

1 FEDERAL SUBSISTENCE BOARD  
2  
3 PUBLIC REGULATORY MEETING  
4

5  
6 VOLUME II  
7

8 EGAN CONVENTION CENTER  
9 ANCHORAGE, ALASKA

10  
11 DECEMBER 13, 2006  
12 8:30 o'clock a.m.  
13

14 MEMBERS PRESENT:

15  
16 MIKE FLEAGLE, CHAIR  
17 NILES CESAR, Bureau of Indian Affairs  
18 GARY EDWARDS, U.S. Fish and Wildlife Service  
19 JUDY GOTTLIEB, National Park Service  
20 DENNY BSCHOR, U.S. Forest Service  
21 GEORGE OVIATT, Bureau of Land Management  
22  
23  
24  
25 SARAH GILBERTSON, State of Alaska Representative  
26  
27 KEITH GOLTZ, Solicitor's Office  
28 KEN LORD, Solicitor's Office  
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1 P R O C E E D I N G S

2  
3 (Anchorage, Alaska - 12/13/2006)

4  
5 (On record)

6  
7 CHAIRMAN FLEAGLE: Good morning. The  
8 Federal Subsistence Board will now resume session. Today  
9 is December 13th, we're in Anchorage at the Egan Civic  
10 and Convention Center dealing with issues pertaining to  
11 rural and nonrural determinations. Yesterday we  
12 concluded public testimony. Today we're going to get  
13 into the business of deciding the issues before the  
14 Board, and those issues are on the agenda. Before I  
15 start with some announcements and discussion I'd like to  
16 just open it up to Board or Staff, do we have any  
17 announcements that we need to make to the public.

18  
19 (No comments)

20  
21 CHAIRMAN FLEAGLE: Anybody.

22  
23 (No comments)

24  
25 CHAIRMAN FLEAGLE: All right. First off,  
26 I want to welcome everybody back that are with us today,  
27 thank you for coming back to the meeting. I want to  
28 thank everybody that's still here that testified  
29 yesterday. I think the public testimony portions of  
30 these meetings are some of my favorite times. I like to  
31 hear what people think and where their hearts are on  
32 issues and really it's also a time between breaks, you  
33 know, you get to talk to people and meet new people and  
34 really get a feel for issues and a lot of good testimony  
35 yesterday that we'll be carefully considering today.

36  
37 I want to go over how these actions will  
38 be decided and if you look at your agenda, under Item 4,  
39 we have broken down A through G, each letter being a  
40 different area for consideration and we'll start out with  
41 a -- no, I think this is not quite right, right, we get a  
42 brief Staff presentation first.

43  
44 MR. PROBASCO: We did that.

45  
46 CHAIRMAN FLEAGLE: Oh, you did the whole  
47 overall Staff presentation, okay.

48  
49 We'll start with the Council  
50 recommendation on the area, ADF&G comments, InterAgency

1 Staff Committee recommendations, followed by Board  
2 deliberations.

3

4           And at the request of the State liaison  
5 to the Board, the State's comments would apply broadly to  
6 all of the issues and rather than repeating those broad  
7 comments, she has requested that I give her an  
8 opportunity to address before we open up consideration on  
9 each area, which I have agreed to do.

10

11           Now, while we're on the subject, I was  
12 involved with the State system when we were requesting,  
13 we, as the State, I'm no longer with the State Board, but  
14 when we requested the Federal Board have a non-voting  
15 member on its Board and people that were present at the  
16 September 5 work session will recall that I made the  
17 error in referring to that State seat as a non-voting  
18 Board member when, in fact, the State seat has been  
19 recognized as just a liaison to the Board. However,  
20 there is very little change in that description and I'd  
21 like to just lay out what I would -- how I'm going to  
22 handle dealing with the State liaison on this Board. And  
23 I'm going to back up with letters that I have of February  
24 24th, 2004.

