

1 FEDERAL SUBSISTENCE BOARD  
2  
3 PUBLIC REGULATORY MEETING  
4

5  
6 VOLUME IV  
7

8 EGAN CENTER  
9 ANCHORAGE, ALASKA

10  
11 January 20, 2012  
12 9:00 o'clock a.m.  
13

14 MEMBERS PRESENT:

15  
16 Tim Towarak, Chairman  
17 Bud Cribley, Bureau of Land Management  
18 Geoff Haskett, U.S. Fish and Wildlife Service  
19 Deb Cooper, National Park Service  
20 Beth Pendleton, U.S. Forest Service  
21 Gene Virden, Bureau of Indian Affairs

22  
23  
24

25 Bertrand Adams - Southeast RAC  
26 Rosemary Ahtuanguaruak - North Slope RAC  
27 Ralph Lohse - Southcentral RAC  
28 Richard Wilson - Bristol Bay RAC

29  
30

31 Keith Goltz, Solicitor's Office  
32 Ken Lord, Solicitor's Office

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P R O C E E D I N G S

(Anchorage, Alaska - 1/20/2012)

(On record)

CHAIRMAN TOWARAK: We are going to start our day with information sharing.

Pete.

MR. PROBASCO: Thank you, Mr. Chair and good morning to everybody and I believe this will be our last day of our Board meeting.

What we have on our plate remaining is we will have testimony on non-agenda items and then we'll go into the consensus agenda and we do have one individual that just wants to speak to the agenda and we'll allow that person to speak at that time. Then we'll go into rural/non-rural determination and there are some public that want to speak before we discuss that. So I would suggest we'd give that opportunity as well. And then under other business we have five items that the Board will be discussing. We'll be looking at finalizing our agenda for our March meeting which deals with ex-territorial jurisdiction. We will discuss a potential workshop retreat and we'll look at a date for our May meeting and then I'll give you a quick update, Jennifer and I will just do a real quick update on the MOU.

So that's all I have, Board members.

CHAIRMAN TOWARAK: Anything from other Board members.

(No comments)

CHAIRMAN TOWARAK: Not hearing any, then we will go onto public comment period on non-agenda items.

MR. PROBASCO: Mr. Chair, I have no one signed up, but if anyone wants to testify, please go out and fill out a white card, but I have no one at this time for non-agenda items.

CHAIRMAN TOWARAK: Go ahead, Mr. Wilson.

MR. WILSON: Mr. Chair, information

1 sharing still, can -- is it possible, Mr. Chair?

2

3 CHAIRMAN TOWARAK: Sure.

4

5 MR. WILSON: Just wanted to finish out  
6 the morning here, I've got a family emergency I got to  
7 deal with here soon, but I wanted to just give you an  
8 overview. This is my first sitting on this -- on this  
9 Council here at this Board and I appreciate the  
10 opportunity here.

11

12 What I wanted to say was as a RAC member  
13 out there in the bay we're trying to deal with issues  
14 that best suit our people. And I'm finding that when  
15 we're sitting there with the information in front of us  
16 a lot of times our data is old. Our surveys, our  
17 information from -- both from the State side of things  
18 and the Fed side of things are like two and three years  
19 old at times. And it's very difficult to make real  
20 prudent decisions on stocks and different things, you  
21 know, and it's been very troublesome for us out there.  
22 With this it's very hard to make good decisions. So I  
23 just wanted to just let the Board and the Chairs and  
24 Staff and people know that it's very hard to make great  
25 decisions for our people and I would just appreciate that  
26 as a -- you know, it's a big concern of ours and  
27 hopefully in the future we can have better information  
28 put before us so we can make good decisions.

29

30 Thank you.

31

32 CHAIRMAN TOWARAK: Thank you. I think  
33 the message has gotten across.

34

35 Any other -- Mr. Adams.

36

37 MR. ADAMS: Thank you, Mr. Chairman. I'm  
38 just wondering how long do you anticipate this meeting to  
39 last today?

40

41 CHAIRMAN TOWARAK: We've got a Southeast  
42 issue.....

43

44 MR. ADAMS: I know.

45

46 CHAIRMAN TOWARAK: .....so I -- your  
47 guess is as good as mine, but I would hope that we would  
48 be done before 3:00 o'clock.

49

50 MR. ADAMS: Okay. So I just might as

1 well stay here because my airplane leave about that time.  
2 That's okay. My reservation is booked for tomorrow and  
3 the way the planes are filling up I might have to be on  
4 standby anyhow. So -- but that's okay.

5  
6 Mr. Chairman, thank you.

7  
8 CHAIRMAN TOWARAK: Okay. I think we'll  
9 get a better feeling for what it's going to be by noon  
10 today.

11  
12 Anything else further.

13  
14 (No comments)

15  
16 CHAIRMAN TOWARAK: Then we will continue  
17 on to the public comments on non-agenda items.

18  
19 (No comments)

20  
21 CHAIRMAN TOWARAK: And I don't see anyone  
22 here or we don't have any requests for public testimony  
23 at this point.

24  
25 Our first item then is to -- public  
26 comment period on consensus agenda items.

27  
28 MR. PROBASCO: Thank you, Mr. Chair. And  
29 before I call up Mr. Sam Thomas just let me get everybody  
30 up to speed, where we're at as far as consensus items.  
31 You'll find that at the front of your book on Page 5 and  
32 6 and there's numerous proposals that are listed that are  
33 on the consensus agenda. In addition the Board at the  
34 start of the meeting added Proposal 12-22B, 12-49 and 12-  
35 69. The Board -- if we hear no requests from Board  
36 members, Council or public to remove any of these items,  
37 then the Board will act on them in one block, to accept  
38 the consensus agenda. And consensus simply means that  
39 the Advisory Councils, the InterAgency Staff Committee  
40 and the State were in agreement on the proposals and are  
41 recommending consensus.

42  
43 So with that, Mr. Chair, may I call our  
44 one testifier?

45  
46 CHAIRMAN TOWARAK: Sure.

47  
48 MR. PROBASCO: Mr. Sam Thomas.

49  
50 MR. THOMAS: Good morning, Mr. Chairman,

1 members of the Board. I was wondering if I could go  
2 ahead and just run through all my items with my testimony  
3 versus having to fill out a piece of paper for each of  
4 the items since I do have the floor and it kind of runs  
5 into the rural/non-rural issue.

6  
7                   And what I was speaking on this morning,  
8 Mr. Chairman, members of the Board, was Proposal WP12-08  
9 in regards to the -- I just put that number on there so  
10 I could get the floor, but I did have a little -- a  
11 couple comments in relationship to that proposal is that,  
12 you know, the previous program did work or didn't work  
13 and a couple different reasons why it didn't work is  
14 because when the Forest Service had the hunt on POW, the  
15 documents went from POW to Petersburg and somehow there  
16 was a disconnect on who was supposed to be the compiler  
17 of the information and disseminate the information on it.  
18 I've had a couple incidences, a couple different seasons  
19 where I got four or five requests for my information for  
20 being the hunter and in actuality I've already sent it to  
21 them and so there was no one guarding the box or  
22 compiling the information on the other end. And I hope  
23 this doesn't happen when the State goes through their  
24 process otherwise it's not going to be very statistical.  
25 And within the proposal it identifies the possibility of  
26 going from five deer to four deer. We may have a problem  
27 with that. The reason why there's the disconnect is  
28 because no one's keeping accurate data. And so when you  
29 go to get accurate data on POW as hunters we are the  
30 targeted people by law enforcement versus the -- guarding  
31 the ship that leaves on and off the island. We have a  
32 lot of non-rural users come to POW to hunt and so the  
33 State people that are in management can emphasize that  
34 back to enforcement that, you know, we are just -- the  
35 rural users are less than 1 percent of the actual people  
36 taking the resource so we are the ones that are targeted  
37 and they should be more targeting the non-rural users.

38  
39                   I would like to go on record now that I  
40 do have the floor to -- the Craig Tribal Association does  
41 support the proposal for the rural status of Saxman so  
42 therefore we hope that when you guys go into your  
43 deliberations on that that you guys overturn your  
44 decision.

45  
46                   And just a few comments on the customary  
47 and traditional stuff that I observed yesterday. I'm  
48 going to use the Forest Service as a good example. On  
49 Prince of Wales Island, the four tribes on Prince of  
50 Wales, communicate, coordinate and collaborate very well

1 with the Forest Service and when we want to do a totem  
2 from -- obtain a totem log from the National Forest, we  
3 put in a proposal, identify it to one of the rangers on  
4 Prince of Wales, they put it up the food chain and they  
5 have this list. And if other tribes in Southeast Alaska  
6 want to acquire one of those totems for their use they  
7 get ahold of the Forest Service and go through the same  
8 thing, but the Forest Service doesn't grant it until they  
9 come back to the tribe on Prince of Wales Island and say  
10 do you mind gifting that totem to another tribe within  
11 Southeast Alaska that needs it. And so this process in  
12 customary is true to the effect of -- I forget the  
13 gentleman's name from Kodiak that alluded to that  
14 yesterday in that deliberation. But that's a good way to  
15 go about customary and traditional uses.

16  
17 An observation of day one on WP12-01,  
18 although the gentleman did do a good job in sharing on  
19 that, there was a little bit of -- I thought Robert's  
20 Rules of Etiquette could have probably been achieved  
21 sooner than giving the guy the floor without going  
22 through that because I felt the motions a couple of times  
23 should have been thrown out of order in relationship to  
24 that proposal.

25  
26 Those are my observations and I -- my  
27 main emphasis was to get into the rural/non-rural issue.

28  
29 Thank you.

30  
31 CHAIRMAN TOWARAK: Thank you. Are there  
32 any questions of Mr. Thomas.

33  
34 (No comments)

35  
36 CHAIRMAN TOWARAK: Thank you for your  
37 testimony.

38  
39 Pete.

40  
41 MR. PROBASCO: Mr. Chair, that moves us  
42 to the consensus agenda. And at this time it would  
43 probably be good to ask the Councils and then the State  
44 if there's any comments on that and then we could move to  
45 Board action.

46  
47 CHAIRMAN TOWARAK: Okay. The floor is  
48 open for any comments from any of the Council Chairs.

49  
50 MR. LOHSE: No, objection to anything

1 from Southcentral.

2

3 MR. ADAMS: Could I confer with my  
4 coordinator?

5

6 CHAIRMAN TOWARAK: While he's doing that,  
7 procedurally are we going to have one motion that -- a  
8 sweeping that takes care of all of the.....

9

10 MR. PROBASCO: That's correct, Mr. Chair.

11

12 CHAIRMAN TOWARAK: Okay. I had a  
13 question because some of them are going to be opposed,  
14 but some of them we support. And.....

15

16 MR. PROBASCO: Mr. Chair, the motion  
17 would be accept the consensus agenda, not specific  
18 proposals.

19

20 CHAIRMAN TOWARAK: Okay. Go ahead.

21

22 MR. ADAMS: I just conferred with my  
23 coordinator and we're fine with it.

24

25 Thank you.

26

27 MS. AHTUANGARUAK: North Slope is also  
28 fine.

29

30 CHAIRMAN TOWARAK: Okay. From the State.

31

32 MS. YUHAS: I don't know if this is the  
33 appropriate time, Mr. Chairman, but I just want to say  
34 that I think the number of items that reached the consent  
35 agenda speak well to our working relationships between  
36 the agencies, the Department and the RACs. You know, we  
37 went through a full public process, several internal  
38 Staff Committee meetings to be able to place these items  
39 here and reach agreement.

40

41 CHAIRMAN TOWARAK: Thank you. Maybe the  
42 next one will be a constitutional amendment.

43

44 (Laughter)

45

46 CHAIRMAN TOWARAK: Any other comments  
47 from anyone.

48

49 (No comments)

50

1 CHAIRMAN TOWARAK: Thank you. Then the  
2 floor is open now for action.  
3  
4 MS. PENDLETON: I'd like to -- Mr.  
5 Chairman, like to make a motion to -- that we move to  
6 adopt the consensus proposal with the recommendations as  
7 they're shown on Pages 5 and 6 of our Board book.  
8  
9 MR. HASKETT: I'll second that.  
10  
11 CHAIRMAN TOWARAK: You heard the motion  
12 and the second, any discussion.  
13  
14 Pete.  
15  
16 MR. PROBASCO: Just to keep the record  
17 clear, and that would also include Proposals 12-22B, 12-  
18 49, and 12-69 which were added right to the meeting.  
19  
20 Mr. Chair.  
21  
22 CHAIRMAN TOWARAK: Any further  
23 discussion.  
24  
25 MS. PENDLETON: Call for the question.  
26  
27 CHAIRMAN TOWARAK: The question's been  
28 called for. Roll call, please.  
29  
30 MR. PROBASCO: Thank you, Mr. Chair.  
31 Final action on the consensus agenda.  
32  
33 Mr. Virden.  
34  
35 MR. VIRDEN: Yes.  
36  
37 MR. PROBASCO: Mr. Haskett.  
38  
39 MR. HASKETT: Yes.  
40  
41 MR. PROBASCO: Mr. Towarak.  
42  
43 CHAIRMAN TOWARAK: Yes.  
44  
45 MR. PROBASCO: Ms. Cooper.  
46  
47 MS. COOPER: Yes.  
48  
49 MR. PROBASCO: Ms. Pendleton.  
50



1 MS. PENDLETON: Yes.  
2  
3 MR. PROBASCO: And, Mr. Cribley.  
4  
5 MR. CRIBLEY: Yes.  
6  
7 MR. PROBASCO: Motion carries, Mr. Chair.  
8 And that completes our consensus agenda on all proposals.  
9  
10 CHAIRMAN TOWARAK: Thank you very much.  
11 And I concur with the State's comments about reaching a  
12 happy medium amongst everyone, I appreciate that.  
13  
14 We will now move to the rural/non-rural  
15 determination.  
16  
17 Pete.  
18  
19 MR. PROBASCO: Yes, Mr. Chair. And if  
20 you look at our agenda we need to reverse A and B so  
21 we'll be taking up B first which is procedures for  
22 decennial rural/non-rural determinations. And before we  
23 get into that I think we should take public testimony, I  
24 do have one person signed up. If that's okay with you,  
25 Mr. Chair?  
26  
27 CHAIRMAN TOWARAK: Sure.  
28  
29 MR. PROBASCO: Okay. Mr. Lee Wallace,  
30 please. And if anybody else wants to comment on the  
31 rural issue, please go fill out a white card.  
32  
33 Thank you.  
34  
35 MR. WALLACE: Thank you. Lee Wallace,  
36 Organized Village of Saxman president. Thank you, Chair.  
37 Thank you, Board. Thank you RAC Chair. And the State as  
38 you're also at this table. One thing I do really  
39 appreciate with the review that started back in 2009 was  
40 the presence of the RAC Chairs, being able to participate  
41 in the whole process. And like was mentioned yesterday  
42 with the time frame of meeting in January, you know, the  
43 State is pretty much under this big, high pressure and  
44 there's, you know, low temperatures in your villages.  
45 And Saxman's really no different, you know, when I left  
46 Monday morning it was clear skies all the way up. So and  
47 keeping in touch with our tribal office there's pipes  
48 freezing and they bring village of -- like Katlaw, there  
49 was a fire and these low temperatures running a fire hose  
50 there was -- you know, the ground just turned to ice

1 which made it even more hazardous for the fire department  
2 to, you know, abate the fire. And that's really nothing  
3 compared to villages, you know, that are 40 below. And  
4 I do appreciate all the people that came in to testify  
5 for this January meeting.

6  
7                   You know, I've been president since 2003  
8 in a Tlingit village and I say that with humbleness  
9 because I'm known as a Haida, my family originally comes  
10 from Hydaburg. And so I'm humbled that they've been  
11 electing me to lead them since 2003. And since that time  
12 this rural status issue of Saxman's been a thorn in my  
13 side. All along we believe it was the wrong decision and  
14 I say that going back to the 2009 announcement of --  
15 announcement that subsistence is broken from the  
16 Secretary of Interior. So he announced it then, but it  
17 was broken prior to that, it was broken and not working  
18 back when the old FSB Board that was in session back when  
19 they made that determination. And it was still broken  
20 when Saxman filed the RFR, it was really not taken into  
21 consideration, it was denied. And I say that -- again  
22 that it was broken at that time also. And it is under  
23 review and I may add that probably most tribes, if not  
24 all tribes, would say the review process is taking too  
25 long, it's been too slow of a process to fix.

26  
27                   You know, common sense, you look at that  
28 whole issue of its -- if a lot of the tribes are saying  
29 it's been too slow, if we were in a situation to fix  
30 something that was vital you would probably replace that  
31 individual or individuals that are in charge of the fix  
32 because in our viewpoint with the tribes it's -- there's  
33 some obvious administrative things that can be fixed and  
34 should have been fixed. The first day, you know, there  
35 was a question of -- all along we thought that there  
36 would be two new rural seats sitting at this table and  
37 what happened and it was revealed that yes, it was  
38 lawyers, the lawyers were where that it slowed up the  
39 process. If I heard right it was D.C. And this is  
40 something that we've stated all along in this whole  
41 process of Saxman's rural status is individuals and  
42 agencies make decisions from a far off place. In this  
43 case it's the individuals that are mostly serving up here  
44 in the Anchorage area.

45  
46                   Some time ago when I was at FSB meeting  
47 I invited a meeting in Saxman and that was granted and  
48 there was some that came and I thank Mr. Haskett for his  
49 visit. And when he had to visit to our little humble  
50 village of Saxman of 400 and some people we took a quick

1 tour around the village, just show him just, you know,  
2 what is a village. And all that was revealed in the  
3 testimony prior and it was revealed in the RFR that we  
4 submitted. And what I believe happened was that the  
5 process of the decennial review periods. I remember the  
6 first review period that we undertook was -- it was  
7 shortly after I moved to Saxman and there was attempt  
8 that first time to make us non-rural. There was great  
9 testimony that they had in Ketchikan, Saxman came out in  
10 force to testify. And after that meeting in Ketchikan  
11 the decision was to keep us rural. Then the next  
12 decennial period came forward and what happened there was  
13 individuals or agencies or Staff or whoever decided well,  
14 let's add all this criteria to look at what makes a  
15 community rural. And I fully support some of the RFR  
16 findings that -- and Sealaska's testimony. You know,  
17 some of those criteria should be thrown out, I think  
18 there should have been just kind of markers, but I think  
19 really in common sense if you just kind of visit a  
20 village, Saxman's no different than any other village in  
21 Saxman [sic], the only difference is that we're close to  
22 Ketchikan. But when you really look at Saxman itself,  
23 you know, it's easy to determine that we're a rural  
24 village. I went to the State of Alaska site and you  
25 could see in there when they were looking at the  
26 different communities the updates on it was from the 2010  
27 census, we're at 411 individuals, well under the  
28 threshold. And that should be one of the common sense  
29 things you look at, is just like at a threshold. And  
30 then also stating in that same thing the State is saying  
31 Saxman is predominantly a Tlingit village and they're  
32 leading a subsistence lifestyle. And that's a quote. So  
33 those are some of the common sense things that this Board  
34 and Staff should undertake when they look at decennial  
35 review period and they look at rural status. And then  
36 you really look at the trust responsibility and the law  
37 and the law is to assist and enhance our ability to lead  
38 our way of life, not to encumber it by putting all --  
39 dreaming up all these requirements to maybe take away a  
40 village's rural status.

