; and

5. a 800′ long x 52′ wide x 4′-10′ (variable) deep road with 4:1 side slopes, running north of the juncture point (in "4" above) along the east side of the storage pad approximately 370′ past the NE corner of that pad.

Breakdown of the fill types and quantities are as follows:

a. Dredge tailings for the pier and terminal facilities core—700,000 cubic yards;

b. 300,000 cy of quarry rock for the pier and terminal facilities filter;

c. 254,000 cy quarry rock for the pier and terminal facilities armor slope protection;

d. 63,000 cy of dredge tailings for the road system between the onshore storage pad and the pier;

e. 93,000 cy non-frost susceptible dredge tailings for the onshore storage pad;

f. 24,000 cy of dredge tailings for the road system between the onshore storage pad and the pier; and

g. 10,000 cy of non-frost susceptible dredge tailings for the onshore road system.

Possible future construction would consist of an expansion of the onshore storage area with a pad approximately 500′x400′ to the west of the original proposed pad and a pad approximately 1800′x40′x 1800′x800′ to the north of the original proposed pad.

PURPOSE: To provide needed waterborne barge and marine vessel docking and port facilities for Nome, whose remoteness requires most goods to be received via air freight or barge. The existing Corps

of Engineers' dock in Nome can only handle shallow draft vessels. To accommodate these vessels annual dredging of the dock area is required. Ocean going vessels must anchor a mile offshore to find adequate water depth.

ADDITIONAL INFORMATION: A breach in the causeway approximately 400′ offshore, and in 8′ of water, would be provided to aid salmon migration.

AUTHORITY: This permit will be issued or denied under the following authorities:

(X) Perform work in or affecting navigable waters of the United States Section 10, River and Harbor Act 1899 (33 U.S.C. 403).

(X) Discharge dredged or fill material into waters of the United States Section 404, Clean Water Act (33 U.S.C. 1344).

WATER QUALITY CERTIFICATION: A permit for the described work will not be issued until a certification or waiver of certification as required under Section 401 of the Clean Water Act (Public Law 95-217), has been received from the Alaska Department of Environmental Conservation.

COASTAL ZONE MANAGEMENT ACT CERTIFICATION: Section 307(c)(3) of the Coastal Zone Management Act of 1972, as amended by 16 U.S.C. 1456(c)(3), requires the applicant to certify that the described activity affecting land or water uses in the Coastal Zone complies with the Alaska Coastal Management Program. A permit will not be issued until the Division of Policy Development and Planning has concurred with the applicant's certification.

EIS DETERMINATION: A preliminary determination has been made that an environmental impact statement is not currently required for the described work.

PUBLIC HEARING: Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing.

CULTURAL RESOURCES: The property described is not a registered or eligible property in the latest published version of the National Register of Historic Places.

ENDANGERED SPECIES: Preliminarily, this described activity will not affect endangered species, or their critical habitat designated as endangered or threatened, under the Endangered Species Act of 1973 (87 Stat. 844). Formal consultation under Section 7 of the Act is not required for the described activity.

FLOOD PLAIN MANAGEMENT: Evaluation of the described activity will include conformance with appropriate State o[r] local flood plain standards; consideration of alternative sites and methods of accomplishment; and weighing of the positive, concentrated and dispersed, and short and long-term impacts on the flood plain.

EVALUATION: The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and

utilization of important resources. The benefit which reasonably may be expected to accrue from the proposals must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among these are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety production and, in general, the needs and welfare of the people.

Comments on the described work, with the reference number, should reach this office no later than the expiration date of this Public Notice to become part of the record and be considered in the decision. If further information is desired concerning this notice, contact Jerome Madden at (907) 552-4942 or 279-4123.

FOR THE DISTRICT ENGINEER:

/s/ Jack L. Ferrise
JACK FERRISE
Acting Chief, Interior Permit
Processing Section
Regulatory Functions Branch

3 Incl
1. Plan
2. ACMP Notice
3. 401 Notice

[Enclosures omitted]

APPENDIX C

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE
Alaska OCS Region

[SEAL]

Offshore Leasing
P.O. Box 1159
Anchorage, AK 99510
Ph: 907-276-2955

Offshore Operations & Evaluations
800 A Street, Suite 201
Anchorage, AK 99501
Ph: 907-271-4304

November 22, 1982

Colonel Lee R. Nunn
District Engineer
Corps of Engineers
Department of the Army
Alaska District
P.O. Box 7002
Anchorage, AK. 99510

Re: Public Notice 071-OYD-2-820546

Dead Colonel Nunn:

The Minerals Management Service's (MMS) objection to issuance of a permit for the Nome dock expansion still remains. The principle followed by the Federal Government in matters such as this was enunciated by the United States Supreme Court in *United States v. California*, S. Ct. No. 5, Original. The Court adopted the report of the Special Master regarding the effect of artificial accretions on the legal "coastline," stating

> The Special Master ruled that lands so enclosed or filled belonged to California because such artificial changes were clearly recognized by international law to change the coastline. Further-

> more, the Special Master recognized that the United States, through its control over navigable waters, had power to protect its interests from encroachment by unwanted artificial structures, and the effect of any future changes could thus be the subject of agreement between the parties.
>
> * * * *
>
> Arguments based on the inequity to the United States of allowing California to effect changes in the boundary between Federal and State submerged lands by making future artificial changes in the coastline are met, as the Special Master pointed out, by the ability of the United States to protect itself through its power over navigable waters.

381 U.S. 139, 177 (1965).

The Interior Department consistently follows a policy of protecting the rights of the United States in all cases of artificial coastline accretion that come to its attention. In keeping with the Supreme Court opinion, we do this primarly through the Federal Government's control over navigable waters, which is exercised through the Corps of Engineers permitting process.

In this case, the MMS is simply following the apparent suggestion of the Supreme Court in seeking an agreement from the State regarding the effect of a future change in the coastline. We are attempting to do nothing more than preserve the status quo by protecting property rights to which the United States is now clearly entitled. On the other hand, by agreeing not to assert a future claim based upon the dock extension, as other States have done in similar situations, the State of Alaska would give up absolutely

nothing in the way of property or claims to which it is now entitled. It would simply give up a possible future claim to a windfall gain at the expense of the Federal Government.

I should also point out that any territorial claim which Alaska might make based upon the Nome causeway would not be dependent upon the *U.S. v. Alaska* boundary litigation now pending before the Supreme Court. The United States has conceded that an artificial extension of the coastline, if constructed in full compliance with applicable Federal regulations, can extend a State's submerged lands. By requesting that you require a waiver before permits are issued, we are trying to avoid a situation like the ARCO pier extension that resulted in litigation.

If more information is needed please free to call. You may also wish to contact the Solicitor's Office on 343-4325.