25

26           The first is a letter to Chairman Mitch  
27 Demientieff from Secretary Gale Norton, I'm not going to  
28 read the whole letter but we do have these available if  
29 people want to find them. The first letter to the  
30 Chairman of the Board, the second paragraph reads:

31

32           The Secretary of Agriculture and I  
33 acknowledge the sovereign role of the  
34 State of Alaska in the management of fish  
35 and wildlife resources. We are committed  
36 to working with the Governor and State  
37 officials to coordinate and manage an  
38 effective and efficient subsistence  
39 program. We expect the Board to work  
40 closely with the State in a cooperative  
41 manner that will maximize everyone's  
42 involvement and guarantee that the  
43 subsistence program is operated  
44 efficiently and effectively. We fully  
45 expect that the Chairman will recognize  
46 the State for comment on any issue  
47 related to the coordinated regulation of  
48 fish and wildlife resources.

49

50           And a second letter that went out the

1 same day also signed by the Secretary Gale Norton. This  
2 letter went to the Governor of Alaska, Governor  
3 Murkowski. And, again, I'm just going to highlight, not  
4 read the whole letter. The Secretary says that:

5  
6 My approach to consideration of your  
7 request, and once again the request was  
8 to have a non-voting Board member at this  
9 table, my approach to consideration of  
10 your request was guided by the four C's,  
11 communication, consultation and  
12 cooperation all in the service of  
13 conservation. Consistent with the April  
14 '92 record of decision for the  
15 subsistence management for Federal public  
16 lands in Alaska Environmental Impact  
17 Statement, the State liaison along with  
18 10 Regional Advisory Council Chairs will  
19 serve as active consultants to the Board  
20 but will not have a vote in Board  
21 decisions or participate in executive  
22 sessions.

23  
24 During Board proceedings, prior to a  
25 motion, State and RAC liaisons will fully  
26 participate and be recognized by the  
27 Chair when they want to ask questions,  
28 raise concerns and/or provide additional  
29 information or clarification.

30  
31 Now, I think that part there has been no  
32 question that that's allowable. The second part here was  
33 where I believe that needs clarification, and with these  
34 letters I think it's made adamantly clear that she  
35 continues:

36  
37 Once a motion is made, the liaison's may  
38 be invited to participate in Board  
39 deliberations or may be recognized by the  
40 Chair when they want to ask questions or  
41 provide additional information or  
42 clarification. The Board's meeting  
43 guidelines have been amended to reflect  
44 these principles.

45  
46 The Secretary goes on to say:

47  
48 We fully expect that the Chairman will  
49 recognize the State for comment on any  
50 issue related to the coordinated

1 regulation of fish and wildlife services.

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The Board enjoys a good working relationship with the State of Alaska, Department of Fish and Game, as well as the Alaska State Board of Fish and Board of Game.

This was written in 2004.

(Laughter)

CHAIRMAN FLEAGLE:

While not officially designated as liaisons to the Board, representatives from the State of Alaska, Department of Fish and Game have routinely attended and participated in Board meetings and have provided valuable input and recommendations.

Further, the Secretary also states:

I anticipate that the appointment of an official State liaison to work with the Federal Subsistence Board will increase cooperation between the State and Federal agencies thereby facilitating efforts to assure conservation and provide for use of the resources.

The reason I bring this up is I understand that it is at the discretion of the Chair to recognize the State or RAC liaisons after a motion has been made. At our last meeting I was unclear on the procedure and we interrupted the State in a discussion after a motion had been made and that interruption was ruled to be valid. I, in reflection, I don't think it was and I want to Ms. Gilbertson for that action. And I want to say that in spirit of cooperation with the letter from the Secretary and with everybody involved I would like to begin anew in our consideration of State comments at the Board. So if the State liaison wants to participate in the discussion after the motion has been made and raises a hand, and this goes for the RAC Chairs as well, because it says that here, I will recognize and we will hear.