41  
42 Now with the draft consultation protocol,  
43 I do thank the individuals that took the time to start  
44 the process, to bring up the draft, and it is a draft.  
45 One of the things I'd like to see with consultation is  
46 whenever an issue is brought up that would affect a  
47 community, a village, a tribe, those tribes should be in  
48 direct consultation. You know, I attended the July  
49 workshop here in Anchorage, right here in this same room  
50 here, I came here -- I went to that workshop expecting it

1 was just going to be a meeting, but it had to be a  
2 workshop and that's when we discussed the first mention  
3 of a stay. And since that July workshop I would question  
4 what transpired between July and now, what meetings  
5 occurred and again with meetings happening that would  
6 affect a village like Saxman, I would request that  
7 protocol would call for information sharing at that time,  
8 shortly after a meeting.

9  
10 So I'm here today and I'm expecting that  
11 a stay will happen. Although we advocated for a reversal  
12 was the first choice. And I made that advocacy all the  
13 way back to Washington, D.C. in the December trip to the  
14 White House Tribal Nations Conference. I had a  
15 conversation and a talk with Larry EchoHawk. I wrote --  
16 the Organized Village of Saxman wrote Secretary Vilsack  
17 and Secretary Salazar a letter back in October about our  
18 rural status and there it was in December and I told  
19 Larry hey, we haven't heard a return reply from our  
20 letters. And Larry told me that yeah, there's a process  
21 that happens and definitely it's a letter to a high  
22 official, a secretary of a cabinet, but here we are in  
23 January and we still haven't had a reply.

24  
25 And so there's some -- really some issues  
26 there because again, you know, the United States has a  
27 trust responsibility. And so we were bringing it up to  
28 a higher level than the FSB Board because again based on  
29 the 2009 announcement, subsistence system is broken, we  
30 believe it's still broken, it still needs a long way to  
31 go and it's been very slow.

32  
33 Back to visits to Saxman. I do invite  
34 again any Board member that hasn't been to Saxman, it's  
35 just a little bit south of Ketchikan, we're a unique  
36 community, we have our own municipal government, we have  
37 our Federally recognized tribe, the Organized Village of  
38 Saxman, and I invite you to a celebration in March, March  
39 29th. If you happen to be in the Ketchikan area I would  
40 invite you there to Saxman to a celebration of opening --  
41 grand opening of our new Saxman senior housing project.  
42 It's a -- the project was partnership of many different  
43 entities and governments and it was a \$5 million project  
44 and so we're going to be very proud of that new facility,  
45 it's going to assist our elders in a much better housing  
46 situation than they are right now. Right now the --  
47 senior housing looks like a barracks. This would be  
48 looking more enhancing and more -- anyway it'll be a  
49 better place for our seniors. So if you happen to be in  
50 the area, I truly invite you down to Saxman and I'll be

1 glad to show you around to our village and you can get a  
2 better sense of it.

3

4                   In closing, I'm getting close to wrapping  
5 up here, I just want to thank a lot of different  
6 individuals and entities that assisted Saxman throughout  
7 this time of its rural status issue. First of all  
8 there's Bert Adams and the Southeast RAC, they've been  
9 solidly behind us from the very beginning. I do thank  
10 Southeast RAC for their support. There's been many  
11 different villages and entities that have recently since  
12 July that we solicited support thinking that there may be  
13 a reversal or at least a stay. Hopefully those in the  
14 packet some of those letters or resolutions got to --  
15 through to the Board. On the FSB site you're able to  
16 review the big booklet for the meeting, for all the  
17 proposals, but you don't see anything on the rural  
18 status. And I think after you guys meet and make some  
19 kind of decisions that yeah, you should be able to share  
20 those, whatever outcomes there is so villages could kind  
21 of react to those and make comment to those. AFN, you  
22 heard for Al Kookesh from AFN, Sealaska Heritage,  
23 Sealaska, you heard from Rosita Worl on Tuesday morning,  
24 I thank them for their support. I thank the City of  
25 Saxman, I thank Cape Fox Corporation, the village  
26 corporation of Saxman for supporting us. And there's  
27 been others like Kasaan and Sitka that actually supported  
28 us monetarily for a defense fund. And after talking with  
29 Al and Rosita after they testified we did talk about a  
30 defense fund and I stated that well, we -- at this point  
31 we do not know what the Board is really looking at, we're  
32 hoping for a reversal, at the very least a stay. But in  
33 the event that it's a ruling that's against Saxman's  
34 rural status then we were discussing defense as far as  
35 legal fees. And unofficially they spoke to me and they  
36 said yeah, well, we'll be behind you. You guys make the  
37 first move and we'll assist you. And I know there's been  
38 past issues at AFN where corporations put into a  
39 subsistence defense fund. And we hope that we don't have  
40 to go to a legal issue, take it to the courts, but  
41 hopefully that will not occur and hopefully fairness and  
42 justice will prevail.

43

44                   And I'll just close with that. Thank  
45 you.

46

47                   CHAIRMAN TOWARAK: Thank you, Mr.  
48 Wallace. The floor is open to Mr. Haskett.

49

50                   MR. HASKETT: Well, good to see you

1 again, I appreciate your comments. And I actually  
2 understand your concerns, it is very frustrating dealing  
3 with the government, how long things take. I think it  
4 was two years ago when I was out your way and we get --  
5 got to spend a couple hours touring Saxman, that is a  
6 very long time. I want to make sure though, there was a  
7 list of complaints and then in the middle of that you  
8 talked about visit, my visit wasn't a complaint, right,  
9 that was a good thing?

10

(Laughter)

11

12  
13 MR. HASKETT: It's just -- I just wanted  
14 to make sure that was on the record. It was a very -- it  
15 was a good visit, it wasn't a bad thing.

16

17 And the other comment I wanted to make is  
18 -- I mean, it was very eye opening, I did -- lots of  
19 questions after getting a chance to tour and meet people  
20 and I very much enjoyed the -- being able to spend the  
21 time with you. And, I guess, I would ask let the process  
22 work its way through and, you know, there's a -- it's a  
23 different Board than it was three or four years ago, I'm  
24 not saying anything bad against past Boards, but there's  
25 lots of questions being asked and I think it's worth  
26 going through the process. So again we're glad you're  
27 here.

28

MR. WALLACE: Thank you, Geoff.

29

30  
31 CHAIRMAN TOWARAK: Any further comments.  
32 Mr. Adams.

33

34 MR. ADAMS: I suppose, you know, when  
35 everyone else has made their testimonies and everything  
36 then we would go through the process of going through it  
37 as a Board and RACs. So if that's, Mr. Chairman, I'll  
38 just save my comments for that time.

39

40 CHAIRMAN TOWARAK: There will be plenty  
41 of opportunity.....

42

MR. ADAMS: Okay.

43

44

45 CHAIRMAN TOWARAK: .....for the RACs to  
46 participate.

47

48 MR. ADAMS: Because I'm storing a lot of  
49 information right here that's probably going to come out.

50

1 Thank you.

2

3 (Laughter)

4

5 MR. WALLACE: Mr. Chair, if I could make  
6 one more comment.

7

8 MR. ADAMS: That's why I asked him how  
9 long he anticipated, you know, the meeting to last  
10 because I was going to take up the rest of it.

11

12 (Laughter)

13

14 CHAIRMAN TOWARAK: Go ahead, Mr. Wallace.

15

16 MR. WALLACE: Thank you, Mr. Chair. I've  
17 got another comment. Here we are on the eleventh agenda  
18 item of a long agenda, there was many proposals that the  
19 Board had to review and make rulings on. And I  
20 appreciate the time that you guys do take to go through  
21 this whole thing. I know you have your own jobs at your  
22 own agencies and it's really not like a tribal agenda,  
23 sometimes luckily we're -- they're not that thick. A lot  
24 of times they get deferred for another meeting if they  
25 are large. But here we are again, I'm mentioning the  
26 eleventh agenda, the eleventh hour and I'm at the same  
27 point I was years ago, not really knowing or very  
28 uncertain what the outcome's going to be today. I say  
29 that because again there was talk of the July meeting and  
30 when I went home to Saxman I was hoping yes, there's  
31 going to be a stay, but when I'm coming up here again  
32 months later I'm still uncertain. But -- and that's why  
33 I mentioned the activities that happened since July up  
34 here in Anchorage at your Board meetings. It would be  
35 great to have some information sharing so, you know, we  
36 could be kept abreast. And that's what this whole  
37 consultation issue's all about, let's have a dialogue,  
38 let's not just have the FSB meet about a village's issue,  
39 let that village be a partner and talk about the issue  
40 together. But here I am again at the eleventh hour  
41 waiting to hear what -- what's transpired.

42

43 Thank you.

44

45 CHAIRMAN TOWARAK: Thank you, Mr.  
46 Wallace. And I might point out that I think when we do  
47 the first part of our agenda the procedures for decennial  
48 rural and non-rural determination, some of the  
49 discussions I think will explain what we have gone  
50 through since July.

1 Any further comments from -- or  
2 questions.

3  
4 (No comments)

5  
6 CHAIRMAN TOWARAK: Thank you very much,  
7 Mr. Wallace, and.....

8  
9 MR. WALLACE: Thank you.

10  
11 CHAIRMAN TOWARAK: .....I'm sure that if  
12 there are questions regarding Saxman that we will  
13 probably ask you to come back to the table if need be.

14  
15 MR. PROBASCO: Mr. Chair, we have one  
16 more person. Ms. Carrie Sykes.

17  
18 MS. SYKES: Good morning. I appreciate  
19 the opportunity to provide comment again on Saxman. And  
20 I'm here to represent Tlingit-Haida Central Council. I  
21 did speak on Tuesday right after Rosita and Albert spoke  
22 about the Saxman issue, but I wanted to go ahead and  
23 provide some more support for this issue.

24  
25 And on Tuesday I mentioned that I have  
26 spoken about Saxman on many occasions at both the Federal  
27 Subsistence Board meetings, at the RAC meetings, to Larry  
28 EchoHawk and so this has been ongoing for quite some time  
29 and Central Council has been supporting their rural  
30 designation. I also informed that I grew up in Ketchikan  
31 and so I do understand that Saxman is a high subsistence  
32 area and I know these people and they've been calling me  
33 as -- you know, in my previous position I was the  
34 subsistence coordinator for Central Council so I've been  
35 very aware of this situation for a long time. I've  
36 stressed the importance of the subsistence -- of the  
37 traditional and customary harvest of subsistence products  
38 and that is our native economy, it is part of our food  
39 security and that it is very essential to our culture.  
40 I've always stated that I thought the decision about the  
41 Saxman urban designation was a very bad decision and that  
42 we urge the Federal Subsistence Board to reverse that  
43 decision or to provide the stay that Saxman has been  
44 requesting.

45  
46 Another point that I made is that the  
47 subsistence preference in ANILCA is not working, that the  
48 rural versus non-rural is not adequate. There are a lot  
49 of native people who live in the urban areas. A lot of  
50 us have to go to the urban areas for work, there's the



1 high cost of living in the villages and the high cost of  
2 energy, but we still, you know, enjoy subsistence as much  
3 as the people in the rural areas. And just because we  
4 have to go into the communities for our jobs, that  
5 shouldn't mean that we don't have that subsistence  
6 priority.

7  
8 I've also stated that it's created a  
9 break in our culture, that there's a lot of people in our  
10 urban areas that don't have the opportunity to put up  
11 subsistence foods and so they are not being taught. Our  
12 younger generations in these communities are not learning  
13 these traditional and cultural ways. And so I think it's  
14 something that we really need to think about and try to  
15 figure out how we can make better decisions about these  
16 rural priorities.

17  
18 I talked about how it's been since  
19 October, 2009 since Secretary Ken Salazar stated that  
20 subsistence is broken. And I've stated on numerous  
21 occasions that I hear from the Southeast tribes a lot,  
22 that they've frustrated with the process and that we need  
23 to do something to fix subsistence in Alaska.

24  
25 And again I was very excited about the  
26 two Federal Subsistence Board seats that were to be at  
27 this meeting and there was much disappointment again  
28 about that issue. The Native people need to have a seat  
29 at this table when there are major decisions that are  
30 being made about subsistence and how it'll affect our  
31 culture. We really do need to have that -- those people  
32 sitting at the table and I really urge you to work  
33 through those legalities in D.C. and get those seats at  
34 the table as soon as possible. I'm hopeful that they  
35 will be seated by the time you have your next meeting in  
36 Juneau.

37  
38 But, you know, Tim, I've heard you speak  
39 about fixing subsistence in Alaska and that that is what  
40 this Board is tasked to do. I want to emphasize that  
41 subsistence in Saxman was not broken, it was working  
42 before this issue of rural and non-rural became a part of  
43 this process. And, you know, their population is very  
44 small, they meet all the criteria, Rosita presented a  
45 great deal of information and Central Council supports  
46 the information that she presented too. And so I really  
47 urge you to reverse that decision or to provide a stay.

48  
49 Another point that I wanted to emphasize  
50 too is in support of what Lee said. You know, they've

1 been working through this process and I really think that  
2 there does need to be more information sharing. In the  
3 last couple days I've been asking for information about  
4 the rural and non-rural decision and in addition to that  
5 Bob Loescher who is the Subsistence Chair for A&B/A&S  
6 Grand Camp, we've been meeting with the Forest Service  
7 and we've been asking for information and we weren't able  
8 to get that information. It just seems to me like with  
9 all the tribal consultation discussions that are going on  
10 that there needs to be better information sharing. The  
11 Native people need to have a more equal playing field,  
12 they need to have information so that when they're  
13 sitting at this table they can come prepared and they  
14 will know how to deal with the situation better when  
15 decisions are being made about their traditional culture.

16  
17 With that I really do urge you to reverse  
18 or stay this decision. And I was very -- I was happy to  
19 hear you say, Tim, that the Board is considering a  
20 retreat to go over the rural/non-rural designations. And  
21 I really urge you to look at those processes and see how  
22 you can make it work better.

23  
24 Thank you.

25  
26 CHAIRMAN TOWARAK: Thank you, Ms. Sykes.  
27 Albert Kookesh is a personal friend of mine and he told  
28 me that Southeast Alaska quit using the term retreat.

29  
30 (Laughter)

31  
32 CHAIRMAN TOWARAK: So we're looking for  
33 another designation. But we are -- but we will be doing  
34 that and reviewing our procedures.

35  
36 MS. SYKES: Thank you.

37  
38 CHAIRMAN TOWARAK: And any questions of  
39 the Board.

40  
41 (No comments)

42  
43 CHAIRMAN TOWARAK: Thank you, very much  
44 for your testimony. Oh, I'm sorry.

45  
46 Mr. Adams.

47  
48 MR. ADAMS: Anyhow I just want to express  
49 my appreciation to Carrie for her diligent efforts now  
50 not only this particular issue, but has been helping the

1 tribes in Southeast Alaska become more aware of  
2 subsistence issues and becoming more and more involved.  
3 I mean, we're just beginning, but this lady here has been  
4 the backbone of that effort. And so I just wanted to  
5 thank her very much for being there.

6  
7 MS. SYKES: Thank you, Bert. And that  
8 does remind me of one other issue that I did bring up in  
9 my testimony on Tuesday, was the need for training for  
10 tribes so that we could better interact with this  
11 process. In my last few years of working with the  
12 Federal Subsistence Management Program I have found that  
13 most -- well, not most, a lot of tribal people do not  
14 understand the processes, the State and the Federal, and  
15 it's very difficult when you try to explain to them and  
16 I think that we really do need to have more training. I  
17 was very pleased to see that Sitka Tribe -- the Sitka  
18 Tribe of Alaska brought some young people over to come  
19 and observe those processes because I think that we do  
20 need to get our younger people more involved with the  
21 process so they know how to interact when things -- when  
22 decisions are being made that will affect their future.

23  
24 CHAIRMAN TOWARAK: Thank you.

25  
26 MR. ADAMS: Again thank you, Mr.  
27 Chairman. I remember when Carrie first started coming to  
28 our RAC meetings and I was so happy to be able to know  
29 that she was, you know with Central Council because they  
30 represent, what is it, 18, 19 tribes and so.....

31  
32 MS. SYKES: Over 27,000 tribal members.

33  
34 MR. ADAMS: Okay. Put it in numbers, but  
35 I was going by tribal numbers, but that's good. Because  
36 it had always been a concern of mine about how -- how can  
37 we get tribal governments more involved in the  
38 subsistence programs. And as I mentioned earlier, you  
39 know, in the week their budgets are very small for that.  
40 And just getting the word out, you know, through your  
41 effort, Carrie, has been a great help I believe. And  
42 then to have young people like the youth from Sitka, you  
43 know, I had an opportunity to talk to them a little bit  
44 and, you know, I think a seed has been planted and it's  
45 going to -- it's going to take years and years before  
46 they get involved in this process because it does take a  
47 lot of training, you know, for people who sit on the RACs  
48 and as well as, you know, sitting as Chairs. And so I  
49 think, you know, that the tribal consultation idea is  
50 really good, but we need to really work harder at making

1 it work for us.  
2 So again thank you, Carrie, for your  
3 efforts.  
4  
5 CHAIRMAN TOWARAK: Thank you, Mr. Adams.  
6 Any further questions.  
7  
8 (No comments)  
9  
10 CHAIRMAN TOWARAK: Thank you for your  
11 testimony.  
12  
13 MS. SYKES: Thank you.  
14  
15 CHAIRMAN TOWARAK: Pete.  
16  
17 MR. PROBASCO: Mr. Chair, that's just --  
18 all the people I have for signing up, but you may want to  
19 check the phone line just in case someone's dialed in  
20 since last time we checked.  
21  
22 We have nobody on line.  
23  
24 UNIDENTIFIED VOICE: Just Wayne.  
25  
26 MR. PROBASCO: Just Wayne Owen from --  
27 just Wayne Owen.  
28  
29 (Laughter)  
30  
31 MR. PROBASCO: No, from Forest Service,  
32 Wayne Owen.  
33  
34 So, Mr. Chair, that concludes public  
35 testimony.  
36  
37 CHAIRMAN TOWARAK: Go ahead.  
38  
39 MS. K'EIT: I know that OSM Staff are  
40 working on getting me in the system for public testimony  
41 and I kind of -- hadn't really gathered my thoughts yet.  
42 I don't know if you need to wait for that paperwork or if  
43 want to just trust me on that.  
44  
45 (Laughter)  
46  
47 MS. K'EIT: Thank you.  
48  
49 CHAIRMAN TOWARAK: We can wait if need  
50 be, if that's what you're requesting.