Sincerely yours,

/s/ Esther C. Wunnicke
ESTHER C. WUNNICKE
Acting Regional Manager

APPENDIX D

DEPARTMENT OF THE ARMY
ALASKA DISTRICT CORPS OF ENGINEERS
ANCHORAGE, ALASKA 99506

April 4, 1983

Regulatory Functions Branch
Interior Permit Processing

Mr. William H. Coldiron
Office of Solicitor
Department of Interior
18th and "C" N.W.
Washington, DC 20240

Dear Mr. Coldiron:

This refers to the enclosed permit application public notice involving structures affecting coastal water that may modify the coast line or base line from which the territorial sea is measured. This is being sent to you for comment as prescribed in 33 CFR Section 320.4(f).

The enclosed public notice number 071-OYD-2-820646, Norton Sound 36, causeway/barge berthing facilities, Nome, Alaska, should provide adequate descriptions of the proposed activity.

The Alaska District Corps of Engineers solicits your comments regarding this proposal. A copy of the public notice and plans are enclosed.

Sincerely,

/s/ Colonel Neil E. Saling
NEIL E. SALING
Colonel, Corps of Engineers
District Engineer

Enclosure

Copies Furnished:

Mr. John Allen
Regional Solicitor,
Department of Interior
840 C Street, Suite 100
Anchorage, Alaska 99506

[Enclosure Omitted]

APPENDIX E

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON DC 20240

[SEAL]

May 16, 1983

Colonel Neil E. Saling
District Engineer
Corps of Engineers
Department of the Army
Alaska District, Pouch 898
Anchorage, Alaska 99506

Dear Colonel Saling:

This responds to your request for comments concerning Nome's application for a permit "to place approximately 1,477,000 cubic yards of fill to construct an offshore storage area and roadway system, . . . barge berthing facility, and an earth filled pier." (Reference number 071-OYD-2-820546.)

The proposed construction would move Alaska's coastline or baseline seaward of its present location. Federal mineral leasing offshore Alaska would be affected because the state-federal boundary, as well as international boundaries, are measured from the coastline or baseline.

To prevent modification of the outer Continental Shelf rights of the United States, we recommend that approval of the permit application be conditioned upon Alaska executing an agreement or a quit claim deed preserving the coastline and the state-federal boundary. Such agreements have been encouraged by the

Supreme Court, and have been entered into by other states as well as Alaska. *See, e.g., United States v. California,* 381 U.S. 139, 176 (1965). The agreement or quit claim deed would simply maintain the status quo; it would not affect property or claims to which Alaska is now entitled. Should Alaska execute the agreement or quit claim deed, so that the Nome project would not be construed as moving the baseline or state-federal boundary, we would have no objection to approval of the Nome project.

Please advise us of your action on this permit application.

Sincerely,

/s/ Jean Kingry
For Solicitor

APPENDIX F

DEPARTMENT OF THE ARMY
ALASKA DISTRICT CORPS OF ENGINEERS
ANCHORAGE, ALASKA, 99506

July 1, 1983

Regulatory Functions Branch
Interior Permit Processing Section

Ms. Sharon Barton
Alaska Department of Natural
Resources
Pouch M
Juneau, Alaska 99811

Dear Ms. Barton:

In regard to the City of Nome's application for a Department of the Army (DA) permit, file number 071-OYD-2-820546, Norton Sound 36, to place fill material to construct a port facility in Nome, Alaska. This is to inform you that in accordance with the attached letter from the Office of the Solicitor, dated May 16, 1983 a DA permit will not be issued until an agreement has been reached between the Alaska Department of Natural Resources and the City of Nome, and a waiver or quit claim deed has been issued preserving the coastline and the State-Federal boundary. As per the telephone conversation between Mrs. Georgina Akers and yourself, we will expect your decision on this matter by July 20, 1983.

If you have any further questions, please contact Mrs. Georgina Akers of my staff at the address above, or call (907) 279-1123.

Sincerely,

/s/ David B. Barrows
Chief
Regulatory Functions Branch

Enclosure

Copies Furnished:

Ivan Widom, City Manager
City of Nome
P.O. 281
Nome, Alaska 99762

Mr. Michael Marten
TAMAS Engineers
4791 Business Park Blvd., Suite 1
Anchorage, Alaska 99083

[Enclosure Omitted]

APPENDIX G

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
OFFICE OF THE COMMISSIONER

Colonel Neil Saling
U.S. Corps of Engineers
District Engineer
Pouch 898
Anchorage, Alaska 99506

May 9, 1984

Dear Colonel Saling:

Enclosed is the State of Alaska's disclaimer to additional submerged lands based on construction of the Nome port facility. It is our understanding that it has been approved as to form by representatives of both the United States Attorney General and the Solicitor of the United States Department of the Interior.

We hope the submission of this disclaimer will enable the Corps of Engineers to issue the permit for construction of the Nome port facility without further delay. If we can do anything more in this regard, please contact us at your earliest convenience.

Sincerely,

/s/ Esther C. Wunnicke
ESTHER C. WUNNICKE
Commissioner

ECW:CTK:djc

Enclosure

cc: Louis F. Claiborne, Esq.
Lawrence J. Jensen, Esq.
Lyle Carson
R. Eldridge Hicks

DISCLAIMER

WHEREAS, the City of Nome ("Nome") has applied to the United States Army Corps of Engineers for a permit to construct a port facility at Nome;

WHEREAS, the project for which Nome is seeking the Corps of Engineers permit is fundamental to economic development in Northwestern Alaska;

WHEREAS, both statewide and nationwide benefits will be derived from the proposed Nome port facility through increased employment, increased revenue generated, and enhanced economic opportunities in Northwestern Alaska and the adjacent outer continental shelf;

WHEREAS, under the Submerged Lands Act, 43 U.S.C. §§ 1301 et seq., construction of such a facility might affect the location of the coast line boundary of the State of Alaska, including the offshore boundary between the outer continental shelf and state-owned lands beneath navigable water;

WHEREAS, under 33 C.F.R. § 320.4(f), the Corps of Engineers is required to consult with the United States Attorney General and the Solicitor of the Department of the Interior if a project for which a permit is sought might affect the coast line;

WHEREAS, the Corps of Engineers has consulted the Attorney General and the Solicitor pursuant to 33 C.F.R. § 320.4(f);

WHEREAS, the Corps of Engineers has been requested by the Attorney General and the Solicitor to withhold approval of Nome's permit application because of the potential effect on Alaska's coast line;

WHEREAS, the Corps of Engineers has determined that it will not issue such a permit over the Attorney General's and the Solicitor's objections on this ground;

WHEREAS, the Attorney General's and the Solicitor's objections to the permit application on this ground would be removed if a binding disclaimer is entered by the State of Alaska to the effect that Alaska does not, and will not, treat the facility as extending its coast line for purposes of the Submerged Lands Act;