Obviously common decency practices will

1 apply, just like I will, as Chair, overrule anybody  
2 that's going to just lay repetitive arguments for the  
3 same case so I'll say you made your point once, you know,  
4 we don't need to go there again and I'll apply the same  
5 principles to RAC Chairs or the State liaison.

6

7 So anyway that will be our approach.

8

9 I do wish to bring us back to where we  
10 are in a spirit of cooperative effort, both between the  
11 State and the Federal systems and with the people of  
12 Alaska. We're too far divided, we have become too  
13 divisive and overall both systems agree that the people  
14 and the resources are most important, it's just how we  
15 get there that we don't agree on and I think we can learn  
16 to disagree agreeably. You know what I mean, it's -- I  
17 guess it's a little cliché statement that we use in our  
18 home, you know, sometimes we have to learn how to agree  
19 to disagree. Neither of our systems is going away any  
20 time soon and I think that the more opportunity that we  
21 have to work together on common problems, and obviously  
22 we're going to have a lot of disagreement, but those can  
23 place second to the fact that we do have a more  
24 commonality.

25

26 That's all I have to say on that issue.

27 Are there comments by the Board members, discussion.

28

29 (No comments)

30

31 CHAIRMAN FLEAGLE: Ms. Gilbertson.

32

33 MS. GILBERTSON: Thank you, Mr. Chairman.

34 I guess I'd just like to thank you for those remarks and  
35 I certainly appreciate the apology and also want to work  
36 with the Board in a cooperative manner and strive to do  
37 so, so I appreciate that.

38

39 CHAIRMAN FLEAGLE: Okay, thank you. With  
40 that then we'll go ahead and move on with the business at  
41 hand. And as I indicated earlier, I would like to go  
42 ahead and turn it over to the State for their overall  
43 comments on the rural/nonrural determination process.

44

45 Sarah.

46

47 MS. GILBERTSON: Thank you, Mr. Chairman.

48 Well, the Board has probably already seen the  
49 Department's written comments and I'll just go ahead and  
50 summarize those quickly for those in the audience today

1 who may not have had the opportunity to read them.

2

3                   In short, the State did not take a  
4 position on whether or not any of these communities  
5 should be rural or nonrural under Federal regulations.  
6 Our comments mainly focused on some flaws that the State  
7 saw in the analysis and some procedural inconsistencies  
8 in the Board process.

9

10                   First, and foremost, the Department felt  
11 that the Board has been inconsistent in its application  
12 of Federal regulations. And perhaps from our perspective  
13 the best example of that is the decision, the Board  
14 decision in December 2005 on Sitka, and the State is not  
15 saying that Sitka should be rural or nonrural under the  
16 Federal system, but just that the Board should have  
17 followed its normal process, that Sitka should have  
18 undergone the same level of analysis that all of these  
19 other communities underwent. And in large part, because  
20 OSM had identified both Sitka and Kodiak as communities  
21 whose populations increased and therefore warranted  
22 further review and the State just felt that both  
23 communities should have underwent the same level of  
24 review, should have been treated fairly and consistently.

25

26                   So that was one of the main problems that  
27 the Department identified in its letter.

28

29                   We also felt that the Federal Staff and  
30 Board was somewhat selective in its use of criteria as  
31 specified in Federal regulations. And if you've had an  
32 opportunity to review the analysis, the State felt in  
33 certain areas, under certain communities that fish and  
34 wildlife use should have been analyzed to a greater  
35 extent or in some cases, that it was not analyzed and it  
36 should have been. And I saw that the Federal Staff have  
37 prepared some comments in reaction to the State's  
38 comments, and I'm just going to leave it at that and we  
39 can, as the Board has questions as they go down the list  
40 of communities, I'm happy to answer those on behalf of  
41 the State but I'm not going to go community by community  
42 and speak to those issues at this time.