1 MS. K'EIT: I'd like to provide public  
2 testimony.....

3  
4 CHAIRMAN TOWARAK: Okay.

5  
6 MS. K'EIT: .....and I filled out the  
7 form, but they're doing their job out at the table.

8  
9 CHAIRMAN TOWARAK: Okay. We can bypass  
10 that. We'll have you go ahead.

11  
12 MS. K'EIT: Okay. Thank you, Mr. Chair.  
13 For the record my name is Kristin K'eit, and I know the  
14 Board members and RAC Chairs recognize me as I've  
15 participated in this process in my professional side  
16 often supporting our regional director and Gene Virden  
17 and before that Niles Cesar. And today I'm here just  
18 compelled to provide testimony as a public citizen and  
19 provide some of my experience with subsistence use in the  
20 Ketchikan and the Saxman area.

21  
22 I grew up in Anchorage, you know, often  
23 in that category urban Indian, urban Alaska Native. I'm  
24 Tlingit from Southeast Alaska. On my mother's side her  
25 father was Deisheetaan from Angoon, from the End of the  
26 Trail House, Deishu Hit, and on my mother's mother's side  
27 I'm Inupiat Eskimo, her mother was from Shishmaref,  
28 Alaska, a member of the Bar family. And what I'd like to  
29 provide is that growing up in Anchorage we didn't have a  
30 lot of access to traditional foods. My mom did the best  
31 she could trying to get things from around Anchorage and  
32 Southcentral area and then on occasion family would bring  
33 things up when they came from Southeast like dried  
34 eulachons, just so tasty and delicious and smoked salmon,  
35 jarred smoked salmon and even jarred fresh salmon. And  
36 it wasn't something we could do, you know, seasonally to  
37 -- for my mom or my dad to leave a job and go to  
38 Southeast and fish with my grandpa or put up smoked fish  
39 for the weeks of -- weeks at a time that it takes during  
40 the summer. My dad did a lot of moose hunting and so  
41 that was a big staple of our diet. As a -- even being in  
42 Anchorage we weren't a wealthy family, we weren't even  
43 what people would call lower middle class these days. So  
44 we did the best we could. But when I was a young adult  
45 and had an opportunity to go to Ketchikan and Ms. Carrie  
46 Sykes that spoke before you, she's related to my family  
47 and her grandmother raised her and I think I was about 16  
48 or 17 and we went to visit Grandma Vesta, Vesta Scott.  
49 And that was the first time I'd ever had fish egg soup.  
50 And it's just so basic, so simple, so delicious, so

1 nourishing, just a basic boiled fish with potatoes if you  
2 have them, seaweed is essential, essential ingredient to  
3 that and fish eggs. And my brother knowing that I didn't  
4 really get to eat a lot of Native foods he wasn't quite  
5 sure if I would like it and I can tell you it was like  
6 manna from heaven, you know, going back to the Old  
7 Testament and, you know, the people got this stuff, what  
8 is it, manna, what is it. And it was just fabulous,  
9 delicious. And Carrie being raised by her grandmother  
10 she didn't talk about this in her testimony today, but  
11 her grandmother taught her all those ways of living among  
12 our traditional resources, of collecting and harvesting  
13 our food resources, the power in that, the healing in it,  
14 the knowledge that our family, grandparents, great-  
15 grandparents, generations back have experienced and  
16 learned. And just like on my father's side, you know,  
17 people learned to farm and you learn to watch the weather  
18 and you learned the signs of the seasons changing, our  
19 people had to do that too.

20

21                                   And on my professional side and the  
22 scientist side of me, I know this isn't always easy to  
23 take this information, the Alaska Native cultural way of  
24 life, the traditional way of life, and fit that in the  
25 box of a Federal regulatory system, but it's really  
26 important that that be at the forefront and be at the  
27 same level, at the same measuring bar as what we have to  
28 use for our Federal regulatory system and trying to fit  
29 Alaska Native people into these definitions of rural and  
30 non-rural. And I look forward to what the results of the  
31 retreat will be, that there's a lot of smart people in  
32 this room, smart in traditional Alaska Native ways as  
33 well as Western European collegiate, philosophical,  
34 scientific ways. So I really -- I know that there's the  
35 potential to fix this.

36

37                                   And I'm not -- I think I'm done. That's  
38 all I have on my heart.

39

40                                   Thank you. I'll wait for any questions.

41

42                                   CHAIRMAN TOWARAK: Thank you, Ms. K'eit.  
43 Any questions from the Board or the RACs.

44

45                                   (No comments)

46

47                                   CHAIRMAN TOWARAK: Thank you for your  
48 comments.

49

50                                   MS. K'EIT: Thank you.

1 CHAIRMAN TOWARAK: I assume that is the  
2 end of the public testimony in regards to the Saxman or  
3 rural/non-rural determination.

4  
5 (No comments)

6  
7 CHAIRMAN TOWARAK: If not --if it is --  
8 if there aren't any more then we will continue on with  
9 our Item B as listed under rural/non-rural determination,  
10 procedures for decennial -- the procedures for decennial  
11 rural/non-rural determination. And at this point if  
12 there are any comments from the RAC Seats or from the  
13 State, I'd like to maybe put your statements on the  
14 record before we get into it.

15  
16 MS. AHTUANGARUAK: Mr. Chair, when I  
17 first started in the Federal Subsistence Board this issue  
18 came up and it was one of my first mistakes. I took the  
19 document as being discussed and presented in the  
20 communities and that they were in concurrence with this  
21 process and I almost made the greatest mistake of  
22 accepting the determination without having that process.  
23 Years since then, watching the changes that are happening  
24 in the North Slope and having to make considerations to  
25 change the Prudhoe Bay area from a rural determination to  
26 an industrial area, I'm facing changes to lands and  
27 waters that my family has subsisted upon for the last 24  
28 years, 25 years now. I've moved to Barrow now, but I  
29 still have two children in Nuiqsut. And having efforts  
30 for our State to build a road into Nuiqsut and what is  
31 that going to mean for our people. Watching the progress  
32 of this meeting and suffering through the changes and  
33 knowing that there are generations and generations of  
34 tribal people who have had their daily lives changed, my  
35 mom's Native allotment is in Unit 20, we're not able to  
36 hunt there, we can't get our caribou in that area. We're  
37 -- I'm very concerned that the progressive process of  
38 increased concentration of people into areas throughout  
39 the State has created criterias of game management that  
40 are leading to precedent setting issues that are going to  
41 affect us. I pray to god that we have freezing of our  
42 lands and waters in the Arctic so that the people don't  
43 desire to come up there, so that we can still have a hope  
44 of having our traditional and cultural uses. The efforts  
45 to drill in our ocean is giving us nightmares with the  
46 reality in the last few years we've had many spills in  
47 multiple oceans and we're still not learning from this  
48 process.

49  
50 I've toiled and turned over these last

1 few days, my stomach has been burning with pain with the  
2 decisions that have progressively happened as we watched  
3 through each of these regions address issues that are  
4 affecting traditional food sources. The value of our  
5 traditional and cultural beings are being disseminated  
6 through a paper process and a decision making process  
7 that is taking other factors and placing dollar values  
8 and creating criterias that are affecting the decisions  
9 and losing sight of the people who have raised our  
10 families and kept us healthy with traditional foods and  
11 a lifestyle that has carried us through generations and  
12 generations to the time before us. And now there are so  
13 many things that are causing so much change throughout  
14 the world that we've got international efforts to come in  
15 and to harvest our foods from our lands and waters.  
16 We've got national efforts of people coming in and  
17 harvesting foods from our lands and waters. There's  
18 points at this table when I feel like we have to think  
19 about becoming sports hunters to be able to have a hope  
20 of having our traditional foods. And it's devastating  
21 for me to sit here and continue to be involved in this  
22 process wondering how is this going to filter down for  
23 the 500 people in Nuiqsut that have a road coming into  
24 their village and it's going to change them even further  
25 when we've already had tremendous amounts of change to  
26 the lands and waters around the community affecting  
27 multiple species, affecting multiple resources and taking  
28 foods away from our village. And this is echoing  
29 throughout the State in many rural areas. I'm torn about  
30 how to progress with this process, the weight of this  
31 concern is carrying many generations of communities upon  
32 our shoulders in this process, it's not something that  
33 can be taken lightly and it's something that has already  
34 changed the health of many Native people. We're watching  
35 the changes that are coming with these health impact  
36 assessments that are occurring on some of these  
37 assessments, but yet the criteria to adequately assess  
38 this were never incorporated into the data sets so  
39 they're being assessed as well as the maintaining of this  
40 information to help us effectively gather information to  
41 guide this. I worked as a health aid for 14 years. When  
42 I was working for a period of years I identified people  
43 who had diabetes and there were up to 60 people. I took  
44 a break for less than two years and when I came back to  
45 work at the clinic all of a sudden they said there were  
46 20 people who had diabetes. It wasn't that 40 had died,  
47 it was that they were no longer maintained to be kept in  
48 the data base to be identified to be assessed in this  
49 process. And this is what we're going to be assessing  
50 these health impacts assessments with the EISes that are



1 affecting our lands and waters. But the reality it comes  
2 down to our traditional and cultural uses, the health of  
3 our people. Our lands and waters have kept us healthy,  
4 safe and in our homes and in our communities. And we  
5 have gone through continuous efforts to change and expand  
6 and make criterias and decisions that have fragmented and  
7 changed our maps so that our people can no longer go out  
8 into areas and do as their great-grandfather and their  
9 grandfathers and their mothers and bringing the same  
10 information into our children to continue to be who and  
11 what we are. Some of the ways that we process our  
12 traditional foods are being lost because we don't have  
13 access to these foods. The way that we teach our  
14 children, the grandparents our kids that first bites of  
15 some of these foods that we're giving because our  
16 communities make the efforts of making sure our elders  
17 have the delicacies that are so important. But if our  
18 elders are not having these foods to give our children  
19 these first tastes how are they going to develop the  
20 desire to consume these fish. I went through the process  
21 of my own son, taking him to the lands where his father  
22 was taught by his -- my son's grandfather how to harvest  
23 his first caribou. Instead of the joy of harvesting the  
24 caribou and sharing that within the community, we give  
25 the whole animal away, we feasted, cook it all up and  
26 give the whole thing away. The respect from the elders  
27 is shared upon that new young hunter of giving a meal to  
28 the family, of sharing food for their freezer, of giving  
29 the joy of responsibility for the nourishment of the  
30 community as a whole, instead he faced anger and  
31 frustration because there were activities that changed  
32 our lands and waters and there were words that were put  
33 on paper that were not enforced to protect our  
34 traditional and cultural uses.

35  
36 This is a devastating process. I've sat  
37 here through these days wondering how am I going to  
38 respond to this process, how am I going to face the eyes  
39 of those people that are dealing with the loss of these  
40 efforts to identify who and what they are and to continue  
41 to be who and what they have in our lands and waters  
42 through the generations of time immemorial, to the days  
43 of the future. It's a very difficult process, I am not  
44 reassured, I am fearful of the days to come. I have not  
45 got anything that gives me the hopes that we're doing  
46 things in a good way. We've done some things that were  
47 better than the last time, but were they the best way.  
48 This book, I didn't get it in time enough to go through  
49 and effectively assess it, I'm sitting here cringing as  
50 I'm looking at all of the decisions that are being made

1 throughout this State and throughout the various RACs and  
2 the quantity of the participation of those that are most  
3 affected is missing. Look at how many others that are  
4 being paid to work on these issues that are here and yet  
5 the volunteers and the people who are living through this  
6 decisions are not, just a small handful. This increased  
7 time of activity and yet we've got communities that we  
8 have to try to think about, am I going to leave my  
9 grandchildren and my elders at home to suffer through  
10 this 40 below weather to come down here and try to give  
11 us a hope that we'll have a life to subsist in in the  
12 future, it's a big deal whether or not we're even going  
13 to consider. Do we even have the resources to come down  
14 here, if I didn't have this ticket paid, I don't have the  
15 \$1,000 in my pocket to get here, to come and bring these  
16 words into this process. Many of the people that were  
17 affected by this process did not have that number to call  
18 in. I was calling on Monday to -- and we're given this  
19 information so that people could call in that were going  
20 to be affected by some of the proposals that were there  
21 and I was here to be sitting at this table trying to  
22 communicate within this process and yet I still had to  
23 try to divide and make contact so that the testimony  
24 would be here. The absence of it is felt by me, the  
25 burden of this process is weighing me down heavily. I  
26 pray that we have the right answers that come through  
27 this process and that we can continue to hold our heads  
28 up and face the people who have their life and safety at  
29 risk with the decision before us.

30

31 Thank you.

32

33

CHAIRMAN TOWARAK: Thank you, Rosemary.  
34 If you could I'd like for you to give people a picture of  
35 where Nuiqsut is compared to the rest of the North Slope  
36 and your proximity to Deadhorse.

37

38

MS. AHTUANGARUAK: When I first moved to  
39 Nuiqsut, it's name means someplace beautiful on the  
40 horizon, it's a very rich, biologically diverse area.  
41 We're a little bit inland from the ocean so we have the  
42 life of living off the tundra and traveling upriver up to  
43 the foothills and harvesting throughout this land. We  
44 have the changes in our lands and waters with now oil and  
45 gas development is within four miles of the village. We  
46 have 12 miles of roads with the Alpine development unit  
47 that is on the east side of the Nigluk (ph) channel of  
48 Nuiqsut, and yet you have hundreds and thousands of miles  
49 of roads and pipes to the east of Nuiqsut with the  
50 Kuparuk River Unit and all of the other developments in

1 Prudhoe Bay you have the Foothills development, that area  
2 is up near Umiat, that efforts to bring in additional oil  
3 and gas development and also efforts to build a road to  
4 resources. There's a lot of activity that is happening  
5 completely surrounding the villages. We've got near  
6 shore oil and gas activity, we've got offshore oil and  
7 gas activity, we've got onshore oil and gas activity.  
8 We've had disruption of migration for our caribou, we've  
9 had near shore activity that has disrupted the migration  
10 of the Arctic cisco and it's ability to get into the  
11 Nigluk channel. We've had seismic activity that has  
12 diverted whales from our harvesting ability. All of this  
13 kinds of things comes down not just changes to our lands  
14 and water, but changes to our subsistence.

15  
16 CHAIRMAN TOWARAK: Thank you. Any  
17 questions or comments.

18  
19 Mr. Adams.

20  
21 MR. ADAMS: I think I'm ready to make my  
22 comments now, Mr. Chairman.

23  
24 CHAIRMAN TOWARAK: Sure. The floor is  
25 yours.

26  
27 MR. ADAMS: Gunalcheesh. I just need to  
28 say on the onset that I really appreciate the hard work  
29 that Lee Wallace has put into this effort. I didn't know  
30 until this morning that he was a Haida working on behalf  
31 of Tlingits.

32  
33 (Laughter)

34  
35 MR. ADAMS: You know, that really tells  
36 me a lot of his character and his dedication to this  
37 effort. So, you know, my respect for this man has  
38 stepped up a whole notch.

39  
40 He mentioned that -- well, let me say  
41 first when the Board, the old Board, made the decision to  
42 join Saxman with Ketchikan Lee was up here for that Board  
43 meeting and he had no clue that this was going to happen.  
44 And so it came as a real big surprise to him. And so my  
45 first comment on this is that I believe that there was no  
46 due process, you know, as far as the Board's action on  
47 this was concerned because never had a chance to confer  
48 and meet with the people from Saxman to see if this is  
49 okay. And it brings to mind, you know, that -- and we  
50 find it in -- I think it's in the Declaration of

1 Independence that no law should be made without the  
2 consent of the people. And, you know, and in that being  
3 I think that Saxman and Ketchikan, you know, have been  
4 ignored in that effort and they've never had a chance,  
5 you know, prior to that to make their comments. And I  
6 remembered Lee being really taken back on that fact that  
7 this was thrown upon them, you know, at that meeting.  
8 And so it's been, you know, my motivation to help him in  
9 as much as we can and, of course, the Southeast Regional  
10 Advisory Council stands behind Saxman for regaining their  
11 rural determination.

12  
13                   When this happened we wanted to submit an  
14 RFR, the Southeast Regional Advisory Council did. And,  
15 of course, we found out that we couldn't do that. It's  
16 interesting to note that in the Regional Advisory  
17 handbook, the one that I had at that time, Regional  
18 Advisory Councils did have the ability to submit RFRs and  
19 when we made that effort, you know, we were told it  
20 couldn't and then that -- that particular section in the  
21 handbook was taken out. Now, you know, we've -- since  
22 all of my previous meetings have been just like a broken  
23 record, you know, talking about RACs having the ability  
24 to do RFRs and I think it was at the last meeting where  
25 I was approached by legal counsel that we'd still not be  
26 able to do our RFRs, however we would as a counsel be  
27 able to assist villages or communities, you know, in  
28 submitting RFRs. We tried to do this on the onset and we  
29 were told that we couldn't, now we can.