WHEREAS, the Alaska Attorney General, in a formal opinion dated October 29, 1980, concluded that the Alaska Commissioner of Natural Resources has the power to issue such a disclaimer;

WHEREAS, Alaska would enter such a disclaimer without objection if the Corps of Engineers has the legal authority to require the state to enter such a disclaimer before issuing such a permit;

WHEREAS, Alaska and the United States disagree as to whether the Corps of Engineers has the legal authority to require the state to enter such a disclaimer before issuing such a permit;

WHEREAS, Alaska would not enter such a disclaimer but for the Corps of Engineers' determination that it will not issue the permit unless such a disclaimer is entered, thereby removing the Attorney General's and the Solicitor's objections to issuance of the permit;

WHEREAS, it is neither in the United States interest nor in Alaska's interest to delay construction of the Nome port facility while the question of the Corps

of Engineers' legal authority to require such a disclaimer is resolved;

WHEREAS, this disclaimer is entered without prejudice to Alaska's right to file an appropriate action to determine whether the Corps of Engineers has the legal authority to require such a disclaimer prior to issuing such a permit;

WHEREAS, this disclaimer is fully effective and binding upon the State of Alaska, but becomes ineffective and without force and effect upon a final determination by a court of competent jurisdiction that the Corps of Engineers does not have of the legal authority to require such a disclaimer prior to issuing such a permit; and

WHEREAS, it is the intent of both the United States and Alaska that this disclaimer remove the Attorney General's and the Solicitor's objections to issuance of the permit for construction of the Nome port facility, thereby allowing the construction to proceed, while at the same time preserving both the United States' legitimate interest is not having Alaska's coast line extended if the Corps of Engineers has the legal authority to require such a disclaimer prior to issuing such a permit and Alaska's interest in not being bound by such a disclaimer if the Corps of Engineers does not have such legal authority;

THEREFORE, the State of Alaska, acting by and through the Commissioner of Natural Resources, pursuant to the authority granted to the commissioner by art. VIII, sec. 1 of the Alaska Constitution, AS 38.05.020(b), AS 38.05.027(a), AS 38.05.035(a)(14), and AS 38.05.0315(a), declares and agrees as follows:

1. Subject to paragraph 4 below, the State of Alaska agrees that the coast line and the boundaries of the State of Alaska are not to be deemed to be in any way affected by the construction, maintenance, or operations of the Nome port facility. This document should be construed as a binding disclaimer by the State of Alaska to the effect that the state does not, and will not, treat the Nome port development as extending its coast line for purposes of the Submerged Lands Act, again subject to paragraph 4 below.

2. This disclaimer is executed solely for the purpose of complying with the conditions recommended by the Solicitor of the Department of the Interior and the Attorney General and maintains the status quo of the baseline and the state-federal boundary. It does not affect property or claims to which Alaska is now entitled. It is not an admission by the State of Alaska or by the United States as to the present location of the shoreline, coast line, or the boundaries of the State of Alaska, and is without prejudice to any contention that any party may now or hereafter make regarding such present location.

3. This disclaimer is entered without prejudice to Alaska's right to file an appropriate action leading to a determination whether the Corps of Engineers has the legal authority to require such a disclaimer before issuing a permit for a project which might affect the coast line.

4. This disclaimer becomes ineffective and without force and effect upon a final determination by a court of competent jurisdiction in any appropriate action that the Corps of Engineers does not have the legal authority to require such a disclaimer before issuing

a permit for a project which might affect the coast line.

DATED:
May 9, 1984

STATE OF ALASKA

/s/ Esther C. Wunnicke
ESTHER WUNNICKE,
Commissioner
Department of Natural
Resources

APPENDIX H

U.S. DEPARTMENT OF JUSTICE
OFFICE OF THE SOLICITOR GENERAL
Washington, D.C. 20530

June 15, 1984

Colonel Neil Saling
District Engineer
United States Army
Corps of Engineers
Pouch 898
Anchorage, Alaska 99506

Dear Colonel Saling:

Re: Artificial coastline construction
in the area of Nome, Alaska.

The State of Alaska has now disclaimed any Submerged Land Act consequence of the proposed jetty for Nome. That disclaimer satisfies any objection which the Department of Justice might otherwise have interposed to the issuance of a permit for that jetty. We have been advised by the Office of the Solicitor, United States Department of the Interior, that the disclaimer has likewise satisfied any possible Submerged Lands Act concern of that Department.

Thank you for giving us the opportunity to review the application.

Sincerely,

/s/ Louis F. Claiborne
LOUIS F. CLAIBORNE
Deputy Solicitor General

APPENDIX I

SECTIONS 10 & 404
STATEMENT OF FINDINGS

This concerns the decision to issue a Department of the Army permit under Section 10 of the River and Harbor Act of 3 March 1899 (30 Stat. 1151; 33 U.S.C. 403) and Section 404 of the Clean Water Act (Public Law 95-217) to place approximately 1,477,000 cubic yards of fill to construct an onshore storage area and roadway system, an offshore storage area-barge berthing facility, and an earth-filled pier connecting the onshore and offshore facilities.

1. I have reviewed and evaluated, in light of the overall public interest, the documents and factors concerning the permit application, as well as the stated views of other interested Federal and non-federal agencies and the concerned public relative to the proposed work in waters of the United States.

2. The possible consequences of this proposed work have been evaluated and the work is in accordance with regulations published in 33 CFR, Parts 322 and 323. Factors bearing on my review include conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, and, in general, the needs and welfare of the people.

3. In evaluation of this work and consideration of comments received from coordination of Public Notice NPACO No. 071-OYD-2-820546 dated October 20, 1982 the following points are considered pertinent:

a. *Federal Agencies*: The U.S. Fish and Wildlife Service had concerns and requested one special condition. The concerns were resolved by modification of the applicant's proposal (causeway breach). The recommended special condition is incorporated in the ADEC certification. The National Marine Fisheries Service requested two special conditions. The first condition (monitoring program) was incorporated into the applicant's proposal. The second condition was included on the permit. The Environmental Protection Agency requested one condition (monitoring program). This condition was incorporated into the applicant's proposal and referred to in the special conditioning of this permit. The Department of the Interior objected to the issuance of the permit unless an agreement was signed by the State of Alaska to waive its rights to any additional submerged lands created by the construction of this project. This agreement has been signed by the State of Alaska and approved by the Office of the Solicitor. The U.S. Coast Guard had no objections to the proposed work, and informed the applicant of the requirements necessary for this type of project.

b. *State & Local Agencies*: The Alaska Department of Fish and Game had no objection to the proposed project and did not request that any special conditions be included in the permit. The Alaska Department of Natural Resources, and the Advisory Council on Historic Preservation concurred with this office that the proposed project would not adversely affect the two historical sites located within the area. The Alaska Department of Environmental Conservation (ADEC) issued a Certificate of Reasonable Assurance pursuant to Section 401 of the Clean Water Act and in accordance with the Alaska Water Quality Standards with seven stipulations. In accordance

with 33 U.S.C. 1341, all conditions of the ADEC certification are incorporated as part of the DE permit; therefore, they are not listed as special conditions. The Alaska Division of Governmental Coordination certified that the proposed work is consistent with the Alaska Coastal Management Program with the same stipulations that were included on the ADEC 401 certification.