43

44                   The State did object, in large part, to  
45 the Board determinations made in executive session, and  
46 by that we're referring to there was a Board meeting --  
47 an executive session Board meeting on June 22nd to  
48 develop this list of communities and areas that the  
49 Federal Board believed was nonrural and the State felt  
50 that such important decisions ought to be made in front

1 of the public so that both the State and the public  
2 understand the rationale and understand the basis for the  
3 Board decisions, and I think that that's something we've  
4 heard over the last couple of days, just the need for  
5 consistent process procedures and an open process and  
6 that's something we feel very strongly about.

7  
8 We also felt very strongly that there was  
9 insufficient public information, that in many cases  
10 caused fear among Alaskans, and I think yesterday's  
11 testimony in particular, supported that point. And what  
12 I mean by that is we had folks here yesterday who were  
13 very upset, the word, genocide, was even mentioned and I  
14 don't think that Alaskans fully understand in some cases  
15 what we're talking about here today and that is, that  
16 even if the Federal Board is to change a status of a  
17 community the State still has an obligation under State  
18 law to have a subsistence priority and the State does and  
19 will continue to follow that law and to provide Alaskans  
20 with subsistence opportunities.

21  
22 So even if the Federal system were to  
23 make some changes here today the State is still providing  
24 subsistence opportunity and will continue to do so.

25  
26 We felt that, you know, while we commend  
27 the Board for the number of public hearings that they've  
28 had, because it truly has been remarkable, I know the  
29 Board members have traveled all over the state over the  
30 last year and I was in Sitka and didn't stay there until  
31 midnight with some of the Board members, but they really  
32 did a great job in terms of reaching out to Alaskans and  
33 we appreciate that but we felt that the Board should have  
34 provided some information in terms of explaining that the  
35 proposed changes only affect a community's status under  
36 the Federal subsistence Federal Subsistence Board program  
37 and that they apply only on Federal lands and applicable  
38 waters, and that a change would not take place for at  
39 least five years, and that even if the Federal Board were  
40 to make a change, that Alaskans would still be able to  
41 hunt and fish on Federal lands, but would do so under  
42 State regulations.

43  
44 Again, regardless of what the Board  
45 decides today I want to emphasize that the State will  
46 continue to provide subsistence opportunities for  
47 Alaskans and will continue to provide that under the  
48 State subsistence law on all lands outside of State non-  
49 subsistence areas.

50



1                   And finally we had some factual concerns,  
2 and I'm not going to go through all of those because  
3 they're mainly in reference to the analysis and they go  
4 community by community. But I think the largest question  
5 that we had under those comments is what's changed since  
6 1990, and we would have liked the analysis to have done a  
7 better job in addressing that question. We think that  
8 that's key to the conversation that the Board is about to  
9 have.

10  
11                   And then finally we make a reference to  
12 the Kenai Peninsula, and on that note our letter lays out  
13 the history of the State Board determinations and  
14 findings for our non-subsistence area on the Kenai  
15 Peninsula. And with respect to this topic we felt that  
16 since Federal regulations do not contain a mechanism for  
17 applying the subsistence priority to subgroups, the  
18 findings of a rural status for a community only a few  
19 miles from another community found not rural is not  
20 justified.

21  
22                   So in closing, thank you for the  
23 opportunity to give this brief overview and just want to  
24 urge the Board to follow its process and to look at the  
25 respective criteria to make its decisions today.

26  
27                   Thank you.

28  
29                   CHAIRMAN FLEAGLE: Thank you, Sarah.  
30 Board members do you have any questions.

31  
32                   (No comments)

33  
34                   CHAIRMAN FLEAGLE: Okay, thank you.

35  
36                   MR. PROBASCO: Mr. Chair.

37  
38                   CHAIRMAN FLEAGLE: Pete, go ahead.

39  
40                   MR. PROBASCO: Thank you, Mr. Chair.  
41 Just to make the Board aware and following your theme of  
42 agreeing at times we will disagree, Staff did provide  
43 comments, Sarah mentioned them, to the State's comments,  
44 they're in Appendix B in the back of your books so as you  
45 go through the process, we also have comments as well.

46  
47                   Thank you, Mr. Chair.