30  
31                   This go along also, Mr. Chairman, with  
32 the deference issue. The handbook also says on that --  
33 it says that the Board should give deference to Councils,  
34 however there's a little disclaimer in there, it says  
35 that not necessarily. We do feel that we had a real  
36 strong case here mainly because when you look at Saxman  
37 on its own it does have all of the characteristics of  
38 being a real community. Population-wise, you know, it  
39 fits into -- oh. And so, you know, the criteria that I  
40 think that Lee was referring to should be thrown out was  
41 that Saxman was connected through Ketchikan with roads.  
42 The residents did shopping there in the stores and that  
43 the kids, high school kids went to school in Saxman. And  
44 I think that was probably one of the -- some of the  
45 reasons why they combined Saxman with Ketchikan. But if  
46 you took the two communities apart and I also -- already  
47 mentioned, you know, that Saxman, you know, population-  
48 wise and characteristic-wise do have a rural preference.  
49 If you look at some of the surveys that were done in  
50 Ketchikan, you'll find that they too, even though they

1 might be above the population threshold, do have the  
2 characteristics of being, you know, subsistence users.  
3 They follow all of the -- as far as I have determined,  
4 the criteria of being, you know, a rural community.

5  
6           So, you know, giving deference to the  
7 Council I thought was kind of a slap in the face because  
8 a lot of work went into putting the document together.  
9 We have an individual by the name of Dan Motiff (ph) who  
10 devoted his free time, you know, into developing, you  
11 know, a document on why Saxman should be a rural  
12 community. So I really, you know, think, you know, that  
13 even though there's rumors that there might be a stay,  
14 which means that, you know, Saxman will retain its rural  
15 determination for another five years or so and then the  
16 process will be started all over again, I really do  
17 believe, Mr. Chairman, that the Board should give them  
18 their rural determination.

19  
20           When I first made my comments, you know,  
21 at the beginning of this meeting I read some paragraphs  
22 out of a book that I'm hoping to have published real  
23 soon. And it had to do with the issue of true law. And  
24 I wanted to review that with you again. True law is the  
25 order of the creator. It's the creator's order of  
26 things. Okay. And included in that is that true law is  
27 reason in agreement with nature. And you trans that a  
28 little bit further to our everyday living, it translates  
29 to wisdom. And then when you take that a little bit  
30 further and apply it to government it translates to  
31 justice. And I think that's what Saxman is -- Lee has  
32 made reference to that, that they are looking for  
33 justice. And I really believe, you know, that the Board  
34 really should give them their recognition as a rural  
35 community.

36  
37           One of the things, I think it was Carrie  
38 that said that, many of our young people are not learning  
39 from the elders how to participate in subsistence issues  
40 and I think that's a real big problem, but I do know in  
41 looking at some of the surveys from Ketchikan that the  
42 elders there were actually doing that. And I really do  
43 believe, you know, that we do have a lot to do in regards  
44 to passing down our history and culture and traditions to  
45 the young people. And I'm happy to see the people from  
46 -- the young people from Sitka here again today. What  
47 you are sitting in right now is a very important issue in  
48 regards to our subsistence issues and whether a community  
49 can have the ability to participate in subsistence  
50 programs and so forth because of their rural activities.

1  
2                   And so I think I've talked myself out,  
3 Mr. Chairman, so I appreciate, you know, having the  
4 opportunity to share these things with you.  
5  
6                   Gunalcheesh.  
7  
8                   CHAIRMAN TOWARAK: Thank you, Mr. Adams.  
9 We're going to do a little reversal here. We have three  
10 people on the phone and they're all from Southeast that  
11 would like to make statements.  
12  
13                   (Phone disconnects)  
14  
15                   MR. PROBASCO: We should take -- we might  
16 want to take a break so we could redial them.  
17  
18                   CHAIRMAN TOWARAK: Okay. Let's take a  
19 couple of minutes. I think I hung up on them.  
20  
21                   (Laughter)  
22  
23                   (Off record)  
24  
25                   (On record)  
26  
27                   CHAIRMAN TOWARAK: We are ready at this  
28 point, we are going to call our meeting back into  
29 session.  
30  
31                   Okay. We would like to open the line  
32 with Clarence Jackson.  
33  
34                   MR. JACKSON: Hi, I'm Clarence Jackson,  
35 Sr. I know the people from Saxman all my life. And I  
36 would like to see that community continue as a rurally  
37 designated community. No matter how close to they are to  
38 an urban center, they're still a Native people and  
39 they're still a subsistence people. And I would urge  
40 that somehow that their status as a rural community  
41 continue.  
42  
43                   That's all I have to say.  
44  
45                   CHAIRMAN TOWARAK: Thank you very much,  
46 Mr. Jackson. This is Tim Towarak, I'm the Chair of the  
47 Federal Subsistence Board. And I appreciate your  
48 comments.  
49  
50                   MR. JACKSON: Okay. I'd like to talk to

1 you, Tim, we'll see you later.

2

3 CHAIRMAN TOWARAK: Thank you. Operator,  
4 we like to be connected to the people in Saxman. We have  
5 Sara and Janice I think on the line from Saxman.

6

7 (Off record comments - connecting Saxman)

8

9 CHAIRMAN TOWARAK: Weonna, this is Tim  
10 Towarak, the Chair of the Federal Subsistence Board. You  
11 have the floor.

12

13 MS. WALLACE: Hi. Good morning, Mr.  
14 Chairman. My name Weonna Wallace and I'm providing  
15 personal testimony this morning.

16

17 Twenty-two years ago our eight year old  
18 daughter testified at the Eagles Paternity Organization  
19 at a public meeting. And it was basically to figure out  
20 if Saxman would be rural or not. She was very emotional  
21 about it being an eight year old, but she felt incumbent  
22 to speak before other people. And her question was why  
23 people who don't live in Saxman should tell us what limit  
24 and what -- what to limit and what goes on our tables and  
25 how to feed our people and feed out families. She said  
26 that these people who make decisions probably don't even  
27 know what yane (ph) is and how we use it. Now she's 30  
28 and she like other people from Saxman want to ensure that  
29 their children or grandchildren or great-grandchildren  
30 have the opportunity to customarily and traditionally  
31 harvest food. We have a large area of deer hunting in  
32 our area, we have people who obtain things from the  
33 shoreline in this particular area and we're really  
34 reliant. I'm familiar with some of the things that  
35 happen in Saxman because I'm a tribal administrator when  
36 I am in my official position and a lot of the people here  
37 are very low income. We subsidize what happens -- what  
38 occurs in our pantry with the things that we can get from  
39 traditional harvesting. I feel that we are punished  
40 because of perhaps a word that people have been throwing  
41 around and it's urban sprawl. Ketchikan is next to us,  
42 I used to live in Ketchikan, but I can tell you for a  
43 fact that the Native community here in Saxman is very  
44 different than living in the City of Ketchikan which  
45 feels very urban to me when I used to live there.

46

47 I just really want to say that the  
48 Secretaries of Agriculture and Interior should take  
49 immediate administrative and regulatory measures to  
50 reverse the Federal Subsistence Board's decision to

1 classify Saxman as non-rural, there lies the feeling and  
2 intent of Title VIII of ANILCA and protecting our way of  
3 life. And it's our desire for Saxman to remain rural.

4  
5                   The Federal Subsistence Board needs to be  
6 -- needs to give deference to the Regional Advisory  
7 Councils which were created by Title VIII of ANILCA to  
8 incorporate local knowledge into the rural/non-rural  
9 determinations. The (indiscernible) currently and  
10 frequently disregards the work and recommendation of RACs  
11 and they have done so when they reviewed Saxman's status.

12  
13                   It's really important to work together.  
14 Saxman's recent rural determination is evident that  
15 additional wildlife management decisions are broken,  
16 people talk about them not working and not fulfilling  
17 their original intent. I would like to have -- today  
18 like to see action by the FSB to restore faith in the  
19 system and to be assured our children's children will  
20 continue our way of life.

21  
22                   That's pretty much what I wanted to speak  
23 this morning so thank you very much.

24  
25                   CHAIRMAN TOWARAK: Thank you, Ms.  
26 Wallace, we appreciate your comments.

27  
28                   Do we have Janice Jackson and Sara and  
29 Mark.....?

30  
31                   MS. JACKSON: I think they may be  
32 listening, but you may ask for Mark Callan, I think  
33 Janice is here too.

34  
35                   (Off record comments - teleconference  
36 operator)

37  
38                   CHAIRMAN TOWARAK: Is there anybody else  
39 that would like to testify in Saxman?

40  
41                   (Off record comments - teleconference  
42 operator)

43  
44                   MS. WALLACE: I was just responding to --  
45 just listening, I had already previously given testimony.  
46 Did someone have a question for me.

47  
48                   (Off record comments - teleconference  
49 operator)

50



1 CHAIRMAN TOWARAK: I'm not hearing anyone  
2 responding. Again, if you want to testify hit star and  
3 one on your phone. In the meantime we will continue. Do  
4 we have anyone else that wants to testify from the  
5 public?

6  
7 (Off record comments - teleconference  
8 operator)

9  
10 MS. JACKSON: Good morning, this is  
11 Janice Jackson. And I work in the community of Saxman  
12 and I just wanted to strongly urge the Board to give this  
13 rural status to Saxman. I believe that even though  
14 Saxman is close to the City of Ketchikan, there's not  
15 much benefit to that in the way of income or jobs because  
16 we -- there's a very high unemployment rate in Saxman and  
17 there are no jobs in Ketchikan.

18  
19 I agree with what Weonna said about  
20 Native foods being used in the households and there's a  
21 heavy reliance on our Native foods because of the lack of  
22 jobs and the lack of income. And I work as a social  
23 worker, I see a lot of that on a daily basis here in  
24 Saxman and would just like to urge you to rural status.  
25 And I'm also with the Alaska Native Sisterhood and this  
26 issue as come up before the convention on a yearly basis  
27 and it's very important. A lot of our Native people  
28 agree that this rural status should be given to Saxman --  
29 given back to Saxman by the Board.

30  
31 Thank you.

32  
33 CHAIRMAN TOWARAK: Thank you, Ms.  
34 Jackson. Is there anyone else with you that would like  
35 to testify?

36  
37 MS. JACKSON: No, I don't have anybody  
38 here.

39  
40 (Off record comments - teleconference  
41 operator)

42  
43 CHAIRMAN TOWARAK: We are going to assume  
44 then that that ends the teleconference testimonies so we  
45 will proceed with Item B on our agenda, procedures for  
46 decennial rural/non-rural determination.

47  
48 Pete.

49  
50 MR. PROBASCO: Mr. Chair. Before I turn

1 it over to Staff, as part of the Secretarial Review, one  
2 of the Board's goal was to have a more transparent  
3 process and one of the criticisms we had was the number  
4 of executive sessions that we had in the past as well as  
5 the public understanding what took place in executive  
6 session.

7

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50

To meet the Secretarial directive, the Board has developed a process where any time they go into executive session, at the next meeting as well as providing copies, a summary of what took place in the executive session, a summary, and I do have copies here so Board members, if you want copies I can share them.

On January 11th, 2012 beginning at 1:30 here at the Fish and Wildlife Service Regional Office, the Board called an executive session, all agencies and the Chair were represented along with legal counsel.

The Board met in this executive session for approximately an hour to discuss legal and policy issues associated with the rural determination process, both past and future.

The Board received counsel regarding procedural requirements associated with the Federal regulatory process; discussed timeframes associated with the next rural determination process; review different procedures for initiating Federal rulemaking and was briefed on legal issues associated with the rural determination process.

No decisions were made during this executive session. It was an information gathering executive session on legal issues.

Mr. Chair. If there's no questions I would then turn it over to my Staff.

CHAIRMAN TOWARAK: Thank you. Would you introduce yourselves and proceed with our discussion.

1 MR. MATUSKOWITZ: Mr. Chair. I'm Theo  
2 Matuskowitz, I'm the regulation specialist for  
3 Subsistence Management.

4  
5 DR. JENKINS: David Jenkins. I'm the  
6 acting policy coordinator for the Office of Subsistence  
7 Management.

8  
9 MR. MATUSKOWITZ M: Mr. Chair. I'll  
10 start the briefing. What I'm going to cover to the Board  
11 will be the regulatory framework that you will be  
12 operating under as you move forward in the decisionmaking  
13 process.

14  
15 To start with I'll cover the foundation  
16 for my part of this briefing, as far as references.

17  
18 We have the letter from the Secretary to  
19 the Board dated September 2010. We have Section 15 of  
20 our current regulations, and I will note that Section 15  
21 falls under the Secretarial part, it's actually in  
22 Subpart B; and then we have our May 2007 Federal Register  
23 Final Rule which was published on rural determination.  
24 In addition I've had phone conversations with the Office  
25 of the Federal Register and with the U.S. Fish and  
26 Wildlife Office of Policy Directives and Management.

27  
28 A few terms that I will be using in my  
29 briefing and just so everyone's on the same sheet of  
30 music to try and make this a little bit more  
31 understandable.

32  
33 When we refer to guidelines, guidelines  
34 are in our regulations in Section 15 and they speak to  
35 the process that the Board uses for rural determinations.

36  
37 When we say criteria, criteria was in the  
38 preamble of our 2007 Final Rule published in the Federal  
39 Register, and the criteria was used to identify and link  
40 communities together.

41  
42 That's some key points, once, again, so  
43 hopefully there's not too much confusion.

44  
45 The different options that are presented  
46 to you:

47  
48 Right now there are two points of issue.

49  
50 No. 1, is the issue of extending the

1 compliance date for the 2007 Final Rule. Now we cannot,  
2 you cannot do this administratively. It was not a typo,  
3 it was not a mistake. So the only way to extend that  
4 date is through a direct final rule which you would not  
5 be going through the full public process as normally do  
6 when we publish a proposed rule and finish it with a  
7 final rule.

8

9 Or, you could publish a proposed rule, go  
10 through the full public process and end with a final  
11 rule.

12

13 Now, the difference is if you do a direct  
14 final rule, you may publish that, and keep in mind this  
15 is going to be for Secret -- I take that back -- the  
16 direct final rule, you can have that published and we  
17 should -- you should be able to have that completed prior  
18 to May of this year, which would -- if you decide so,  
19 extend the compliance date. If you decide not to go that  
20 route and want to go through the full public process,  
21 starting with a proposed rule, ending with a final rule,  
22 that process would take at least 12 months and, of  
23 course, the date, the critical date here being May 7th,  
24 2012, which is when the 2007 rule goes into effect for  
25 the communities that you decided were non-rural.

26

27 Now, the direct final rule, even though  
28 we will not have a public process, in the direct final  
29 rule will be a section where you state, the direct final  
30 rule may be withdrawn if significant adverse comments are  
31 received. So even if you do this, if there are  
32 significant adverse comments that direct final rule would  
33 have to be pulled and you would have to go through the  
34 full public process.

35

36 So that's the issues with the direct  
37 final rule and then the full public process for dealing  
38 with the 2007 Final Rule that has been published.

39

40 The other issue before you is moving  
41 forward with the rural determination review that is  
42 required.

43

44 And that would be similar to what was  
45 done in the past as far as you publish a proposed rule,  
46 go through the public process and then you end with a  
47 final rule.

48

49 Now, another option that has been brought  
50 up, and I will address it here, is starting with an

1 advanced notice of proposed rule, followed by proposed  
2 rule, ending with a final rule. An advanced notice of  
3 proposed rulemaking tells the public that the agency is  
4 considering an area for rulemaking and requests written  
5 comments on the appropriate scope of the rulemaking and  
6 on specific topics.

7  
8 The one area I would ask that you  
9 consider if you want to look at the advanced notice of  
10 proposed rulemaking is that the Secretary in his  
11 September 2010 letter under the part, recommended  
12 actions, the fifth bullet:

13  
14 .....directs the Federal Subsistence  
15 Board to commence a review with RAC  
16 input on the rural/non-rural  
17 determination process for use in  
18 determinations pursuant to the 2010  
19 census. In parenthesis, changes may  
20 require new regulations.

21  
22 In addition to that, our regulations,  
23 Section 15(b) states:

24  
25 The Board shall periodically review  
26 rural determinations. Rural  
27 determinations shall be reviewed on a  
28 10-year cycle commencing with the  
29 publication of the Year 2000 U.S.  
30 census.

31  
32 So in reality since direction has already  
33 been provided by the Secretary and by regulations,  
34 there's really not a need for an advanced notice of  
35 proposed rulemaking, because you'd be asking the public  
36 to define what has already been defined. So we would be  
37 adding another step and time into the overall process.  
38 So that would be something that you would want to  
39 consider.

40  
41 Another area to consider also is, which  
42 would add to the time factor, is this would be going  
43 forward for Secretarial signature. So needless to say  
44 that would be additional briefings and additional time to  
45 the process to simply get the document published.

46  
47 The other option that you have is to go  
48 directly to a proposed rule. And for that it would be  
49 recommended that we open it up to the public. This also  
50 will be for Secretarial signature because we're looking

1 at Section 15 of our regulations, Subpart B, which is for  
2 Secretarial signature. So those guidelines that I  
3 addressed earlier would be presented to the public and  
4 they could make comment and recommendations on those  
5 guidelines. In addition to that we have the actual non-  
6 rural determinations that were made in 2007, which also  
7 would be presented to the public to comment and propose  
8 changes on.

9  
10 Now, this process proposed rule/final  
11 rule can be combined with the direct final rule, which,  
12 depending on your decision, would postpone -- I'm sorry,  
13 not postpone, would extend the compliance date of the  
14 2007 Final Rule. So you would have the 2007 Final Rule,  
15 the compliance date extended, which would give the Board  
16 time to readdress any issues it may so decide on, or, you  
17 have a five year limitation on there, whichever comes  
18 first. And then after that five years, the Final Rule of  
19 2007 would go into effect, because since that was a final  
20 rule and it went through the complete and public process,  
21 you cannot continue to just extend it, extend it, extend  
22 it, because then you're going against your own  
23 regulations, which you could not do.

24  
25 So those are the options that you have to  
26 either -- in relation to the 2007 Final Rule, you may do  
27 a direct final rule, or you may go through the full  
28 public process. The direct final rule should be  
29 completed and in place prior to the May 2012 compliance  
30 date. The full public process would not meet that date.

31  
32 The next issue being for the next step in  
33 the rural review as required by our regulations and  
34 directed by the Secretary, we can add a step by doing  
35 advance notice of rulemaking asking the public what  
36 you've already been directed or what our regulations say  
37 that you will do, or you can go directly to a proposed  
38 rule, ending with a final rule.

39  
40 Are there any questions at this time?

41  
42 (Laughter)

43  
44 CHAIRMAN TOWARAK: Mr. Haskett, go ahead.

45  
46 MR. HASKETT: So, Theo, I mean I'm going  
47 to ask you to maybe simplify that just a little bit.