It is presumed from the comments received from the State of Alaska and the lack of response from local agencies that the proposed work conforms with applicable local laws, regulations, and codes, and is in keeping with similar activities found in Alaskan waters.

c. *Individuals or Organized Groups*: No individuals or organized groups commented on the proposed work. The work is not considered to be contrary to the general public interest.

d. *Other Considerations*: An ecological evaluation as required by Section 404(b)(1) of the Clean Water Act has been made following the evaluation guidance in 40 CFR 230.4, in conjunction with the evaluation considerations in 40 CFR 230.5. The proposal was found to comply with the 404(b)(1) guidelines with inclusion of the following three special conditions:

(1) That the permittee shall dredge the breach and entrances to the design depth (8 feet below MLLW), when deposition has reduced the design depth to a depth of 3 feet below MLLW. The permittee shall contact the District Engineer (D.E.) prior to performing any dredging of the breach and entrances. The dredged material shall be placed at a site approved by the D.E. The breach and entrances shall be kept open or maintained over the life of the project.

(2) That the permittee shall implement the approved Littoral Drift Monitoring program prior to the construction of the causeway or any related structure. This monitoring program shall continue for the life of the project, unless determined otherwise by the D.E.

(3) That should the D.E. determine, through the monitoring program, that significant shoreline erosion is occurring the permittee shall be required to develop and implement a shoreline protection program to the satisfaction of the D.E.

These conditions were included.

4. I find that issuance of the Department of the Army permit as prescribed by regulations published in 33 CFR, Part 322 and 323 and with scope of work as described in the introduction to this document, and in accordance with the drawings attached to Public Notice NAPCO No. 071-OYD-2-820546 dated October 20, 1982 is based on thorough analysis and evaluation of the various factors enumerated above; that there are no reasonable alternatives available to the applicant that will achieve the purposes for which the work is being conducted; that the proposed work is in accordance with the overall desires of the public as reflected in the comments of State and local agencies and the general public; that the proposed work is deemed to comply with established State and local laws, regulations, and codes; that there have been no identified significant adverse environmental effects related to the work; that the issuance of this permit is consonant with national policy, statutes, and administrative directives; and that on balance, the total public interest would best be

served by the issuance of a Department of the Army permit to the city of Nome for the proposed work.

FOR THE DISTRICT ENGINEER:

/s/ David B. Barrows
DAVID B. BARROWS
Chief, Regulatory Branch

Date 9 Jul 84

APPENDIX J

DEPARTMENT OF THE ARMY
ALASKA DISTRICT CORPS OF ENGINEERS
ANCHORAGE, ALASKA 99506

Regulatory Branch
Permit Processing Section

9 JUL 1984

Lyle Larson, City Manager
Post Office Box 281
Nome, Alaska 99762

Dear Mr. Larson:

Enclosed are the original and one copy of the Department of the Army permit, file number 071-OYD-2-820546, Norton Sound 36, to place fill material to construct an earth filled pier connection onshore and offshore facilities, near Nome, Alaska. Please sign, date, and return both copies to this office for validation.

The Alaska Department of Environmental Conservation has issued a Certificate of Reasonable Assurance pursuant to Section 401 of the Clean Water Act for your project and they have found it to be in accordance with the Alaska Water Quality Standards. In addition, the Alaska Division of Environmental Coordination has certified that your project is consistent with the Alaska Coastal Management Program.

It should be understood that this is not an authorization to commence construction. No work is to be performed in the waterway or adjacent wetlands until you have received a validated copy of the permit.

Sincerely,

DAVID A. BARROWS
Chief, Regulatory Branch

[Enclosure Omitted]

APPENDIX K

Application No. 071-OYD-2-820546

Name of Applicant City of Nome

Effective Date 25 July 1984

Expiration Date (*If applicable*)

File No. Norton Sound 36

DEPARTMENT OF THE ARMY
PERMIT

Referring to written request dated August 25, 1982 for a permit to:

(X) Perform work in or affecting navigable waters of the United States, upon the recommendation of the Chief of Engineers, pursuant to Section 10 of the Rivers and Harbors Act of March 3, 1899 (*33 U.S.C. 403*);

(X) Discharge dredged or fill material into waters of the United States upon the issuance of a permit from the Secretary of the Army acting through the Chief of Engineers pursuant to Section 404 of the Clean Water Act (*33 U.S.C. 1344*);

( ) Transport dredged material for the purpose of dumping it into ocean waters upon the issuance of a permit from the Secretary of the Army acting through the Chief of Engineers pursuant to Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (*86 Stat. 1052; P.L. 92-532*);

City of Nome
Post Office Box 281
Nome, Alaska 99762

is hereby authorized by the Secretary of the Army: to place approximately 1,477,000 cubic yards (cy)

of fill to construct an onshore storage area and roadway system, an offshore storage area-barge berthing facility, an earth-filled pier connecting the onshore and offshore facilities, and to monitor the project in accordance with the attached monitoring program. Approximate dimensions for the structures are as follows:

a. A 3,575′ long x 85′ wide (crown) x 16′ above sea level (ranging from 16′ to approximately 50′ deep) fill for a pier, which will be protected with approximately 10-15′ of armor rock; side slopes would be 1.5:1;

b. a 250′ wide x 800′ long x 40′ deep fill for a general cargo storage area will be constructed at the seaward terminus of the pier; a 15′ layer of armor rock will protect the 1.5:1 side slopes, the dock structure will consist of 30′ diameter concrete caisons, 31′ on center with grated connections;

c. a 520′ long x 100′ wide marshalling yard will connect the proposed barge docking facility and a future phase II oil rig service marshalling area adjacent to "b" above;

d. a 1,200′ long x 450′ x 9′ deep fill for an onshore storage pad west of the pier road; a 26′ crown width road, with 4:1 side slopes will surround the storage pads; and

e. a 2,400′ long x 52′ x 9′ to 16′ (variable) deep fill for a road system will connect the offshore storage area to the pier; the following components comprise this road system;

1. The western spur will be an approximately 260′ long x 16′ wide x 8′-11′ (variable) deep fill, with 4:1 side slopes;

2. the northeastern spur will be an approximately 530′ long x 40′ wide x 6′ deep fill with 2:1 side slopes;

this spur will run from the northeast terminus to a central tangent point;

3. a 140′ long x 16′ x 6′ deep spur, with 2:1 side slopes, running southeast from the northeast spur (in "2" above) to the beach;

4. a 400′ long x 52′ wide x 4′-10′ (variable) deep fill for a road, with 4:1 side slopes, from the shoreline to the southeast corner of the onshore storage pad; and

5. an 800′ long x 52′ x 4′-10′ (variable) deep fill for a road with 4:1 side slopes, running north of the juncture point (in "4" above) along the east side of the storage pad approximately 370′ past the northeast corner of that pad.