48  
49                   CHAIRMAN FLEAGLE: Thank you. I was  
50 going to note that. I know I'm aware of quite a bit of

1 correspondence that has gone back and forth between the  
2 State and the OSM on these issues and I do feel that  
3 we're trying to address some of the concerns that we can  
4 address. So, you know, the future will play out as to  
5 what results we have but I think that we do recognize  
6 some valid concerns and try to work on those.

7

8 I appreciate the comments and with that  
9 we'll go ahead and move into the first area of  
10 consideration ,and that being the Kodiak area. Let me  
11 find my cheatsheet here.

12

13 Currently the Proposed Rule addresses the  
14 grouping of the Kodiak area and proposes a change to  
15 nonrural status. If there is no motion the current  
16 regulations would remain unchanged and the Proposed Rule  
17 would be withdrawn, which means the city of Kodiak and  
18 surrounding places would remain rural in status, and  
19 concurrently there could be a motion to adopt the  
20 Proposed Rule, which would state exactly what the  
21 Proposed Rule intends to do.

22

23 So our first order of business under  
24 Kodiak will be to turn to the Regional Advisory Council  
25 for their recommendation. And who do we have for that?

26

27 MR. PROBASCO: Pat Holmes.

28

29 CHAIRMAN FLEAGLE: Pat Holmes.

30

31 MR. HOLMES: Mr. Chairman. On Kodiak,  
32 the Kodiak/Aleutians RAC has submitted correspondence and  
33 resolutions twice, that the Kodiak and its road system  
34 should remain classified as rural.

35

36 And we'll come back to Adak when we get  
37 there.

38

39 Thank you.

40

41 Oh, I might add, our first resolution  
42 wasn't specific and Tom Boyd, when he was the director  
43 suggested that we provide more specific input and so on  
44 our second motion we submitted a letter that had some  
45 bulleted points on rural characteristics and other  
46 arguments.

47

48 Thank you.

49

50 CHAIRMAN FLEAGLE: Thank you, Pat.

1 Questions, Board members, from the Regional Advisory  
2 Council.

3

4 (No comments)

5

6 CHAIRMAN FLEAGLE: All right. Sarah,  
7 additional comments on the Kodiak from the State.

8

9 MS. GILBERTSON: No, not at this time,  
10 thanks.

11

12 CHAIRMAN FLEAGLE: InterAgency Staff  
13 Committee recommendations, Steve Klein.

14

15 MR. KLEIN: Thank you, Mr. Chair. For  
16 the record I'm Steve Klein. I'm the acting deputy for  
17 the Office of Subsistence Management and Chair of the  
18 InterAgency Staff Committee.

19

20 I also wanted to briefly cover the Staff  
21 Committee for members in the audience or people that are  
22 new to this process, and I'll be very brief.

23

24 The InterAgency Staff Committee is  
25 advisory to the Board. It's composed of senior Staff  
26 members for each of the five Federal agencies and a  
27 representative for the Chair, and those are mostly the  
28 people in the back row behind the Board members, except  
29 for two solicitors.

30

31 For the Kodiak area, the Staff Committee  
32 addressed both grouping and the rural status. The  
33 InterAgency Staff defined the Kodiak area grouping as the  
34 entire road system connected to the city of Kodiak and  
35 did not recommend changing the rural status. And as Mr.  
36 Chair announced, no regulatory action would be necessary  
37 for this.

38

39 In terms of the grouping, group Kodiak  
40 city and the surrounding road connected area and consider  
41 in the aggregate for purposes of determining rural and  
42 nonrural status.

43

44 The justification for the grouping was  
45 that Kodiak city and the surrounding road connected areas  
46 have been determined to be economically, socially and  
47 communally integrated. The Coast Guard station clearly  
48 meets two of the three criteria the Board has given us  
49 for grouping. With the commuting criteria not being met  
50 at 11 percent. However, this can be attributed to the

1 fact that enlisted personnel residing on the Base are  
2 required to work on Base and have no option to commute  
3 into Kodiak city.