48  
49 (Laughter)

50

1 MR. HASKETT: Because it is very  
2 complicated, I get that, and we're covering a lot of  
3 legal requirements we have to go through, that we  
4 actually do have to go through or else it becomes, you  
5 know, things can be contested in the court and we want  
6 this to be legally defensible, we do, but can you just  
7 cover, very briefly, just kind of summarize how it works;  
8 why we would do a final interim rule, how long that would  
9 last for; just kind of condense and simplify what you  
10 did, if you could, because it just -- I'm probably not  
11 the only one that got lost, at least in part of what you  
12 were covering there.

13

14 MR. MATUSKOWITZ: Through the Chair.  
15 Yes, sir. For the direct final rule, we would state that  
16 we are -- you are extending the compliance date, which  
17 will give you, the Board, time to address issues that  
18 have been presented to you; or, five years, whichever  
19 comes first.

20

21 MR. HASKETT: So just stop I want to make  
22 sure everybody got that part, because I think that's  
23 pretty important.

24

25 That this actually extends -- if we go  
26 that direction, what it does is it extends the compliance  
27 date on the previous determination and allows us to  
28 address all these different issues that have been  
29 presented to the Board, and either until we make a  
30 decision or for the five years that we would go through  
31 the next session. Yes?

32

33 MR. MATUSKOWITZ: Through the Chair.

34 Yes, sir.

35

36 CHAIRMAN TOWARAK: Go ahead, Pete.

37

38 MR. PROBASCO: And, Mr. Chair, I won't go  
39 to the reasons why -- and that's the reason why Mr.  
40 Matuskowitz said you need to look, if you're going to go  
41 the route, is to combine that so it allows you the  
42 opportunity to look at issues that have been raised with  
43 our rural process when we go through the 2010 with a  
44 proposed rule, so you combine the direct final rule with  
45 the proposed rule.

46

47 Mr. Chair.

48

49 CHAIRMAN TOWARAK: Mr. Cribley.

50

1 MR. CRIBLEY: Yeah, question for Staff.  
2 And this is what I'm curious about, is, you mentioned if  
3 we were to issue a direct final rule, that would be  
4 implemented immediately, the action would be implemented  
5 immediately but that there would be a period for  
6 comments, I believe a 30 day comment period or something,  
7 after, I'm not sure if you actually defined that comment  
8 period, but if there were significant comments, concerns  
9 raised, that the -- that based on that the rule could be  
10 pulled or the action stopped; is that correct? I didn't  
11 use your terms, you used the right terms, I used what I  
12 heard or something.

13

14 (Laughter)

15

16 MR. CRIBLEY: Well, I guess the -- I  
17 assume I'm on the right track here. My question is, is  
18 who actually makes the determination that the comments  
19 are significant enough not to implement the action.

20

21 MR. MATUSKOWITZ: Through the Chair.  
22 First off, if you would decide to publish a direct final  
23 rule, that will not go into effect for 30 days.

24

25 MR. CRIBLEY: Right. Right.

26

27 MR. MATUSKOWITZ: That is directed to us.  
28 The minimum waiting period after its publication is  
29 another 30 days. Historically when you have published  
30 direct final rules in the past you have given 45 days,  
31 but that's -- once again 30 days is the limit.

32

33 As far as the -- who decides on  
34 significant adverse comments, that is your decision,  
35 however.....

36

37 MR. CRIBLEY: The Board?

38

39 MR. MATUSKOWITZ: The Board, yes, sir.

40

41 MR. CRIBLEY: Okay. Okay. That's what  
42 I was curious about.

43

44 MR. MATUSKOWITZ: You do have oversight  
45 and that is OMB, which.....

46

47 MR. CRIBLEY: Oh, they're our friends.

48

49 (Laughter)

50



1 MR. MATUSKOWITZ: Yes, sir.  
2  
3 MR. CRIBLEY: Okay, now I understand.  
4  
5 MR. MATUSKOWITZ: We have not had an  
6 instance where they have looked at comments that were  
7 sent on our past direct final rules, however, they do  
8 review our work and as a matter of fact when the May 2007  
9 Final Rule was published they temporarily pulled it and  
10 changed it from an insignificant rule to a significant  
11 rule and that was their call. So even though, yeah, we  
12 do not normally have their input they are looking.  
13  
14 MR. CRIBLEY: Okay, thank you very much.  
15  
16 MR. MATUSKOWITZ: Yes, sir.  
17  
18 CHAIRMAN TOWARAK: Mr. Haskett, you had  
19 a question.  
20  
21 MR. HASKETT: Just a comment. Again, I  
22 mean this is for the Board, to make sure we understand  
23 how we make our decisions and make sure they're legally  
24 defensible, but it's also to be presented for a lot of  
25 people here and on the phone to make sure -- I mean there  
26 were lots of concerns about how long things take, you  
27 know, and just the bureaucracy and I totally understand  
28 those concerns but we also want to make sure whatever  
29 decision this Board makes is something we can legally  
30 defend, that it's something that will not be overturned,  
31 that there will not be other forces that come in and take  
32 a look and say you didn't do it right so it's kind of a  
33 long discussion that I think is very important for  
34 everyone to hear on whatever decision we end up making  
35 here, how we get through that process.  
36  
37 CHAIRMAN TOWARAK: Go ahead.  
38  
39 MR. GOLTZ: I think I heard my name  
40 called.  
41  
42 (Laughter)  
43  
44 MR. GOLTZ: I'm a little bit concerned,  
45 Theo, that we're getting the horse way out ahead of the  
46 cart on this. The legal justification for the rural --  
47 rule -- rural -- R-U-L-E.....  
48  
49 MR. HASKETT: You didn't spell it right,  
50 R-U-R-A-L.

1 (Laughter)

2

3 MR. GOLTZ: The legal justification for  
4 what you're talking about is an entire global look at how  
5 we're making rural determinations and I'd like to get  
6 that on the record before we get too far caught up in  
7 this one.

8

9 MR. PROBASCO: Mr. Chair.

10

11 CHAIRMAN TOWARAK: Go ahead.

12

13 MR. PROBASCO: Thank you, Mr. Chair. I  
14 think Keith's counsel is very wise. This is a combined  
15 package to give the full flavor of the issue and Dr.  
16 David Jenkins will provide that, what Mr. Goltz is  
17 looking for. So with your permission, before any more  
18 questions could we go to Mr. Jenkins.

19

20 CHAIRMAN TOWARAK: Yes we could, and  
21 please proceed.

22

23 DR. JENKINS: Thank you, Mr. Chair.  
24 David Jenkins with OSM.

25

26 Mr. Adams, in his opening comments to the  
27 Board read a few paragraphs of a book that he's writing  
28 and what he suggested was that it's important to find a  
29 way to link human activity to natural law. And what I  
30 interpret him to say is that matching governance to the  
31 lives and life cycles of humans and their communities and  
32 their environments is the key issue in resource  
33 management.

34

35 Now, under title -- ANILCA, matching  
36 governance with subsistence uses requires determining the  
37 rural status of communities and areas. Now, this Board,  
38 since it's inception in 1990 has been involved in  
39 determining rural status of communities and areas.

40

41 Now, in 2009 the Secretary of Interior  
42 instituted a review of the Subsistence Program and in  
43 2010 the Secretary suggested that this Board needs to  
44 review its process and method of rural determination.  
45 Now, at the same time the Board is also obligated to  
46 start the 2010 rural review based on the 2010 census and  
47 the data for that is now becoming available. So the  
48 Board has two charges, as Theo pointed out. One is to  
49 begin the 2010 rural determination review. And the other  
50 is to review its own processes of making those

1 determinations.

2

3

4 Now, to the second end the Board has  
5 already received two briefings in response to the  
6 Secretarial request. The first in January of 2011 and  
7 the second in April of 2011. The January briefing  
8 focused on four questions for the Board to consider  
9 concerning proposed rules. The April briefing detailed  
10 some of the history of rural determinations with a focus  
11 on process considerations and it discussed some of the  
12 key issues of the 2000 census, including methods and  
13 presumptive population thresholds and suggested changes  
14 to regulatory language.

14

15

16 The Board, now, has discussed and the  
17 Staff has discussed, beginning the process of rural  
18 determination with an initial call for public  
19 participation, but rather than directing Staff to analyze  
20 the assumptions and the methods and the processes of  
21 rural determination, which is then published for public  
22 comment, the Board may consider first asking for the  
23 public to comment on the existing rural determination  
24 process, process used in 2000 census and the current  
25 rural determinations, Staff could subsequently conduct an  
26 analysis of the rural determination process with the  
27 public response as a point of information and departure.

27

28

29 In other words, begin the review of the  
30 rural determination process with public input and base  
31 subsequent Staff analysis on that input. Public input  
32 may address elements such as the criteria used for  
33 grouping communities together, we've heard a little bit  
34 about that with regards to Saxman, and public input may  
35 address the indicators of community characteristics. So  
36 both the criteria for grouping and the indicators for  
37 community characteristics enter into Board decisions on  
38 rural status, and other elements may emerge from the  
39 initial public input that the Staff could then analyze.

39

40

41 So this is the direction that the Board  
42 could take and then discuss it among yourselves if this  
43 is applicable.

43

44

I think I'll stop there, Pete.

45

46

Thank you, Mr. Chair.

47

48

CHAIRMAN TOWARAK: Are there questions.

49

50

(No comments)

1 CHAIRMAN TOWARAK: Any questions of Dr.  
2 Jenkins.

3  
4 (Pause)

5  
6 CHAIRMAN TOWARAK: Go ahead.

7  
8 MS. COOPER: Thank you, Mr. Chair. I'd  
9 like to direct the question of -- just to clarify, there  
10 would be one, either advanced notice or proposed rule, or  
11 a direct rule, we would do that one time to answer both  
12 of the points that you brought up, both the 2010 actions  
13 and the process with which we would get there. We would  
14 address both of those in one posting in the Federal  
15 Register, whether we do the advance notice, whether we go  
16 straight to a proposed rule or whether we go straight to  
17 a direct rule.

18  
19 MR. MATUSKOWITZ: If I understand your --  
20 Through the Chair. If I understand your question, I  
21 believe you referenced the -- did you mean the 2007 --  
22 addressing the 2007 rule and then the next part moving  
23 forward for the 2010; did I understand your question?

24  
25 MS. COOPER: Through the Chair. I was  
26 addressing it -- Dr. Jenkins, because I got the  
27 impression you were talking about two different points.  
28 We had to look at the process and then we needed to go  
29 forward to the 2010. And those were two distinct points  
30 I heard you make. And I just want to be clear that we're  
31 not talking about two different postings in the Federal  
32 Register, we would work on both of those in one posting.

33  
34 DR. JENKINS: There would be just one.  
35 And I was referring -- I was discussing the Board's  
36 obligation to have a 2010 rural review and the  
37 Secretary's charge to the Board to rethink its methods  
38 and processes for doing that. The third issue that's in  
39 front of the Board here is the 2007 Final Rule, which  
40 comes into effect this year. So there are three separate  
41 issues that we're dealing with here, and I addressed the  
42 first two and you heard with the final rule and the  
43 various rulemaking; I think you were addressing mostly  
44 the 2007 issue. So there are three issues.

45  
46 Thank you.

47  
48 CHAIRMAN TOWARAK: Go ahead, Mr. Haskett,  
49 first.  
50

1 MR. HASKETT: Well, actually it's a  
2 question, I don't think we want to spend too much time  
3 talking about what we're going to do on the 2007 decision  
4 yet because we haven't actually done that yet so I think  
5 it's good we're concentrating on the first two and  
6 recognizing that's going to be another part of it when we  
7 get to that.

8

9 And I guess I'm asking the Solicitor if  
10 that's correct or not?

11

12 CHAIRMAN TOWARAK: Go ahead.

13

14 MR. GOLTZ: Well, I think that's correct.  
15 I think the danger of this discussion is that we get so  
16 tangled up with jargon and nobody knows where we are.  
17 And I propose that we leave the jargon to Theo.

18

19 (Laughter)

20

21 MR. GOLTZ: And just kind of trace what  
22 this is all  
23 about.

24

25 We have a rural determination process  
26 that is in our regulations that complies with the APA.

27

28 If the Board decides they want to, they  
29 can change that process, they'll have to go through the  
30 notice and hearing requirements of the APA to do that,  
31 and I don't think we have to worry right now whether  
32 that's a Secretarial signature or the Board's, it's a  
33 whole process that Dr. Jenkins has suggested be opened up  
34 to the entire state of Alaska for comments to find out if  
35 there's a better way of determining who is rural and who  
36 isn't.

37

38 We can also keep the same process and  
39 make new decisions under that process. But that also  
40 requires, in the ordinary course of events, notice and  
41 hearing process of the APA. So you can change the  
42 process, you can change the decisions, you still have to  
43 go through the APA.

44

45 Theo is very optimistic, I think, when he  
46 says one year for a change. We do these changes in one  
47 year, it's very tight, but something of this nature which  
48 is so fundamental to the Program I would suggest is going  
49 to take at least two and probably will end up on the  
50 Secretary's desk.

1                   If the Board decides that it wants to  
2 change the entire process then it makes sense to delay  
3 action on Saxman because they won't be whipsawed and  
4 there's a renewed opportunity for consensus.

5  
6                   But there are really only two decisions.

7  
8                   Do we take a global look at the entire  
9 process by starting close to the ground, if so, do we  
10 want to let the present rule go into effect or should we  
11 delay that until the end of the global process.

12  
13                  CHAIRMAN TOWARAK: Go ahead, Pete.

14  
15                  MR. PROBASCO: Mr. Chair. And I want to  
16 just add to Mr. Goltz' statement, which he laid out very  
17 well, when we get to that part when we're dealing with  
18 the stay of the decision for those communities that would  
19 be affected on May 7th, 2012, I think it's important that  
20 there is a group of communities that includes Saxman, and  
21 for the record those communities are Prudhoe Bay, Point  
22 MacKenzie (added to the Wasilla/Palmer area), Fritz Creek  
23 East and Northfork Road area (added to the Homer area),  
24 Saxman and other areas added to the Ketchikan area, and  
25 the additional portion of Sterling which was added to the  
26 Kenai area.

27  
28                  So we have, including Saxman, we have  
29 those other areas that are in the same situation where  
30 they're going from rural to non-rural.

31  
32                  Mr. Chair.

33  
34                  CHAIRMAN TOWARAK: Thank you. Do we have  
35 any comments from any of the other people that are  
36 involved, other than Saxman?

37  
38                  MR. PROBASCO: Mr. Chair. Our comments,  
39 to-date, have been -- to my knowledge, and I'll ask Staff  
40 or Board members, has been focused on Saxman.

41  
42                  Mr. Chair.

43  
44                  CHAIRMAN TOWARAK: Go ahead, Mr. Haskett.

45  
46                  MR. HASKETT: So, again, I'm always  
47 trying to simplify things so that we can move forward  
48 efficiently and make sure we get to everything we need to  
49 get to.

50

1                   So I think we've had an excellent  
2 presentation of just what we're facing in terms of  
3 process. I think Pete did an excellent job of making it  
4 clear that we're looking at a couple of different things.  
5 We want to make sure that we treat the Saxman request in  
6 a way that, you know, is fair and we move forward but  
7 also that we have these other charges, that we have these  
8 other communities that we need to cover as well. And I  
9 like your word, whipsaw you used, we don't want to go  
10 ahead and do something that is under one process and  
11 suddenly you have a new process and you have to relook at  
12 it again so I think -- I mean I'm going to suggest we  
13 move on from the discussion here because I think we have  
14 a pretty good understanding of what we're facing and  
15 let's kind of move toward that point where we can, you  
16 know, make some determinations in what direction we want  
17 to go.

18

19                   CHAIRMAN TOWARAK: Mr. Virden.

20

21                   MR. VIRDEN: Mr. Chair. I just had a  
22 question, and I'm not sure if it should be directed to  
23 legal counsel or maybe Pat Pourchot. What we're doing  
24 here is a regulation -- part of the regulations, Federal  
25 subsistence, is this tied any way to the Secretarial  
26 Review that's going on; that's my question?

27

28                   MR. GOLTZ: Well, that's a question for  
29 the Board to answer.

30

31                   If you want to do a global review and tie  
32 that to the Secretary's charge I think you have an  
33 adequate record to do that. We don't have a decision yet  
34 as to whether or not you're going to do a global review.  
35 If you do, that will make a change to the Subpart B  
36 regulations and that part will be Secretarial.

37

38                   If you decide, as a part of that process,  
39 to delay the Saxman decision, that's not a change to  
40 Subpart B regulations, it's a change -- it's a  
41 modification of your own regulations and that would be a  
42 Board's decision.

43

44                   MR. VIRDEN: Thank you.

45

46                   CHAIRMAN TOWARAK: Go ahead, Mr. Adams.

47

48                   MR. ADAMS: Thank you, Mr. Chairman. I  
49 want to thank Dr. Jenkins for using the, you know, the  
50 principle of -- using the laws of nature and applying it

1 to this particular issue. Hopefully that book will  
2 inspire, you know, other issues that come up where that  
3 process can be used as well.

4  
5 I understand now why, you know, rumor has  
6 been going around why there is a request for a stay on  
7 this thing, because of the process that you need to go  
8 through in order to answer the request of Saxman, so I  
9 understand that now.

10  
11 Let me see, ANILCA was designed, and we  
12 all know this, to work from the bottom up, okay. And  
13 using the public process, you know, is accomplishing  
14 that. Also the founding fathers really felt that and I  
15 mentioned this earlier in my opening comments, that no  
16 law should be made without the consent of the governed.  
17 So we do need to go down to those people and have your  
18 public hearings and get the people that are the most  
19 affected by it to give you their feelings on this  
20 particular issue.

21  
22 So I just wanted to, you know, emphasize  
23 that. And I think, you know, contrary to the way I felt  
24 earlier, we are going in the right direction.

25  
26 Thank you.

27  
28 CHAIRMAN TOWARAK: Thank you. Any other  
29 discussions.

30  
31 (No comments)

32  
33 CHAIRMAN TOWARAK: And when we were  
34 having the public hearing I failed to recognize the State  
35 and I'd like to ask Ms. Yuhas if you have any comments.

36  
37 MS. YUHAS: Thank you, Mr. Chairman.  
38 Jennifer Yuhas with the Alaska Department of Fish and  
39 Game. And I felt slighted none at all, the public  
40 comment period wasn't over and didn't think it was my  
41 turn.