Breakdown of the fill types and quantities are as follows:

a. Dredge tailings for the pier and terminal facilities core—700,000 cy;

b. 300,000 cy of quarry rock for the pier and termial facilities filter;

c. 254,000 cy quarry rock for the pier and terminal facilities armor slope protection;

d. 63,000 cy of dredge tailings for the road system between the onshore storage pad and the pier;

e. 93,000 cy non-frost susceptible dredge tailings for the onshore storage pad;

f. 24,000 cy of dredge tailings for the road system between the onshore storage pad and the pier; and

g. 10,000 cy of non-frost susceptible dredge tailings for the onshore road system.

in Norton Sound, sections 26 and 27, T. 11 S., R. 34 W., K.R.M. at Nome, Alaska in accordance with the plans and drawings attached hereto which are incorporated in and made a part of this permit (*on drawings, give file number or other definite identification marks.*)

"PROPOSED: CONSTRUCT PORT FACILITIES; IN: NORTON SOUND; AT: NOME, ALASKA; APPLICATION BY: CITY OF NOME; DATED: OCTOBER 2, 1982; 7 SHEETS; PORT OF NOME LITTORAL DRIFT MONITORING AND SHORE PROTECTION PROGRAM, MAY 4, 1984; ALSO SUBJECT TO ADEC SPECIAL CONDITIONS."

subject to the following conditions:

I. *General Conditions:*

a. That all activities identified and authorized herein shall be consistent with the terms and conditions of this permit; and that any activities not specifically identified and authorized herein shall constitute a violation of the terms and conditions of this permit which may result in the modification, suspension or revocation of this permit, in whole or in part, as set forth more specifically in General Conditions j or k hereto, and in the institution of such legal proceedings as the United States Government may consider appropriate, whether or not this permit has been previously modified, suspended or revoked in whole or in part.

b. That all activities authorized herein shall, if they involve, during their construction or operation, any discharge of pollutants into waters of the United States or ocean waters, be at all times consistent with applicable water quality standards, effluent limitations and standards of performance, prohibitions, pretreatment standards and management practices established pursuant to the Clean Water Act (*33 U.S.C. 1344*), the Marine Protection, Research and Sanctuaries Act of 1972 (*P.L. 92-532, 86 Stat. 1052*), or or pursuant to applicable State and local law.

c. That when the activity authorized herein involves a discharge during its construction or operation, or any pollutant (*including dredged or fill material*), into waters of the United States, the authorized activity shall, if applicable water quality standards are revised or modified during the term of this permit, be modified, if necessary, to conform with such revised or modified water quality standards within 6 months of the effective date of any revision or modification of water quality standards, or as directed by an implementation plan contained in such revised or modified standards, or within such longer period of time as the District Engineer, in consultation with the Regional Administrator of the Environmental Protection Agency, may determine to be reasonable under the circumstances.

d. That the discharge will not destroy a threatened or endangered species as identified under the Endangered Species Act, or endanger the critical habitat of such species.

e. That the permittee agrees to make every reasonable effort to prosecute the construction or operation of the work authorized herein in a manner so as to minimize any adverse impact on fish, wildlife, and natural environmental values.

f. That the permittee agrees that he will prosecute the construction or work authorized in a manner so as to minimize any degradation of water quality.

g. That the permittee shall allow the District Engineer or his authorized representative(s) or designee(s) to make periodic inspections at any time necessary in order to assure that the activity being performed under authority of this permit is in accordance with the terms and conditions prescribed herein.

h. That the permittee shall maintain the structure or work authorized herein in good condition and in

reasonable accordance with the plans and drawings attached hereto.

i. That this permit does not convey any property rights, either in real estate or material, or any exclusive privileges; and that it does not authorize any injury to property or invasion of rights or any infringement of Federal, State, or local laws or regulations.

j. That this permit does not obviate the requirement to obtain state or local assent required by law for the activity authorized herein.

k. That this permit may be either modified, suspended or revoked in whole or in part pursuant to the policies and procedures of 33 CFR 325.7.

l. That in issuing this permit, the Government has relied on the information and data which the permittee has provided in connection with his permit application. If, subsequent to the issuance of this permit, such information and data prove to be materially incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Government may, in addition, institute apropriate legal proceedings.

m. That any modification, suspension, or revocation of this permit shall not be the basis for any claim for damages against the United States.

n. That the permittee shall notify the District Engineer at what time the activity authorized herein will be commenced, as far in advance of the time of commencement as the District Engineer may specify, and of any suspension of work, if for a period of more than one week, resumption of work and its completion.

o. That if the activity authorized herein is not completed on or before —— day of ——, 19——, (*three years from the date of issuance of this permit*

unless otherwise specified) this permit, if not previously revoked or specifically extended, shall automatically expire.

p. That this permit does not authorize or approve the construction of particular structures, the authorization or approval of which may require authorization by the Congress or other agencies of the Federal Government.

q. That if and when the permittee desires to abandon the activity authorized herein, unless such abandonment is part of a transfer procedure by which the permittee is transferring his interests herein to a third party pursuant to General Conditions hereof, he must restore the area to a condition satisfactory to the District Engineer.

r. That if the recording of this permit is possible under applicable State or local law, the permittee shall take such action as may be necessary to record this permit with the Register of Deeds or other appropriate official charged with the responsibility for maintaining records of title to and interests in real property.

s. That there shall be no unreasonable interference with navigation by the existence or use of the activity authorized herein.

t. That this permit may not be transferred to a third party without prior written notice to the District Engineer, either by the transferee's written agreement to comply with all terms and conditions of this permit or by the transferee subscribing to this permit in the space provided below and thereby agreeing to comply with all terms and conditions of this permit. In addition, if the permittee transfers the interests authorized herein by conveyance of realty, the deed shall reference this permit and the terms

and conditions specified herein and this permit shall be recorded along with the deed with the Register of Deeds or other appropriate official.

u. That if the permittee during prosecution of the work authorized herein, encounters a previously unidentified archeological or other cultural resource within the area subject to Department of the Army jurisdiction that might be eligible for listing in the National Register of Historic Places, he shall immediately notify the district engineer.