4  
5 Women's Bay, Chiniak and other road  
6 connected remainder areas all should be integrated with  
7 the Kodiak area grouping. The Staff Committee found that  
8 all areas fulfill the three criteria, they're road  
9 connected to the city of Kodiak, all share a common high  
10 school in Kodiak, although Chiniak does have a school  
11 that goes to grade 10 and three -- over 30 percent of the  
12 working population for all these areas commute into the  
13 city of Kodiak for work.

14  
15 So that's the recommendation to the Board  
16 regarding grouping and then we can stop there and the  
17 Board can act upon the grouping or I can continue and  
18 move to the rural/nonrural recommendation for Kodiak.

19  
20 Mr. Chair.

21  
22 CHAIRMAN FLEAGLE: Thank you. Before I  
23 recognize questions, I have a quick question. If the  
24 recommendation is to remain rural what would be the  
25 benefit of grouping those other road connected areas to  
26 Kodiak?

27  
28 MR. KLEIN: Mr. Chair. The grouping is  
29 just to define an area and then you make the decision  
30 whether that area is rural or nonrural, so it's just what  
31 are you going to make a decision on. For example, the  
32 Coast Guard Station, we heard some testimony whether that  
33 should be in, that issue should be decided first before  
34 you address rural and nonrural.

35  
36 Mr. Chair.

37  
38 CHAIRMAN FLEAGLE: Other questions.

39  
40 MR. EDWARDS: Mr. Chairman.

41  
42 CHAIRMAN FLEAGLE: Gary.

43  
44 MR. EDWARDS: Mr. Chairman, to follow up  
45 on that. I mean wouldn't another answer be is that it  
46 makes it consistent with our regulations that says that  
47 we shall group communities.

48  
49 CHAIRMAN FLEAGLE: I'm sorry, Gary, would  
50 you repeat that, I didn't hear it.

1 MR. EDWARDS: I was just trying to follow  
2 up on your question and the answer, and I think also part  
3 of the answer is that our regulations is that we will  
4 group communities that are integrated economically,  
5 socially and all and I'm assuming that the Staff  
6 Committee and the Staff, in reviewing those, made that  
7 determination.

8  
9 CHAIRMAN FLEAGLE: Okay.

10  
11 MR. EDWARDS: I mean correct me if I'm  
12 wrong.

13  
14 MR. KLEIN: That's correct.

15  
16 CHAIRMAN FLEAGLE: Other questions,  
17 comments on that portion of the discussion.

18  
19 (No comments)

20  
21 CHAIRMAN FLEAGLE: Larry Buklis.

22  
23 MR. BUKLIS: Thank you, Mr. Chairman.  
24 Just a point of clarification and follow up. The  
25 grouping step, as Steve has described, is an analytical  
26 step that's foundational to then evaluating the overall  
27 status of the area but the grouping step doesn't have  
28 regulatory status. In other words, the way the  
29 regulations are written, all places in Alaska are  
30 considered rural except, and then the regulations list  
31 places that are not considered rural.

32  
33 So in this case the Staff has done an  
34 analysis and the Proposed Rule describes an area and then  
35 proposes the status of that area. Now the Staff  
36 Committee is reporting back to you on their consideration  
37 of the Proposed Rule and all the comments received. One  
38 part is looking at the grouping question, and then the  
39 other part is looking at rural/nonrural status. And, you  
40 know, you could hear the second part of the Staff  
41 Committee view, which is the status issue, and then you  
42 could address whether you want to take up regulation  
43 making or not on the package.

44  
45 CHAIRMAN FLEAGLE: Thanks, I appreciate  
46 that. It's.....

47  
48 MR. EDWARDS: Follow up.

49  
50 CHAIRMAN FLEAGLE: .....somewhat clearer.