42  
43 The State of Alaska has no recommendation  
44 on the issue that is before you. And the reason for  
45 that, as the Chairman pointed out, the State Constitution  
46 doesn't delineate between rural and non-rural users.  
47 I'll simply make the comments I've been repeating  
48 throughout the process these last few days, that we put  
49 that admonishment out to standardize the application of  
50 the process that you have before you. That you maintain



1 a consistent application. But the question before you is  
2 simply for Saxman, if you move into Subpart B at a later  
3 date that would be a different question and of course the  
4 State would probably be recommendations for what should  
5 be considered rural or non-rural in general, but you have  
6 information available to you that the State does  
7 delineate not -- with our Constitution, not for fish and  
8 game resources, for rural schools, for rural roads  
9 funding, for census, these are all things that you take  
10 into your criteria and they're readily available.

11  
12 Our office has been petitioned to  
13 advocate one way or another on this issue but we don't  
14 make that delineation on the State side, and with the  
15 petitioner's request before you it's simply for Saxman,  
16 we'd just admonish the Board to apply that criteria  
17 consistently.

18  
19 CHAIRMAN TOWARAK: Thank you for those  
20 comments.

21  
22 Further discussion.

23  
24 Mr. Lohse.

25  
26 MR. LOHSE: Mr. Chair. It's kind of  
27 interesting listening to all this and then thinking of it  
28 from a people standpoint. I see two issues before you,  
29 too, and like Jennifer said one issue is the issue of  
30 Saxman and the people involved in Saxman and the request  
31 that they've brought before you and the information that  
32 they've brought before you and from that standpoint,  
33 whether you go into -- I'll use the global process or  
34 whatever you want to use, the process that revises the  
35 whole system or sets criteria up for the whole system, I  
36 think it really behooves you to address the Saxman issue  
37 as people at this point in time and decide whether or not  
38 you are going to -- and I won't say make a final  
39 decision, but whether or not you are going to give them  
40 a stay until you have the time to do all of the rest of  
41 this otherwise Saxman is going to be sitting there -- you  
42 know, they've put this effort in, they've brought  
43 everything before you and Saxman's going to be sitting  
44 there on the edge wondering what's going to happen. And,  
45 I, personally, thought the way you had it lined up on  
46 your agenda was a good way. I really thought you should  
47 address Saxman because they're the petitioners, they're  
48 the bottom up that came to you and they came with a  
49 request and they came and you acted on them as if they  
50 were people. I really think that the -- the policy and

1 the big picture needs to be addressed, the review needs  
2 to be addressed, but the people of Saxman need to be  
3 addressed, too.

4  
5 CHAIRMAN TOWARAK: Thank you for those  
6 comments.

7  
8 And in my mind we're going to make a  
9 decision as the Board and the Staff's going to make sure  
10 that we follow the proper procedures so that we don't  
11 have to worry so much about the process but I think if we  
12 focus on the decision that we need to make, I'm going to  
13 assume that the Staff will lead us down the right path.

14  
15 If that's the end of the discussions on  
16 that topic we will then move on to discussion of rural to  
17 non-rural determination that becomes effective 2012.

18  
19 Pete.

20  
21 MR. PROBASCO: Mr. Chair. Mr. Goltz I  
22 will ask for your help as well. I would counsel the  
23 Board to first look at procedures.....

24  
25 MR. GOLTZ: Correct.

26  
27 MR. PROBASCO: .....for the 2010  
28 decennial review, then go to the issue of those  
29 communities, including Saxman, that would result in  
30 possibly staying the decision.

31  
32 Mr. Chair.

33  
34 CHAIRMAN TOWARAK: Thank you. Okay,  
35 we'll get some direction from Mr. Goltz.

36  
37 MR. GOLTZ: No, that's right. I think  
38 that in spite of the personal testimony the law is going  
39 to push us in a different direction. Deal with the  
40 global first. If you do that you're going to have,  
41 possibly, the legal justification for the specific. If  
42 you don't do it that way it's going to be much harder to  
43 defend, I believe. Take the global issue up first.

44  
45 CHAIRMAN TOWARAK: Okay. We will discuss  
46 the global issue.

47  
48 Mr. Adams.

49  
50 MR. ADAMS: I'd like to have, you know,

1 Keith explain that, taking up the global issue first,  
2 please, if you don't mind.

3  
4 MR. GOLTZ: Okay. We've been charged by  
5 the Secretary to take a look at our rural process. If we  
6 are going to do that and we do it in a way that Theo  
7 suggests, we're going to be going out to the entire state  
8 of Alaska and saying, how should we be doing this. We  
9 had a lot of confusion last time, even the people on the  
10 Staff would find themselves with their tongue all tangled  
11 up as I did a few minutes ago, so we're asking the  
12 public, how do you want us to make rural determinations.

13  
14  
15 If we do that then it makes a lot of  
16 sense to say we should delay our decision on Saxman.

17  
18 If you start in the other direction and  
19 say we have been affected by the emotion of this  
20 testimony and we want to change our rule on Saxman,  
21 that's a two year, or at least a one year APA process.  
22 This direct final rule that Theo is talking about is a  
23 very unusual process. It may not even work, it does have  
24 some legal landmines in it but it is a method for making  
25 sure that the people who are affected by the decisions  
26 have a degree of certainty and that they don't have one  
27 set of rules now and a different set of rules six months  
28 from now. And that would be our legal argument.

29  
30 And that's why we had the executive  
31 session, to try to work this through with the Board. I  
32 frankly thought we had a smoother understanding than we  
33 did, but we are -- we are repeating the same -- for those  
34 of you who are suspicious of executive sessions we're  
35 repeating the same thing we said then.

36  
37 MR. ADAMS: Thank you for that  
38 clarification, Keith, appreciate it.

39  
40 CHAIRMAN TOWARAK: Mr. Lohse.

41  
42 MR. LOHSE: Mr. Chair. Then are you  
43 going to be, basically when you're talking about the  
44 global picture, you're going to be dealing with criteria,  
45 am I correct on that?

46  
47 MR. GOLTZ: It's up to the Board but I  
48 would assume so. If the public doesn't like the criteria  
49 and we've heard much on that then we might change it but  
50 we might use a different label.

1                   The discussion would be how are we going  
2 to make decisions.

3  
4                   MR. LOHSE: Well, I'm just going to make  
5 one comment then. Then that's, you know, as we all know  
6 we're all living in a world that's changing and changing  
7 without the choices of the people that are involved in it  
8 and some of the criteria that I saw that have been used  
9 in the past, such as the combination of schools, those  
10 aren't choices of the individuals whose children attend  
11 the schools, those are greater choices, you know, and  
12 that's one of the things -- and I'm not using that -- I'm  
13 just using that as an example, that when we start  
14 deciding on criteria we're going to have to look at what  
15 are those criteria are choices and what are criteria that  
16 don't have no choices.

17  
18                   MR. GOLTZ: I think that would be the  
19 whole point of the rulemaking process. People have been  
20 very critical of the criteria and the way we went about  
21 it, so we are asking, okay, what's a better way and we  
22 are starting at the ground level with the people that are  
23 affected. That's the idea that Dr. Jenkins has proposed.  
24 The Board hasn't taken any action.

25  
26                   CHAIRMAN TOWARAK: Mr. Haskett.

27  
28                   MR. HASKETT: So, again, I'm going to try  
29 and keep us moving, and maybe simplify this conversation  
30 a little bit -- maybe I do that too much but I'll try and  
31 do it again anyway.

32  
33                   So we have kind of two major charges  
34 here.

35  
36                   One is, and no one's questioning the fact  
37 that we have direction from the Secretary and we all  
38 agree it's important that we're going to look at this  
39 global, you know, kind of looking at the whole process  
40 and the criteria. We don't want to get too much into the  
41 conversation this morning about that because we're not  
42 going to try and resolve that today, we're just -- it's  
43 very important we do it and we make sure everybody  
44 understands that's part of what we need to cover here.

45  
46                   In addition, of course, we have, you  
47 know, whatever our decision is on Saxman and the other  
48 communities.

49  
50                   So I think it's very important for us to

1 keep this moving, but not get drug down into what is the  
2 Board going to do because we're going to do that through  
3 a public process and through government to government  
4 consultation and it's not going to be something we're  
5 going to do overnight. It's going to be something we're  
6 going to do as well as we can and get as much input as we  
7 possibly can so I guess I'm hoping we're not going to  
8 spend too much more time talking about that other than  
9 the fact, here's what we're prepared to do going forward.  
10

11 MS. PENDLETON: And I think this ties  
12 into what you were just saying, Geoff, and I just want to  
13 be clear that in the Secretary's direction to the Board  
14 that it's clear that we have that ability to both look at  
15 criteria that the Board uses and recommending  
16 determinations as well as the potential to change those  
17 regulations or make recommendations to the Secretaries to  
18 change those regulations. That that's clear.  
19

20 And I guess I just want to make sure that  
21 we have, within our ability to move forward with both of  
22 those, and that I understand that correctly.  
23

24 CHAIRMAN TOWARAK: Go ahead, Pete.  
25

26 MR. PROBASCO: Beth, you said -- or Ms.  
27 Pendleton, you said it very well.  
28

29 MS. PENDLETON: Okay, thank you.  
30

31 CHAIRMAN TOWARAK: Mr. Adams, you had a  
32 question.  
33

34 MR. ADAMS: I was just going to -- it  
35 seems like I understand earlier conversation that the  
36 criteria is going to come from the people most affected  
37 by it, am I correct in that assumption, or where is the  
38 criteria going to come from?  
39

40 Who is going to establish the criteria?  
41

42 CHAIRMAN TOWARAK: Pete.  
43

44 MR. PROBASCO: Mr. Chair. And that's why  
45 Mr. Matuskowitz, and as well as Mr. Goltz laid out that  
46 we are proposing a proposed rule that would go out to the  
47 public and ask the public; this is what we did based off  
48 the 2000 census, comments on that as well as comments on  
49 what are we missing, how should we go through the  
50 process; sort of like what Mr. Lohse was speaking to. So

1 it opens up globally, everything.

2

3 Mr. Chair.

4

5 CHAIRMAN TOWARAK: Thank you. Mr. Goltz.

6

7 MR. GOLTZ: Right. There is nothing in  
8 ANILCA that tells us how to do this, it's all regulatory  
9 and we're suggesting that we start again with the public  
10 and take another look at it.

11

12 CHAIRMAN TOWARAK: Mr. Virden.

13

14 MR. VIRDEN: Mr. Chair. You know later in  
15 the agenda we're going to talk about a treat, I'm  
16 assuming the location, I don't know for sure, but either  
17 at the retreat or during that discussion can we lay out  
18 some kind of timeframe, a realistic timeframe should we  
19 go this way to finish this process?

20

21 CHAIRMAN TOWARAK: Go ahead, Pete.

22

23 MR. PROBASCO: Mr. Chair. Mr. Virden.  
24 Most definitely that was one of the issues we had. But  
25 keep in mind that the Board and its Staff only controls  
26 portions of it and we'll identify what we can control and  
27 then what's out of our control once it goes down to D.C.,  
28 et cetera. But we would have a timeframe that would,  
29 everything lined up, this is where we can anticipate  
30 completing that.

31

32 CHAIRMAN TOWARAK: Go ahead.

33

34 MR. VIRDEN: Just a follow up, I mean  
35 just from the appointment of the two additional Board  
36 members, we want to make sure that we back up from this  
37 that the Secretary has plenty of time to make a decision  
38 on this if it goes to the Secretarial level.

39

40 CHAIRMAN TOWARAK: Go ahead.

41

42 MR. PROBASCO: Go ahead Keith.

43

44 MR. GOLTZ: I think the Board has to  
45 understand what it does but you don't have the luxury of  
46 a lot of time. If you don't act today I think it's  
47 questionable whether we'll meet the May 5th deadline.  
48 Frankly I think you have to act now.

49

50 CHAIRMAN TOWARAK: Go ahead, Mr. Haskett.

1 MR. HASKETT: Okay, but I think it would  
2 be helpful if you would define what you mean by act now.  
3  
4 MR. GOLTZ; I think the Board has to  
5 decide if it is going to take a global look at the  
6 process.  
7  
8 MR. HASKETT: Okay.  
9  
10 MR. GOLTZ: If it decides that it is  
11 going to, then it has to determine whether these five  
12 areas that are of now -- made some change in  
13 determination, whether it's going to stay -- is it five  
14 -- those five areas.  
15  
16 CHAIRMAN TOWARAK: Mr. Haskett.  
17  
18 MR. HASKETT: Okay. So I mean I'm  
19 prepared, when the appropriate time is to make a motion  
20 to do just that. And I mean I'm ready to do that now  
21 maybe that will help clear up the rest of this discussion  
22 if this is a good time to do that.  
23  
24 CHAIRMAN TOWARAK: Go ahead, Pete.  
25  
26 MR. PROBASCO: And, Mr. Haskett, before  
27 you do that, if I may Mr. Chair.....  
28  
29 CHAIRMAN TOWARAK: Yes.  
30  
31 MR. PROBASCO: .....is that on the global  
32 issue, because of time and because of redun -- to avoid  
33 redundancy, we're recommending that we start with a  
34 proposed rule.  
35  
36 Mr. Chair.  
37  
38 CHAIRMAN TOWARAK: Thank you. Mr.  
39 Cribley, you had a question.  
40  
41 MR. CRIBLEY: Well, I think Keith earlier  
42 said we're in some ways got the cart in front of the  
43 horse and I think he was maybe talking a little bit  
44 differently than what I'm thinking right now. But we  
45 have been -- well, I've been on the Board for over a year  
46 now and going to meetings and listening to public  
47 testimony and the Saxman issue has been one that has been  
48 in front of us and we've been receiving testimony or  
49 concerns from the public about this issue and we have  
50 been listening for a long time and our understanding --

1 and the agenda of this meeting was to -- for the Board to  
2 have a discussion about that.

3  
4                   And I guess it seems like we're having  
5 discussion right now without the Board actually having a  
6 dialogue about what we've heard on the Saxman issue and  
7 rural determination and it seems like we need at least to  
8 poll the Board members of what their thoughts are and  
9 what -- and then to make a conclusion from that and then  
10 to move forward with what our actions would be, both --  
11 from both perspectives, both from the global perspective  
12 and then also from the specific perspective of the  
13 effects to Saxman. And it seems like where we're jumping  
14 -- it seems like we're jumping in front without having  
15 any discussion. We have a whole group of people here who  
16 have been providing us feedback and input and we're not  
17 having any discussion about that. And I guess I would  
18 like to at least spend five minutes to discuss that so  
19 that we can -- because we can't -- this is the forum that  
20 we do that, we don't do that in executive sessions, we  
21 just talk about technical issues, and I'm afraid that  
22 what we're doing here isn't very transparent to the  
23 public as far as why we're doing what we're doing and  
24 where we're going without having any dialogue or  
25 discussion on it, we're just kind of jumping in front of  
26 everything. And I think we can do that, be transparent  
27 and meet the requirements for the record of why we're  
28 doing what we're doing and getting to where we need to  
29 get to be responsive, not only to Saxman and the concerns  
30 they've been voicing to us, but also the over-arching  
31 issue of how we go about doing rural determination and  
32 the obligation we have in front of us that are in the  
33 regulations to do the next 10 year cycle, rural  
34 determination, and how that is done.

35  
36                   Just a concern. Also it's almost lunch.

37  
38                   (Laughter)

39  
40                   MR. CRIBLEY: Sorry.

41  
42                   CHAIRMAN TOWARAK: In some ways, Mr.  
43 Cribley, that was exactly what I was trying to say  
44 earlier, that, we as a Board, will go ahead and make a  
45 decision and have the Staff make sure that we're  
46 following the right path.

47  
48                   MR. CRIBLEY: Right. Right.

49  
50                   CHAIRMAN TOWARAK: And Mr.....



1 MR. HASKETT: Haskett.  
2  
3 CHAIRMAN TOWARAK: .....had a comment,  
4 and then Mr. Lohse.  
5  
6 MR. HASKETT: So where I am, I actually  
7 believe it would help make to the motion specific to have  
8 I believe we should handle the rural determination  
9 process for the five communities, which covers this. I  
10 think it's fine if we're going to have a short poll of  
11 the Board that says, where are you all as far as you  
12 think on, you know, kind of the global thing. I mean  
13 we're kind of talking all around this and I'm feeling a  
14 really strong need to kind of get a little more specific,  
15 although I'm apparently making our attorney nervous when  
16 I say that. So I don't want to spend a whole lot of time  
17 and a lot more dialogue on this, a poll, kind of where we  
18 are, I think is great, but we shouldn't plan on spending  
19 -- I mean we could spend hours getting into the weeds on  
20 this and I want to be really careful we don't do that  
21 yet.  
22  
23 CHAIRMAN TOWARAK: Okay, I'm going to ask  
24 Mr. Goltz and then Mr. Lohse.  
25  
26 MR. GOLTZ: Okay, I'll be direct.  
27  
28 We cannot go where you want to go today.  
29  
30 We have not had the public process, we've  
31 only heard one side of the question.  
32  
33 We're talking in generalities because  
34 that's what we can legally defend.  
35  
36 If we want to directly address the  
37 testimony then we'll have to have notice and hearing on  
38 that testimony.  
39  
40 And be aware that much of the testimony  
41 has not been relevant to the legal considerations in  
42 front of us. This is not a Native statute, it's a rural  
43 statute. There are certain methods for determining  
44 rural. As much as we may be affected by the emotion of  
45 this, that's not the charge of this Board, and we simply  
46 do not have the record in front of us to decide the  
47 ultimate determination of Saxman.  
48  
49 I have tried to lay out a road map, if  
50 you will make a decision to take a global look at your

1 process then it will be defensible to delay Saxman, but  
2 I believe that's the only way we can go. We cannot  
3 address Saxman's ultimate fate today. We do not have a  
4 notice out. We do not have an adequate administrative  
5 record.

6

7 MR. HASKETT: Right.

8

9 CHAIRMAN TOWARAK: I've had Mr. Lohse  
10 wait patiently and then Mr. Haskett, and then Mr.  
11 Cribley.

12

13 Mr. Lohse.

14

15 MR. LOHSE: Well, I hope that I'm not out  
16 of line here and I know that I'm not sure whether -- I  
17 like what Keith said and I'm in agreement with Mr. Goltz,  
18 and I really feel that if you don't have some specific  
19 criteria that you're bringing into question for future  
20 rulemaking you have no basis on which to make any  
21 decisions to address the rural status of Saxman and the  
22 rest of the things, so I think that you really -- I mean  
23 there are parts of that criteria that probably  
24 everybody's in agreement with, but if you would have some  
25 specific parts that you're going to say we're going to  
26 address these in future rulemaking, these bring our  
27 decision in the past into question, then you can go and  
28 you can address a stay for Saxman and the rest of them,  
29 but you've got to have something specific that you're  
30 going to address in future rulemaking. I mean you're  
31 going to have to open it up to future rulemaking but you  
32 need some issues that you're going to open up.