II. *Special Conditions*: (*Here list conditions relating specifically to the proposed structure or work authorized by this permit*):

a. That the permittee shall dredge the breach and entrances to the design depth (8 feet below MLLW), when deposition has reduced the design depth to a depth of 3 feet below MLLW. The permittee shall contact the District Engineer (D.E.) prior to performing any dredging of the breach and entrances. The dredged material shall be placed at a site approved by the D.E. . The breach and entrances shall be kept open or maintained over the life of the project.

b. That the permittee shall implement the approved Littoral Drift Monitoring program prior to the construction of the causeway or any related structure. This monitoring program shall continue for the life of the project, unless determined otherwise by the D.E. .

c. That should the D.E. determine, through the monitoring program, that a significant shoreline erosion is occurring the permittee shall be required to develop and implement a shoreline protection program to the satisfaction of the D.E. .

The following Special Conditions will be applicable when appropriate:

STRUCTURES IN OR AFFECTING NAVIGABLE WATERS OF THE UNITED STATES:

a. That this permit does not authorize the interference with any existing or proposed Federal project and that the permittee shall not be entitled to compensation for damage or injury to the structures or work authorized herein which may be caused by or result from existing or future operations undertaken by the United States in the public interest.

b. That no attempt shall be made by the permittee to prevent the full and free use by the public of all navigable waters at or adjacent to the activity authorized by this permit.

c. That if the display of lights and signals on any structure work authorized herein is not otherwise provided for by law, such lights and signals as may be prescribed by the United States Coast Guard shall be installed and maintained by and at the expense of the permittee.

d. That the permittee, upon receipt of a notice of revocation of this permit or upon its expiration before completion of the authorized structure or work, shall, without expense to the United States in such time and manner as the Secretary of the Army or his authorized representative may direct, restore the waterway to its former conditions. If the permittee fails to comply with the direction of the Secretary of the Army or his authorized representative, the Secretary or his designee may restore the waterway to its former condition, by contract or otherwise, and recover the cost thereof from the permittee.

e. Structure for Small Boats: That permittee hereby recognizes the possibility that the structure

permitted herein may be subject to damage by wave wash from passing vessels. The issuance of this permit does not relieve the permittee from taking all proper steps to insure the integrity of the structure permitted herein and the safety of boats moored thereto from damage by wave wash and the permittee shall not hold the United States liable for any such damage.

MAINTENANCE DREDGING:

a. That when the work authorized herein includes maintenance dredging, it may be performed under this permit for ———— years from the date of issuance of this permit (*ten years unless otherwise indicated*);

b. That the permittee will advise the District Engineer in writing at least two weeks before he intends to undertake any maintenance dredging.

DISCHARGES OF DREDGED OR FILL MATERIAL INTO WATERS OF THE UNITED STATES:

a. That the discharge will be carried out in conformity with the goals and objectives of the EPA Guidelines establishd pursuant to Section 404(b) of the Clean Water Act and published in 40 CFR 230;

b. That the discharge will consist of suitable material free from toxic pollutants in toxic amounts.

c. That the fill created by the discharge will be properly maintained to prevent erosion and other nonpoint sources of pollution.

DISPOSAL OF DREDGED MATERIAL INTO OCEAN WATER:

a. That the disposal will be carried out in conformity with the goals, objectives, and requirements

of the EPA criteria established pursuant to Section 102 of the Marine Protection, Research and Sanctuaries Act of 1972, published in 40 CFR 220-228.

b. That the permittee shall place a copy of this permit in a conspicuous place in the vessel to be used for the transportation and/or disposal of the dredged material as authorized herein.

This permit shall become effective on the date of the District Engineer's signature.

Permittee hereby accepts and agrees to comply with the terms and conditions of this permit.

/s/ Larry L. Larson 7/16/84
City Manager Permittee & Title

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

/s/ John R. Staser 7/25/84
JOHN R. STASER

CPT, Corps of Engineers, Acting Chief, Regulatory Branch FOR: DISTRICT ENGINEER,
U.S. ARMY, CORPS OF ENGINEERS, Colonel Neil E. Saling

Transferee hereby agrees to comply with the terms and conditions of this permit.

_____ _____

TRANSFEREE DATE

APPENDIX L

DEPARTMENT OF THE ARMY
ALASKA DISTRICT CORPS OF ENGINEERS
ANCHORAGE, ALASKA, 99506

Regulatory Branch
Permit Processing Section

PERMITTEE: City of Nome

EFFECTIVE DATE: Sept. 13, 1990

REFERENCE NO. Q-820546
Norton Sound 36

DEPARTMENT OF THE ARMY
PERMIT MODIFICATION

Department of the Army (DA) permit No. 2-820546, Norton Sound 36, was issued to the City of Nome on July 25, 1984, and subsequently modified on October 28, 1987, October 26, 1988, September 8, 1989, and October 27, 1989, for the placement of fill material to construct a causeway at Nome, Alaska.

The permit is hereby modified to include the following additional work:

> "place a 10-inch-diameter, effluent outfall line in the causeway. The outfall diffuser would be located 400 linear feet south and east of the causeway terminus."

If the activity authorized herein is not completed within 3 years of the date of this letter, the authorization of this modification, if not previously revoked or specifically extended, shall automatically expire.

All other terms and conditions of the original permit remain in full force and effect.

This authorization and the enclosed modified plans should be attached to the original permit. Plan sheets 1, 4, and 6 of 11 of DA permit No. 2-890302, Norton Sound 57 (attached), are hereby incorporated by reference into this modification.

By Authority of the Secretary of the Army:

/s/ Timothy R. Jennings
TIMOTHY R. JENNINGS
Chief, Northern Unit
Permit Processing Section

Enclosure

[Enclosure Omitted]

APPENDIX M

STATE OF ALASKA
OFFICE OF THE GOVERNOR
Office of Management and Budget
Division of Governmental Coordination

April 11, 1988

Steve Cowper, Governor

Central Office
P.O. Box AW
Juneau, Alaska 99811-0165
Phone: (907) 465-3562

Southeast Regional Office
431 North Franklin
P.O. Box AW, Suite 101
Juneau, Alaska 99811-0155
Phone: (907) 465-3562

Southcentral Regional Office
2600 Denali Street
Suite 700
Anchorage, Alaska 99503-2795
Phone: (907) 274-1581

Northern Regional Office
675 Seventh Avenue
Station H
Fairbanks, Alaska 99701-4596
Phone (907) 456-3084

Mr. Alan Powers
Regional Manager
Alaska OCS Region
Minerals Management Service
949 East 36th Avenue
Anchorage, AK 99508-4302

Dear Mr. Powers:

The State of Alaska has reviewed the Minerals Management Service's (MMS) request for comments and nominations for a mining lease sale in Norton Sound. The state is actively participating in the federal-state-local coordination team effort to help prepare the Norton Sound lease sale Environmental Impact Statement (EIS). Accordingly, the state will be submitting information and reviewing the EIS at several stages during its development.