1 I think the issue that I'm looking at is if the outcome  
2 is to remain rural as the Staff Committee has suggested,  
3 and testimony seems to support, then it seems like the  
4 grouping would be a moot point because everything is  
5 still nonrural, that's the point I'm making. I mean does  
6 the Board want to go through the process of a grouping  
7 action when there's -- well, I shouldn't say that there's  
8 a likelihood, but there is a likelihood, there's a  
9 possibility that the whole area is going to remain rural.

10

11 MS. GOTTLIEB: Mr. Chair.

12

13 CHAIRMAN FLEAGLE: Discussion. Judy.

14

15 MS. GOTTLIEB: Well, yeah, I think I  
16 agree with you that I don't believe there needs to be an  
17 action taken on the grouping question or maybe even  
18 perhaps as I understand it, if we, after our discussion,  
19 see no reason to change, we may not take any formal  
20 action; if I'm understanding the process correctly and  
21 maybe that needs to be explained to the public, on  
22 whether a vote is needed or not on our decision today.

23

24 CHAIRMAN FLEAGLE: All right, thank you.  
25 And I think you summed up how I feel about it. Why don't  
26 we just go ahead and move into the next section and that  
27 is the rural status and once we get to deliberations  
28 there, if we feel we need to take action on the grouping,  
29 we'll do that, before we take any action on the status.

30

31 Steve Klein.

32

33 MR. KLEIN: Thank you, Mr. Chair. In  
34 terms of rural status, the Staff Committee recommends  
35 that the Kodiak area should retain its rural status  
36 because it possesses significant characteristics of a  
37 rural nature. And our justification, the Board public  
38 hearing in Kodiak regarding rural status was well  
39 attended by a large, diverse group of people, all of whom  
40 presented testimony that elaborated on the rural nature  
41 of Kodiak. Although the population of the Kodiak area is  
42 over the threshold of 7,000, the population trend for the  
43 entire Kodiak area has remained stable with a slight  
44 increase of less than two percent since 1990.

45

46 The economy of the Kodiak area is fairly  
47 stable, with testimony that it is suffering because of  
48 recent downward trends in the areas of commercial  
49 fisheries. Per capita income has increased less than  
50 \$2,000 in the past 17 years, which is less than the rural

1 communities of Sitka, Cooper Landing, Whittier, Cordova,  
2 Nome and Barrow. In addition the unemployment rate  
3 increased by more than three percent to 8.7 percent in  
4 2004.

5  
6 The high level of subsistence harvest was  
7 a key characteristic used by the Alaska Joint Boards of  
8 Fisheries and Game in the late 1980s and the Federal  
9 Subsistence Board in 1990 to designate the Kodiak area as  
10 rural. The high level of subsistence harvest, which is  
11 155 pounds per capita continues to be a key  
12 characteristic that suggests that Kodiak is a rural  
13 community, that's similar to Wrangell and Cordova.  
14 Nearly all of the Kodiak area households use some  
15 subsistence resources and sharing of subsistence  
16 resources is a significant part of the Kodiak area  
17 lifestyle.

18  
19 For these reasons, as well as the high  
20 cost of consumer goods and electricity the unreliability  
21 of off island transport and the small community  
22 atmosphere of Kodiak it continues to exhibit significant  
23 characteristics of a rural area. Overall the Kodiak area  
24 is much the same as it was when its original rural  
25 determination was made and the changes that have occurred  
26 over the past 15 years have not changed these rural  
27 characteristics.

28  
29 Mr. Chair.

30  
31 CHAIRMAN FLEAGLE: Thank you, Steve.  
32 Board members, questions.

33  
34 Gary.

35  
36 MR. EDWARDS: Mr. Chairman, I have one  
37 question. Steve, I read somewhere that actually the  
38 population increased, as occurred in Kodiak, can be  
39 contributed [sic] entirely to the Coast Guard Base, and,  
40 in fact, I know it's only increased by 200 but if all the  
41 increases come from Coast Guard Base and it's grown, then  
42 wouldn't the actual community outside of the Coast Guard  
43 Base actually have declined?