33

34 That's what I was trying to get at  
35 before, some of those changes that have been brought that  
36 the people involved have no control over, how do they  
37 affect rural/non-rural, and if you have those issues then  
38 you can address them in future rulemaking, then you have  
39 a basis for addressing Saxman. If you don't have any of  
40 those then all you're saying is we're going to just  
41 address this whole issue and it's some nebulous thing off  
42 in the sky someplace.

43

44 MR. HASKETT: Again, sorry, I mean I  
45 think the motion I'm going to make actually covers enough  
46 of those issues that it would be something to actually  
47 put something on the record and if, after I make the  
48 motion, if there's any concern that I did not adequately  
49 cover the kind of questions you think need to be covered  
50 then I'd say okay then we won't go forward with it.

1 CHAIRMAN TOWARAK: Mr. Cribley, you had  
2 a question.  
3  
4 MR. CRIBLEY: (Shakes head negatively)  
5  
6 CHAIRMAN TOWARAK: No.  
7  
8 MS. COOPER: Mr. Chair, I did. I was  
9 going to ask for either a five minute break or we break  
10 early for lunch. If Board Member Haskett actually has a  
11 motion then I think we should proceed, if not I do have  
12 a question for legal counsel, but if we're not going to  
13 forward with the motion I think we should take a break.  
14  
15 CHAIRMAN TOWARAK: What's the wishes of  
16 the Board.  
17  
18 MR. HASKETT: Well, I can make a motion  
19 if I want to anyway, right.  
20  
21 (Laughter)  
22  
23 MR. HASKETT: I'd like to make a motion  
24 and the Board can tell me yes or no.  
25  
26 (Laughter)  
27  
28 CHAIRMAN TOWARAK: The floor is open.  
29  
30 MR. HASKETT: So can I get a second to  
31 make my motion.  
32  
33 (Laughter)  
34  
35 MS. PENDLETON: Second.  
36  
37 MR. HASKETT: Okay. Oh, sorry.  
38  
39 (Laughter)  
40  
41 MS. PENDLETON: Make a motion.  
42  
43 (Laughter)  
44  
45 MR. HASKETT: I was just looking for  
46 someone to say I could do the motion, period.  
47  
48 (Laughter)  
49  
50 MR. HASKETT: Okay. I move to delay the

1 compliance date of the Board's previous decision to  
2 revise the areas or communities from rural to non-rural  
3 status as they were published in the Federal Register on  
4 May 7th, 2007. The compliance date will be delayed until  
5 either the 2010 rural process is completed or five years,  
6 whichever comes first.

7

8 I'll provide my justification if I get a  
9 second.

10

11 MS. PENDLETON: Second.

12

13 CHAIRMAN TOWARAK: You heard the motion  
14 and the question.

15

16 Further discussion.

17

18 MR. HASKETT: Okay. So we've been  
19 working on the Secretary's directives to review various  
20 aspects of the Subsistence Program for over a year now  
21 and one of our tasks is to review the rural determination  
22 process. There's a possibility that any proposed  
23 regulatory changes to the rural determination process as  
24 a result of this review would require new rulemaking. By  
25 delaying the compliance date the Board will be saving  
26 time and resources by avoiding the possibility of  
27 repetitive rulemaking. This action also demonstrates a  
28 genuine commitment to listening and responding to what  
29 the Board heard through public comments, tribal  
30 consultations and Council recommendations regarding the  
31 rural determinations.

32

33 I also can't think of any harm this delay  
34 would cause for any fish and wildlife populations around  
35 the state, but certainly would allow those users whose  
36 status is set to change to non-rural this May the  
37 opportunity to continue their subsistence uses on Federal  
38 public lands at least until we get this sorted out.

39

40 As Mr. Lee Wallace pointed out, I had the  
41 opportunity to go out to Saxman and visit the community  
42 and get a sense of why there's concerns, we've had lots  
43 of letters, calls and testimony for us to look at this  
44 previous decision. We've spent a good part of this  
45 morning hearing from people on why it's important. We  
46 had the beginning of this session hearing testimony from  
47 AFN and many others saying why we needed to do this. I  
48 really appreciated Bert Adams comments and Council in his  
49 part, you know, that the RAC believes that we're going in  
50 the right direction on this, after hearing more about the

1 reasons for looking at this. We do have legal  
2 requirements to follow and this stay would allow us to  
3 stay within those requirements for Saxman and the other  
4 communities, and they will continue as rural -- or Saxman  
5 will continue as rural until we make a final decision.

6  
7 I also appreciated the State's comments  
8 that Jennifer made about the State believes we need to be  
9 consistent on all our future decisions, what is exactly  
10 what we're planning to do, and trying to do through this  
11 process.

12  
13 Repeat again we have five communities to  
14 look at. We've had lots of discussion that this is just  
15 not the community of Saxman.

16  
17 We need to make sure that they are all  
18 treated fairly and in a legally defensible manner.

19  
20 These legal requirements also preclude us  
21 from making a decision on Saxman today.

22  
23 However, as I said, there's lots of  
24 questions that the Board has and a decision to stay the  
25 previous rural determination of Saxman allows Saxman to  
26 stay rural while we go through this process, go through  
27 a public process with the different communities, rural  
28 and Native. Almost every letter I saw coming in asks  
29 that we should go forward in ways that -- they recognize  
30 we could not come to a specific decision today, that a  
31 stay would be the next best thing.

32  
33 So we've heard impassioned requests from  
34 the people of Saxman, from many others.

35  
36 It's a complicated process. I recognize  
37 we need to go through a lot of work, you know, working  
38 with the public and making sure we do government to  
39 government consultation. Getting through this process is  
40 not something you do overnight but I do believe that we  
41 do have enough information that we could stay our  
42 previous decision on Saxman and these other communities.

43  
44 And now I guess I -- before we go too far  
45 forward, make sure that my attorney to the right of me is  
46 not way too overly concerned about what I just did.

47  
48 (Laughter)

49  
50 MR. GOLTZ: I suggest we have lunch.

1 MR. HASKETT: Okay. Well, if nothing  
2 else people know where I'm coming from.  
3  
4 CHAIRMAN TOWARAK: Was there a second to  
5 the motion.  
6  
7 REPORTER: Yes.  
8  
9 CHAIRMAN TOWARAK: No.  
10  
11 REPORTER: Yes, there was.  
12  
13 CHAIRMAN TOWARAK: No.  
14  
15 MR. PROBASCO: Yes, there was. Ms.  
16 Pendleton did the second, Mr. Chair.  
17  
18 I think when we get into situations like  
19 this, going from -- from my experience on this Board as  
20 well as my previous experience, I think it's important  
21 that we get it right and that we go down a path that --  
22 make sure that what the Board wants to do for these  
23 communities that may be affected in May of 2012, that we  
24 take a break and that we discuss it so that people  
25 understand -- maybe Geoff can speak with Keith and then  
26 we come back on the record and lay things out, Mr. Chair.  
27  
28 So I strongly recommend that we take a  
29 break.  
30  
31 CHAIRMAN TOWARAK: Go ahead.  
32  
33 MS. COOPER: I concur with that and I'd  
34 like to suggest one more thing, if it's possible maybe we  
35 end up with some thoughts towards the motion and  
36 something typed up when we reconvene.  
37  
38 CHAIRMAN TOWARAK: Mr. Adams.  
39  
40 MR. ADAMS: Just a comment here.  
41  
42 Geoff mentioned that -- I have to make  
43 this known that the RAC, you know, the Southeast RAC is  
44 standing its position to support Saxman. Okay. And the  
45 feeling that I said earlier, that we were probably going  
46 in the right direction, I'm not representing the RAC on  
47 that comment, okay, it's my own personal feeling.  
48 However, I don't see any problem with the RAC supporting  
49 that as well.  
50

1                               So I just wanted to clarify that for the  
2 record.  
3  
4                               Mr. Chairman.  
5  
6                               CHAIRMAN TOWARAK: Thank you. Is there  
7 any objection to taking a lunch break before we act on  
8 the motion.  
9  
10                              (No objections.  
11  
12                              CHAIRMAN TOWARAK: We will reconvene at  
13 1:30 then.  
14  
15                              (Off record)  
16  
17                              (On record)  
18  
19                              CHAIRMAN TOWARAK: There's a motion on  
20 the floor. What's the desires of the motion maker.  
21  
22                              (Laughter)  
23  
24                              MR. HASKETT: So I've been convinced by  
25 our legal counsel that I got ahead of the cart a little  
26 bit.  
27  
28                              (Laughter)  
29  
30                              MR. HASKETT: So he actually didn't tell  
31 me my motion was bad, but he said it was just misplaced.  
32  
33                              (Laughter)  
34  
35                              MR. HASKETT: So what I would like to do  
36 would be to ask the Board to let me pull that motion so  
37 that we could have another motion from another member on  
38 the Board that actually sets the stage a little better  
39 than was set when I did it the first then after that,  
40 assuming it goes, the Board passes it, I intend to go  
41 ahead and give a very similar motion after that.  
42  
43                              MS. PENDLETON: And I will second that.  
44 And I believe I have to withdraw my second as well,  
45 correct.  
46  
47                              MR. PROBASCO: You just concur.....  
48  
49                              MS. PENDLETON: Okay.  
50

1 MR. PROBASCO: Mr. Chair. The request to  
2 withdraw the motion is not a motion, it just has to be  
3 concurred by the second, which was done so the motion is  
4 off the table.

5  
6 CHAIRMAN TOWARAK: We are back to opening  
7 the floor for further action.

8  
9 MR. CRIBLEY: Mr. Chair.

10  
11 CHAIRMAN TOWARAK: Yes.

12  
13 MR. CRIBLEY: I'd like to make a motion  
14 if I may. And if I can get a second on that I'd like to  
15 give my rationale for my motion.

16  
17 MS. COOPER: Second.

18  
19 MR. CRIBLEY: I haven't made my -- slow  
20 down.....

21  
22 (Laughter)

23  
24 MR. CRIBLEY: Okay. The motion that I'd  
25 like to make is consistent with Secretary's direction in  
26 his September 10th letter to the Board and consistent  
27 with our regulations. I move to direct the Staff, the  
28 subsistence Staff to initiate a review of the rural  
29 determination process and the rural determination  
30 findings through publication of a proposed rule.

31  
32 Thank you.

33  
34 MS. COOPER: If that's the motion I'll  
35 second.

36  
37 CHAIRMAN TOWARAK: You heard the motion  
38 and the second. Discussion.

39  
40 MR. CRIBLEY: Yes, Mr. Chairman. As far  
41 as my discussion and rationale for this, as I had said  
42 previously since I've come on the Board the issue of  
43 rural determination and the decisions from the last rural  
44 determination review has been in front of the Board at  
45 all of our meetings and concerns about that process and  
46 the criteria that we use for making determination has  
47 been discussed and has been brought to the Board by the  
48 public. And the public has expressed concerns about the  
49 determinations that were made previously based on the  
50 criteria.



1                   And I just feel based on that, what the  
2 public has been -- the information that they have been  
3 providing to us and that we are required to do a review  
4 every 10 years and we're scheduled to start or we are  
5 starting another rural determination review, that we  
6 should do a review of that process to make sure --  
7 basically to open it up to the public and allow them to  
8 provide us information on how that should be done, to  
9 either validate the current process or make suggestions  
10 or recommendations on how we may make it better and more  
11 reflective of what the intent is.

12  
13                   So that's kind of my thoughts or the  
14 rationale why I think we should open that up and  
15 reconsider our current process, and that's basically  
16 because of the feedback that we have received from the  
17 public.

18  
19                   Thank you.

20  
21                   CHAIRMAN TOWARAK: Any further  
22 discussion. Mr. Virden.

23  
24                   MR. VIRDEN: Mr. Chair. So, Bud, that  
25 would be a bottom up process, input from the public?

26  
27                   MR. CRIBLEY: Yes.

28  
29                   MR. VIRDEN: Thank you.

30  
31                   CHAIRMAN TOWARAK: Any further  
32 discussion.

33  
34                   (No comments)

35  
36                   MS. COOPER: Mr. Chair. I'd like to call  
37 for the question.

38  
39                   CHAIRMAN TOWARAK: The question's been  
40 called for. Roll call, please.

41  
42                   MR. PROBASCO: Thank you, Mr. Chair.  
43 Action on the motion made by Mr. Cribley and seconded by  
44 Ms. Pendleton [sic], I'll just refer to your motion  
45 earlier.

46  
47                   Mr. Haskett.

48  
49                   MR. HASKETT: Yes.

50

1 MR. PROBASCO: Mr. Towarak.  
2  
3 CHAIRMAN TOWARAK: Yes.  
4  
5 MR. PROBASCO: Ms. Cooper.  
6  
7 MS. COOPER: Yes.  
8  
9 MR. PROBASCO: Ms. Pendleton.  
10  
11 MS. PENDLETON: Yes.  
12  
13 MR. PROBASCO: Mr. Cribley.  
14  
15 MR. CRIBLEY: Yes.  
16  
17 MR. PROBASCO: Mr. Virden.  
18  
19 MR. VIRDEN: Yes.  
20  
21 MR. PROBASCO: Mr. Chairman. This motion  
22 carries, 6/0.  
23  
24 CHAIRMAN TOWARAK: I probably should have  
25 asked this a little bit earlier but does that put a stay  
26 on the.....  
27  
28 MR. HASKETT: No.  
29  
30 CHAIRMAN TOWARAK: No, okay.  
31  
32 MR. HASKETT: Go to me.  
33  
34 (Laughter)  
35  
36 CHAIRMAN TOWARAK: Mr. Haskett.  
37  
38 MR. HASKETT: Casey here.  
39  
40 (Laughter)  
41  
42 MR. HASKETT: Just joking. So I'd like  
43 to make a motion and then based on the previous action  
44 that we just took to do a review of the rural  
45 determination process, I move to extend the compliance  
46 date of the Board's previous decision to revise the areas  
47 or communities from rural to non-rural status as they  
48 were published in the Federal Register on May 7th, 2007,  
49 the compliance date will be extended until either the  
50 completion of the 2010 rural determination process or

1 five years, whichever comes first. This will be  
2 accomplished through publication of a direct final rule.  
3 And if I get a second I'll go ahead and give my  
4 justification.

5  
6 MS. PENDLETON: Second that.

7  
8 CHAIRMAN TOWARAK: You heard the motion  
9 and the second. Discussion.

10  
11 MR. HASKETT: So my justification is very  
12 similar to what I gave this morning. I'm going to have  
13 to kind of make some changes as I go through here so I'll  
14 do the best I can to make sure I keep this more  
15 reflective of the discussion but it's very close.

16  
17 As I said earlier today, we've been  
18 working on the Secretary's directives to review various  
19 aspects of the Subsistence Program for well over a year  
20 now. And one of our tasks was to review the rural  
21 determination process. There's a possibility that any  
22 proposed regulatory changes to the rural determination  
23 process as a result of this review would require new  
24 rulemaking. By delaying the compliance date the Board  
25 will be saving time and resources by avoiding the  
26 possibility of repetitive rulemaking. This action also  
27 demonstrates a genuine commitment to listening and  
28 responding to what the Board heard through public  
29 comments. That's the bottom up process that you just  
30 asked about; public comments, tribal consultations and  
31 Council recommendations regarding the rural  
32 determinations.

33  
34 I can't see any harm that this delay  
35 would cause for any fish or wildlife populations, there's  
36 no conservation concerns, and it would certainly allow  
37 those users whose status is set to change to non-rural  
38 this May the opportunity to continue to subsistence uses  
39 on Federal public lands at least until we get this sorted  
40 out.

41  
42 I mentioned earlier today, that I had an  
43 excellent visit  
44 with Mr. Lee Wallace in Saxman a number of years ago.  
45 That actually gave me to start questioning, not just  
46 Saxman, but all the rural communities that the decision  
47 had been made on previously. We had lots of letters and  
48 calls and testimony for us at this meeting to relook at  
49 our previous decision.

50

1                   As I mentioned before, I appreciate Bert  
2 Adams comments and I recognize the fact he said I wasn't  
3 really speaking for the RAC but I think they're still  
4 very important and some recognition of the direction  
5 we're going here.

6  
7                   We do have legal requests to follow and  
8 we still need to make sure that we're following on the  
9 right path and we need to make sure whatever we do that  
10 we do in consistent ways. I think Jennifer's comments  
11 earlier from the State, that whatever process we go  
12 through we need to make sure it's actually something  
13 that's consistent and something that we can logically  
14 defend, which I believe we'll be able to.

15  
16                   We have five communities this involves to  
17 look at to make sure they're all treated fairly and in a  
18 legally defensible manner. These legal requirements also  
19 -- well, let me pull back from that one.

20  
21                   As I said before there's many questions  
22 before the Board.

23  
24                   The previous rural determination in 2007  
25 being stayed, also I need to make sure that this only  
26 covers the action that the Board took from non-rural --  
27 no, from rural to non-rural, there was at least one  
28 decision, I think Adak where the Board had made a  
29 determination that went to rural, this doesn't change  
30 that at all.

31  
32                   I think everything that we've talked  
33 about for the last three days leads to a fair amount of  
34 justification for us to take this action and I'd like to  
35 move forward with it.

36  
37                   CHAIRMAN TOWARAK: Further discussion.

38  
39                   MS. PENDLETON: Call question for the  
40 question.

41  
42                   CHAIRMAN TOWARAK: Question's been called  
43 for. Roll call, please.

44  
45                   MR. PROBASCO: Thank you, Mr. Chair. And  
46 this is the second motion of dealing with the issue of  
47 rural/non-rural determinations as made by Mr. Haskett and  
48 seconded by Ms. Pendleton.

49  
50                   First up is Mr. Towarak.