Available Data and Literature

The state has submitted (or will shortly) the following information for MMS's use during EIS preparation:

[Document List Omitted]

Assumptions for EIS Modeling

The state has also reviewed the assumptions MMS is using for the EIS. These were distributed at the first coordination team meeting. We recommend changes to the assumptions regarding dredge size and predicted area of disturbance. It is probable that either smaller or larger dredge(s) than those stated in the MMS assumptions will be utilized for mining. MMS also assumes that the area dredge each year will be 60 acres year per dredge. This assumption however is based on current nearshore operations (BIMA) and does not fully consider that aerial disturbance will be a function of both dredge size and the depth dredge. It is probable that in future years a 120 acre/year per dredge disturbance may occur. (Additionally, please note that this is a permit imposed limitation.) The state recommends that MMS prepare mining scenarios with both "low" and "high" assumptions regarding dredge size and bottom disturbance. A model should be developed for a low, high and mid-point dredge size and bottom disturbance scenario.

We also recommend that in addition to estimating bottom disturbance in terms of acres, that the amount of cubic yardage disturbed and the depth of disturbance be noted. These two additional parameters will aid in estimating potential mining related impacts.

Proposed Lease Sale Deletions

Subsequent to the construction of the Nome causeway, the State of Alaska executed a waiver of claims to additional submerged lands based on the use of causeways to delimit Alaska's seaward boundary, unless a court of competent jurisdiction finds that the U.S. does not have the legal authority to require such a waiver. The state intends to file an appropriate action to resolve this issue, and in the meantime, respectfully requests MMS to delete the disputed acreage from the lease sale. The enclosed protraction sheets delineate the disputed 1082.16 acres.

Conclusion

The state looks forward to continued cooperation with MMS through the coordination team process. We will continue to provide MMS with information and review of the lease sale EIS, based upon our knowledge and experience with the offshore mining industry. Please call me or Barbara Sheinberg at 465-3562 if you have any questions regarding the state's comments or recommendations.

Sincerely,

/s/ Robert L. Grogan
ROBERT L. GROGAN
Director

Enclosure

cc: Members of Alaska-OCS Mining Program Coordination Team

[Enclosure Omitted]

APPENDIX N

STATE OF ALASKA
DEPARTMENT OF LAW
Office of the Attorney General

Steve Cowper, Governor

REPLY TO:

☐ 1031 W 4th Avenue Suite 200
Anchorage, Alaska 99501-1994
Phone: (907) 276-3550
FAX: (907) 276-3697

☐ 1st National Center
100 Cushman St. Suite 400
Fairbanks, Alaska 99701-4679
Phone: (907) 452-1568
FAX: (907) 456-1317

✓ P.O. Box K—State Capitol
Juneau, Alaska 99811-0300
Phone: (907) 465-3600
FAX: (907) 463-5295

May 22, 1990

Honorable Donald P. Hodel
Secretary of the Interior
Department of the Interior
C & 18th Streets, N.W.
Washington, D.C. 2-0249-0000

Re: Notice of intent to file suit

Dear Secretary Hodel:

Pursuant to 28 U.S.C. § 2409a(m), the State of Alaska hereby gives notice that it intends to file suit to quiet title to a tract of submerged land in Northwest Alaska. For ease of reference, the tract is referred to as the "Port of Nome tract." A full legal description of the tract is enclosed as Exhibit A, and

the tract is generally depicted on the enclosed territorial sea boundary diagram, Exhibit B.

In general terms, the Port of Nome tract consists of the submerged lands which are more than three miles from the natural shore line but within three miles of the low water line on a solid fill causeway which serves as a dock for the City of Nome. Such a causeway ordinarily constitutes an extension of a state's coast line for delimiting that state's three-mile grant under the Submerged Lands Act of 1953, 43 U.S.C. §§ 1301 et seq. *See*, e.g., *United States v. Louisiana*, 389 U.S. 155, 158 (1967).

Because of objections by the United States Attorney General and the Solicitor of the Department of the Interior, however, the Corps of Engineers refused to issue a permit for construction of the causeway until the State of Alaska waived any claims to additional submerged lands which it might make as a result of the causeway's construction. On May 9, 1984, the state filed a conditional disclaimer to additional submerged lands to satisfy the Attorney General's and Solicitor's objections, a copy of which is enclosed as Exhibit C.

At the same time, Alaska contended that the Corps of Engineers did not have the legal authority to require such a disclaimer as a condition precedent to the issuance of a permit and, in the absence of such a disclaimer, to deny a permit solely on the basis of the Attorney General's and the Solicitor's objections. *See* 1980 Inf. Op. Att'y Gen. (Oct. 30; 663-80-0477), a copy of which is enclosed as Exhibit D. Any dispute over submerged land ownership which might arise as a result of causeway construction is not one of the factors which the Corps of Engineers is to consider as part of its public interest review process. Indeed, 33

C.F.R. 320.4(g) provides in part: "The dispute over property ownership will *not* be a factor in the Corps public interest decision." (Emphasis added.) *Also see Mall Properties, Inc. v. Marsh,* 672 F. Supp. 561, 566-71 (D. Mass. 1987), appeal dismissed 841 F.2d 440 (1st Cir.), *cert. denied sub nom. City of New Haven v. Mass.,* 109 S. Ct. 128 (1988) (the Corps of Engineers' authority to consider economic impacts in its public interest review is limited to those economic effects caused by the project's impacts on the physical environment); *Missouri Coalition for the Environment v. Corps of Engineers,* 678 F. Supp. 790, 802 (E.D. Mo. 1988), aff'd 866 F.2d 1025, 1033-34 (8th Cir. 1989) (the Corps of Engineers is not to make political decisions as to which entity's economic interests ought to be preferred, citing *Mall Properties, Inc.*).

As a result, the disclaimer filed by the state provided in part: "This disclaimer becomes ineffective and without force and effect upon a final determination by a court of competent jurisdiction in any appropriate action that the Corps of Engineers does not have the legal authority to require a disclaimer before issuing a permit for a project which might affect the coastline." Alaska intends to seek such a determination in a quiet title action with respect to the Port of Nome tract.

Having notified you of Alaska's intention to file suit and the basis therefore, and having provided you with a description of the lands to be included in the suit, we have satisfied the notice requirements of 28 U.S.C. § 2409a(m) for filing a quiet title action 180 days after you receive this letter.

This notice is not intended to delay or otherwise adversely affect the proposed offshore mining lease

sale near Nome, and preparation for that sale should continue. The Port of Nome tract, however, should either be deleted from any proposed offshore mining lease sale pending resolution of the ownership question or be the subject of an agreement under section 7 of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1336, and Alaska Statute 38.05.027. This would allow the tract to be leased with the revenues placed in escrow pending final resolution of the ownership issue.

We naturally would like to resolve these matters without resort to litigation. If you or members of your staff have any suggestions for resolution without litigation, please contact us at your convenience.