1 CHAIRMAN TOWARAK: Yes.  
2  
3 MR. PROBASCO: Ms. Cooper.  
4  
5 MS. COOPER: Yes.  
6  
7 MR. PROBASCO: Ms. Pendleton.  
8  
9 MS. PENDLETON: Yes.  
10  
11 MR. PROBASCO: Mr. Cribley.  
12  
13 MR. CRIBLEY: Yes.  
14  
15 MR. PROBASCO: Mr. Virden.  
16  
17 MR. VIRDEN: Yes.  
18  
19 MR. PROBASCO: Mr. Haskett.  
20  
21 MR. HASKETT: Yes.  
22  
23 MR. PROBASCO: Mr. Chairman. This motion  
24 carries, 6/0.  
25  
26 CHAIRMAN TOWARAK: Thank you. And I  
27 assume that takes care of that agenda topic.  
28  
29 MR. HASKETT: Can I point out one thing.  
30  
31 CHAIRMAN TOWARAK: Mr. Haskett.  
32  
33 MR. HASKETT: I would like to point out  
34 that our legal counsel showed up just to make sure that  
35 I got that right and he's leaving now that we're done.  
36  
37 (Laughter)  
38  
39 MR. GOLTZ: I'm glad you got it on the  
40 record.  
41  
42 (Laughter)  
43  
44 MR. HASKETT: So I appreciate his coming  
45 back to keep me straight.  
46  
47 (Laughter)  
48  
49 MR. PROBASCO: And I want to thank Mr.  
50 Goltz, thank you, Keith.

1 CHAIRMAN TOWARAK: Thank you. We will  
2 continue then with our agenda. We have other business to  
3 attend to. I don't have them written down but we have a  
4 March Board meeting that we wanted to discuss.

5  
6 MR. PROBASCO: Yes, Mr. Chair. And every  
7 Board member I hope kept their copy, this was handed out  
8 earlier, it focuses on the issue as it pertains to the  
9 extraterritorial jurisdiction. This calendar of events  
10 and schedules was developed by Staff within OSM as well  
11 as Forest Service Staff. And what I would like the Board  
12 to focus on is the March calendar where we are going to  
13 be traveling to Juneau where we'll be meeting in  
14 conjunction with Mr. Adams' Council, the Southeast RAC  
15 Council, and we've laid out a tentative date that we'd  
16 like to get confirmation on so that we can post it as  
17 well as share it with the public.

18  
19 So if you look at the bottom, we have  
20 laid this out and starting on March 21st from 1:30 to  
21 4:00 o'clock, the Board will have a session dealing with  
22 tribal consultation on extraterritorial jurisdiction and  
23 keep in mind that we're trying to do this in conjunction  
24 with the Southeast RAC as well. And then on March 22nd,  
25 not knowing how many people will be testifying on this,  
26 we have set aside a public session. If the tribal  
27 consultation is over sooner than we anticipate we would  
28 do that on March 21st and bleed over into March 22nd.  
29 Then we would recess, the RAC would continue to meet to  
30 deliberate on their issues as well as the  
31 extraterritorial jurisdiction and then they would come  
32 back with their recommendation to the Board and then the  
33 Board, because this is a Secretarial decision, has to go  
34 into executive session to discuss the issues and then  
35 they, under a letter, would draft their recommendation  
36 for the Secretaries to consider. March 23rd, by the end  
37 of the day, we would hope to have that decision  
38 finalized.

39  
40 So I'm looking for confirmation; or first  
41 questions and then confirmation on this.

42  
43 MS. PENDLETON: I would give a  
44 confirmation. I mean it looks good from my perspective.

45  
46 MR. PROBASCO: Mr. Adams, how does this  
47 look for you because we're going to be disrupting your  
48 meeting as well?

49  
50 MR. ADAMS: No, it's fine, we're looking

1 forward to it, so that's fine.

2

3 (Laughter)

4

5 MR. ADAMS: I just have a question  
6 though, Mr. Chairman.

7

8 CHAIRMAN TOWARAK: Go ahead.

9

10 MR. ADAMS: Would the RAC be able to sit  
11 in on the executive session?

12

13 MR. PROBASCO: Mr. Chair. I will check  
14 with legal counsel but I believe the answer would be no.

15

16 Mr. Chair.

17

18 MR. ADAMS: How about the Chair.

19

20 That's okay, I know.

21

22 (Laughter)

23

24 MR. ADAMS: I'm just pulling your leg,  
25 Pete.

26

27 (Laughter)

28

29 MR. PROBASCO: Okay. If there's any  
30 changes to that, Mr. Adams, I will get back to you.

31

32 MR. ADAMS: Oh, we're not expecting it,  
33 I was just trying, you know, to make us laugh this  
34 afternoon.

35

36 (Laughter)

37

38 MR. PROBASCO: I appreciate that Mr.  
39 Adams. So I'm seeing thumbs up around so I'll work with  
40 Mr. Kessler and Staff and the Forest Service and we will  
41 finalize that. I know Steve and Ms. Pendleton are  
42 getting a lot of questions on this so we're good to go.

43

44 So that takes care of the first item, Mr.  
45 Chair.

46

47 CHAIRMAN TOWARAK: We will move on to the  
48 second item.

49

50 MR. PROBASCO: Okay, the second item I

1 have is we've heard a lot of discussion, the Board has  
2 given us, the Staff, a thumb's up to put together a  
3 workshop/retreat. Of course we know scheduling is our  
4 challenge. I would envision a one to two day retreat,  
5 probably more like two days, and I'm looking for  
6 direction from the Board where they would like to do it  
7 and when. Keep in mind we still have to schedule a May  
8 Board meeting, which would deal with hopefully finalizing  
9 the tribal consultation protocol and then any updates  
10 that the State and the Federal side would have on the  
11 MOU.

12

13 So with that, Mr. Chair, we're looking  
14 for a date on the retreat concept.

15

16 CHAIRMAN TOWARAK: I was going to open  
17 the floor for discussion on it but I wanted to suggest  
18 Unalakleet.

19

20 (Laughter)

21

22 MR. PROBASCO: That would be up to the  
23 Board, Mr. Chair.

24

25 CHAIRMAN TOWARAK: The floor is open for  
26 discussion.

27

28 Mr. Adams.

29

30 MR. ADAMS: Thank you, Mr. Chairman. I  
31 just got -- had a discussion with Lee here a little while  
32 and I congratulated him about his valiant effort, you  
33 know, on the Saxman issue, and he gave me the authority  
34 to say that you're invited to Saxman for your retreat.

35

36 CHAIRMAN TOWARAK: Thank you. Ms.  
37 Pendleton, you had a question.

38

39 MS. PENDLETON: Yes, Mr. Chair. Just  
40 getting some clarification we're looking at a two day or  
41 three day, or.....

42

43 MR. PROBASCO: Ms. Pendleton. I would  
44 say based on the issues that we'd like to discuss and the  
45 depth that we want to go I think we should plan on two  
46 days.

47

48 MS. PENDLETON: Thank you.

49

50 CHAIRMAN TOWARAK: Mr. Haskett.



1 MR. HASKETT: I'd actually like to go to  
2 Unalakleet but scheduling it might be difficult. So if  
3 it's two days, I mean we all have horrible travel  
4 schedules and I'm thinking if there's any way we could  
5 just maybe add it on one side or the other of when we're  
6 meeting. I mean that's a long week but it might be  
7 easier just to do that and work into a weekend or  
8 something instead of trying to schedule it.  
9  
10 MR. PROBASCO: You're talking about May?  
11  
12 MR. HASKETT: Yes, the May meeting.  
13  
14 MS. PENDLETON: Or March.  
15  
16 MR. HASKETT: Or March. Yes, March would  
17 work too.  
18  
19 MS. PENDLETON: Since we've got two and  
20 a half day too in that week of March.  
21  
22 MR. HASKETT: Yeah.  
23  
24 MS. PENDLETON: So we could look at, if  
25 I may, Mr. Chair, suggest maybe the 19th or 20th or --  
26 yeah, Monday and Tuesday.  
27  
28 CHAIRMAN TOWARAK: That would work for me  
29 better. I've got other obligations at the end of March  
30 [sic], but I could go on both sides of the week if need  
31 be.  
32  
33 MR. PROBASCO: So on the floor I hear a  
34 suggestion 19th and 20th and I think Ms. Pendleton is  
35 offering Juneau as the location to make things -- the  
36 morning of the 19th would be a travel day, which is a  
37 Monday.  
38  
39 MR. HASKETT: Or travel morning.  
40  
41 MS. PENDLETON: Might suggest if we  
42 needed two full days folks could travel in the morning on  
43 Monday and that would give us Monday afternoon through  
44 Wednesday noon for retreat business and then start that  
45 afternoon with the full Board meeting.  
46  
47 MR. HASKETT: So I think that would be  
48 great if we could start early and then we could just keep  
49 a day at the end too so we can actually maybe split it  
50 up, too, if we needed to, that'd probably be the best

1 date to work.

2

3 MS. COOPER: Mr. Chair. Just to note  
4 that the Southeast RAC starts on the 20th and I don't  
5 know what involvement we need from OSM or ISC.

6

7 MR. PROBASCO: I'm looking at Steve and  
8 myself, I have Staff that could fill in for me at  
9 Southeast, but Mr. Ardizzone and I think Ms. Pendleton  
10 could speak to it, that week in Juneau is very full. I  
11 guess there's a big basketball tournament that week and  
12 we struggled to find location, meeting location as well  
13 as hotel space for that period of time but we can try and  
14 see if we could make it fit. Meeting location I'm sure  
15 we could find something in the Forest Service as far as  
16 location, correct.

17

18 MS. PENDLETON: Well, we will work on  
19 that but, yes, that will be the attempt.

20

21 MR. HASKETT: Just, I mean everybody's  
22 schedules are just horrible. It sounds like we have  
23 something that works and we're all planning on being  
24 there that week so anyway, so anything we could do to  
25 actually make it work that week I think would be really  
26 good. Because it sounds like you have commitment for us  
27 all to be able to be there that week.

28

29 MR. VIRDEN: Is that Gold Medal.

30

31 REPORTER: Yes.

32

33 (Various nods of affirmative)

34

35 MR. VIRDEN: Thank you.

36

37 MR. PROBASCO: We could have a team.

38

39 (Laughter)

40

41 MR. PROBASCO: So, Mr. Chair. It looks  
42 like we have confirmation. Staff will work on securing  
43 a location for the 19th, 20th, into the afternoon of the  
44 21st, with the understanding that the morning of the 19th  
45 is a travel date and based on that I would suggest that  
46 Board members and Staff make additional hotel  
47 arrangements as soon as possible.

48

49 CHAIRMAN TOWARAK: Are there other issues  
50 that we need to address.

1 MR. PROBASCO: Yes, Mr. Chair, I have two  
2 more. Ms. Yuhas and myself would just like to give a  
3 quick update on the MOU. Staff, myself, on the Federal  
4 side, Sandy Rabinowitch, Jerry Berg and Steve Kessler  
5 have been working with Jennifer on the State side. We  
6 hope to be able to, during the March portion, or actually  
7 before the March meeting, before the RACs, have drafts  
8 out of potential changes which we would share with you  
9 before we send out to the public, of some potential  
10 revisions to the MOU with the goal of having the Regional  
11 Advisory Councils review those during this winter cycle.

12

13 Jennifer, do you have anything to add?

14

15 MS. YUHAS: I really don't, just we're  
16 doing our Staff work now and any revisions will be turned  
17 back out to the RACs and the Advisory Committees on our  
18 side before any action is taken or the whole of the  
19 Board.

20

21 MR. PROBASCO: And then once we complete  
22 the RAC cycle with those recommendations we would come  
23 back to the Board and work first with the Staff Committee  
24 and then the Board to finalize the draft for final action  
25 with the State sometime in May.

26

27 Okay.

28

29 CHAIRMAN TOWARAK: Okay.

30

31 MR. PROBASCO: Thank you. And the last  
32 thing -- as I said earlier in the meeting and I wanted to  
33 make this announcement because there's a lot of interest  
34 -- go ahead Jennifer.

35

36 MS. YUHAS: Pete you indicated final  
37 action sometime in May but when we went through the  
38 timeline, when we met as Staff, the timeline had been  
39 pushed back that final action by the Board would likely  
40 not take place until January of next year.

41

42 MR. PROBASCO: Thank you.

43

44 MS. YUHAS: Okay.

45

46 MR. PROBASCO: You are accurate.

47

48 MS. YUHAS: Okay.

49

50 MR. PROBASCO: I'm sorry. Thank you for

1 the correction. Catch me quicker, okay.

2

3 (Laughter)

4

5 CHAIRMAN TOWARAK: Thanks. The last  
6 thing I had was just to make a formal announcement that  
7 as far as the Native liaison position for the Office of  
8 Subsistence Management, which was held by Carl Jack, and  
9 Carl retired, that will be open for recruitment on the  
10 usgov site and that will be open Monday January 23rd.  
11 And anybody interested in that position and need  
12 assistance with that, please, contact my office and we  
13 will help you with that.

14

15 So, Mr. Chair, that's all the items I  
16 have.

17

18 Oh, I do have one more.

19

20 CHAIRMAN TOWARAK: The floor is yours.

21

22 MR. PROBASCO: Thank you, Mr. Chair. And  
23 this one is in big and bold, May meeting, Federal  
24 Subsistence Board I think we need to carve out two days  
25 but hopefully we can do everything in one day, I need  
26 some dates for May for a meeting. And this meeting will  
27 -- right now what we have on our agenda is tribal  
28 consultation and looking at the draft of the MOU, and no  
29 telling what else we will get on our plate.

30

31 Any recommended dates from the Board  
32 members.

33

34 MR. HASKETT: We didn't have the dates?

35

36 MR. PROBASCO: No we have no dates  
37 selected yet.

38

39 MR. VIRDEN: Mr. Chair.

40

41 CHAIRMAN TOWARAK: Go ahead.

42

43 MR. VIRDEN: Do we need to set those  
44 right now. I know I have to go back to D.C. for a budget  
45 meeting, and I don't have that with me, the middle of  
46 May. It's our annual meeting around the country back  
47 there.

48

49 MR. PROBASCO: Well, I've alerted, I  
50 think if we can do this electronically and I'll try to

1 confirm the date next week, I'll send an email out, and  
2 ask for a quick response.  
3  
4 MR. VIRDEN: Okay. Thank you.  
5  
6 MR. PROBASCO: Is that doable.  
7  
8 MR. HASKETT: Yes.  
9  
10 MR. PROBASCO: Are there any weeks, I see  
11 some people are looking at calendars, any weeks to avoid  
12 at this time?  
13  
14 CHAIRMAN TOWARAK: I have meetings on the  
15 22nd of May for about three days.  
16  
17 MR. PROBASCO: Okay so the week of 21st  
18 trouble, has difficulties.  
19  
20 MR. LORD: Mr. Chair. I'm out of the  
21 country from May 20th to the end of the month.  
22  
23 CHAIRMAN TOWARAK: Okay, the last two  
24 weeks.  
25  
26 MR. HASKETT: The week of the 14th  
27 doesn't work for me.  
28  
29 MS. PENDLETON: Yeah, the week of the  
30 14th, same here, doesn't work.  
31  
32 MR. PROBASCO: Doesn't work. So now  
33 we're back to the week of the 7th, okay, let's look at  
34 the week of the 7th.  
35  
36 (Board nods affirmatively)  
37  
38 MR. PROBASCO: Okay, thank you.  
39  
40 MR. PROBASCO: Now that's all I have.  
41  
42 CHAIRMAN TOWARAK: Thank you. Are there  
43 any other business that the Board needs to address.  
44  
45 (No comments)  
46  
47 CHAIRMAN TOWARAK: If not the floor is  
48 open for adjournment.  
49  
50 MR. ADAMS: Mr. Chairman.

1 CHAIRMAN TOWARAK: Go ahead.  
2  
3 MR. ADAMS: If I just might say, you  
4 know, I think this was a very productive meeting and  
5 congratulations for your wisdom and working with the  
6 issue of Saxman. I think that process is going to come  
7 out pretty well.  
8  
9 I also want to show my appreciation to  
10 the young people from Sitka who came to these meetings.  
11 I've had a chance to talk with them a little bit and they  
12 seem to be getting a lot of good information out of here.  
13  
14 So I just want to say, you know, thank  
15 you very much for this meeting -- this meeting has been  
16 very productive, and I commend you for the work you are  
17 doing here.  
18  
19 Thank you, Mr. Chairman. I hope everyone  
20 has a safe trip back home, wherever that might be.  
21  
22 CHAIRMAN TOWARAK: Thank you, Mr. Adams.  
23 And I, too, hope that everyone has a safe journey home,  
24 especially me.  
25  
26 (Laughter)  
27  
28 MR. HASKETT: That's very selfish.  
29  
30 (Laughter)  
31  
32 MR. ADAMS: Well, good luck, Mr.  
33 Chairman. In Southeast Alaska, too, we're having big  
34 storms down there, they're expecting 24 inches of  
35 snowfall and right now there's about 75 knots of wind,  
36 you know, whipping through Juneau and it's going to  
37 spread up toward my home by tomorrow so hopefully I'll  
38 beat that and then get snowed in in Yakutat where I  
39 belong.  
40  
41 (Laughter)  
42  
43 MR. ADAMS: Thank you.  
44  
45 MR. CRIBLEY: Mr. Chairman. I move that  
46 we adjourn. Oh, never mind.  
47  
48 MR. PROBASCO: Your motion is in order.  
49 But I was asked that if the Board members would just  
50 stick around for a couple minutes the students would like

1 to get a picture with you, with the Board. Okay. Is  
2 that okay with the Board?  
3  
4 CHAIRMAN TOWARAK: We'll take time to do  
5 that. The motion is in order.  
6  
7 MR. CRIBLEY: Now what do I do, do I do  
8 it again?  
9  
10 MS. PENDLETON: Just do it.  
11  
12 MR. CRIBLEY: Well, maybe not -- meeting  
13 adjourned, is that what I'm supposed to do.  
14  
15 No.  
16  
17 Make -now I can make the motion to -- Mr.  
18 Chairman, may we adjourn this meeting please.  
19  
20 (Laughter)  
21  
22 MR. CRIBLEY: So we can get our pictures  
23 taken.  
24  
25 (Laughter)  
26  
27 MS. PENDLETON: I just love to second  
28 these so I'm going to second it.  
29  
30 CHAIRMAN TOWARAK: A motion has been  
31 moved and seconded that we adjourn, all those in favor of  
32 the motion say aye.  
33  
34 IN UNISON: Aye.  
35  
36 CHAIRMAN TOWARAK: Any opposed, say nay.  
37  
38 (No opposing votes)  
39  
40 CHAIRMAN TOWARAK: Motion passes, we are  
41 adjourned. Thank you to the Staff and everyone.  
42  
43 (Off record)  
44  
45 (END OF PROCEEDINGS)