Sincerely yours,

Douglas B. Baily
Attorney General

By: /s/ G. Thomas Koester
G. THOMAS KOESTER
Assistant Attorney General

GTK:tg

Enclosures [4]

cc w/encls.:

Allen D. Powers, Regional Director
Alaska OCS Region

U.S. Army Engineer, Alaska District

OCS Survey Group MD 625
P.O. Box 25165
Denver, Colorado 80225

Michael W. Reed, Attorney
General Litigation Section
United States Department of Justice

Lennie Gorsuch, Commissioner
Department of Natural Resources

John Katz, Special Counsel
State/Federal Relations

Robert Grogan, Director
Div. of Governmental Coordination

Jim Spargo
Coastal Boundary Section, DNR/ANC

John Briscoe, Esq.

[Enclosures B-D Omitted]

PORT OF NOME

A tract of tide and submerged land described by Universal Transverse Mercator (U.T.M.), NAD 1927, grid bearings and distances, located within Township 12 South, Range 34 West, Sections 8, 14, 15, 16 and 17, Kateel River Meridian, Alaska, as generally depicted on the State of Alaska Territorial Sea Boundary Diagram for said township and range and more particularly described as follows:

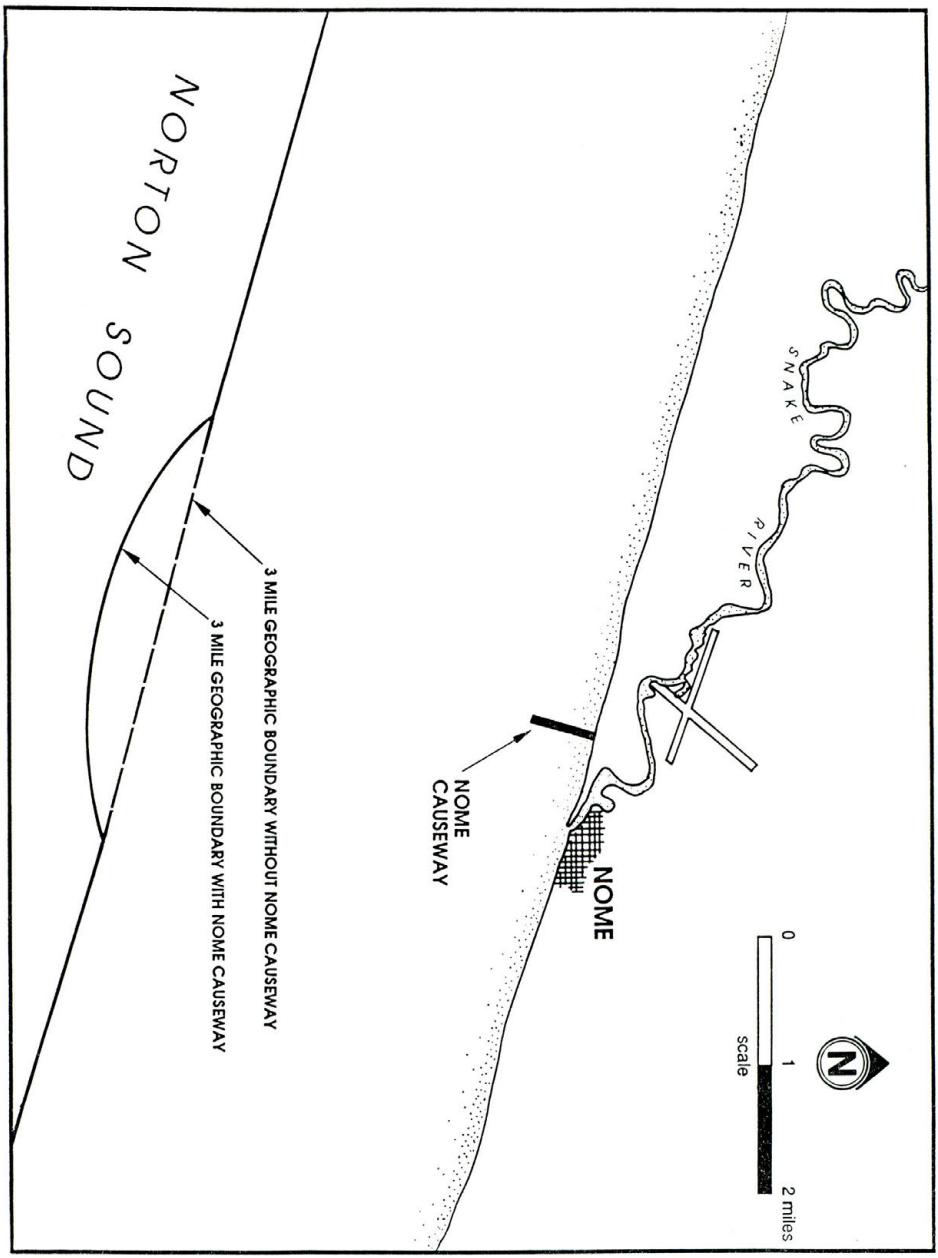
Beginning for reference at the unmonumented northeast corner of protracted Township 12 South, Range 34 West, thence South 25°26′40″ West 4863.394 meters to the true point of beginning for this description, thence 2601.530 meters along a curve concave to the north with a radius of 5556 meters, and a radius point at U.T.M. coordinates North 7,151,924.352 East 478,970.694, thence 3254.734 meters along a curve concave to the north with a radius of 5556 meters, and a radius point at North 7,151,927.511 East 478,955.925, thence South 76°10′59″ East 90.108 meters, thence South 75°11′42″ East 540.049 meters, thence South 73°56′35″ East 330.015 meters to a curve, thence 347.774 meters along said curve being concave to the north with a radius of 5556 meters, and a radius point at U.T.M. coordinates North 7,153,125.790 East 477,452.600, thence South 75°44′11″ East 347.717 meters, thence South 77°31′46″ East 770.826 meters to a curve, thence 2.936 meters along said curve being concave to the north with a radius of 5556 meters, and a radius point at U.T.M. coordinates North 7,152,959.340 East 478,205.240, thence South 77°33′34″ East 525.560 meters, thence South 75°32′35″ East 157.259 meters to a curve, thence 1920.311 meters along said curve being concave to

the north with a radius of 5556 meters, and a radius point at U.T.M. coordinates North 7,152,345.360 East 480,169.310, thence 112.647 meters along a curve concave to the north with a radius of 5556 meters, and a radius point at U.T.M. coordinates North 7,152,338.830 East 480,221.320, thence South 71°03′10″ East 69.696 meters, thence South 70°30′29″ East 445.587 meters to a curve, thence 69.950 meters along said curve being concave to the north with a radius of 5556 meters, and a radius point at U.T.M. coordinates North 7,151,882.300 East 481,954.850, thence South 71°09′28″ East 230.294 meters to the true point of beginning.

This tract contains 2,953,085.62 square meters (approximately 730 acres) more or less.

Exhibit A
Page 1 of 1
("Port of Nome")

APPENDIX O



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