44  
45 MR. KLEIN: Mr. Chair. I don't know the  
46 answer to that question, but I think Mr. Buklis does.

47  
48 CHAIRMAN FLEAGLE: Larry.

49  
50 MR. BUKLIS: Mr. Chairman. Could the

1 question be repeated please.

2

3 MR. EDWARDS: The question is, I thought  
4 I read somewhere that the population hasn't increased  
5 very much at all, but that increase can really be  
6 contributed [sic] to the Coast Guard Base getting much  
7 larger, and if you simply looked at that and excluded the  
8 Coast Guard Base, wouldn't the population of Kodiak  
9 actually have decreased?

10

11 MR. BUKLIS: Mr. Chairman. Mr. Edwards.  
12 The June Staff report on Page 50 outlines the population  
13 trends in Kodiak city and surrounding areas, from 1988,  
14 1990, 2000, and 2005. And Kodiak city has actually  
15 decreased in population from 1988 to 2005. The Kodiak  
16 station has increased by about a little over 200 people,  
17 and the remainder area has also, when you combine the  
18 remainder area, it has also increased in population by  
19 even more than that. So there have been varying trends  
20 in the components of the area that's been described by  
21 the Staff Committee, that's correct, the Coast Guard  
22 Station is one place of increase and this remainder area  
23 is another, and the city itself has actually declined in  
24 population.

25

26 And, secondly, regarding the  
27 consideration of the aggregated area, what I said earlier  
28 was that in the end the regulations on rural/nonrural  
29 don't describe rural groupings, it simply says places in  
30 Alaska are rural, except for the following and it  
31 delineates places that are not rural. But the  
32 regulations do say the Board will consider economically,  
33 socially, communally integrated places in the aggregate.  
34 So I think, you know, if the Board is demonstrating that  
35 they're considering the aggregate here, that's  
36 appropriate, and I'm only saying that in the end the  
37 regulations describe what you've found to be nonrural.

38

39 CHAIRMAN FLEAGLE: Are you finished,  
40 Gary?

41

42 MR. EDWARDS: (Nods affirmatively)

43

44 CHAIRMAN FLEAGLE: Other questions.

45

46 (No comments)

47

48 CHAIRMAN FLEAGLE: Discussion.

49

50 Keith Goltz.



1 MR. GOLTZ: Before we get to discussion,  
2 I think we're missing a communication link here. We  
3 heard all this impassioned testimony lately and now we're  
4 immediately jumping over to very detailed bureaucratic  
5 discussion, and if I were in the audience I'd be  
6 fidgeting and I'd like to know what's going on. And I do  
7 see some people fidgeting.

8  
9 And the missing step is that I have  
10 advised the Board and the Staff Committee and the  
11 individual analysts about what we're supposed to be doing  
12 here, and I think with the Chairman's permission it might  
13 be useful if I explained to the audience what I've  
14 already explained to the Board, and I think that might be  
15 useful.

16  
17 CHAIRMAN FLEAGLE: Any objection.

18  
19 (No objections)

20  
21 CHAIRMAN FLEAGLE: Go ahead.

22  
23 MR. GOLTZ: All right. The statute  
24 plainly says rural. And the Ninth Circuit has said that  
25 the statutory definition of rural can be found in any  
26 common dictionary. So in simple terms, what the word,  
27 rural, means, is areas of the land that remain sparsely  
28 populated.

29  
30 Now, we all know that kinship ties and  
31 sharing patterns can form subsistence communities. And  
32 when those communities occur in rural areas of the state  
33 they receive the benefits of Title VIII. But when those  
34 communities are located in a larger urban landscape, when  
35 they are villages within towns, then all area residents  
36 are treated the same and there is no subsistence  
37 preference. Now, to some this will seem unfair or unwise  
38 or just plain wrong, but we must apply the law as  
39 Congress wrote it and for the task at hand the law  
40 directs our study to areas of the land, geographic areas  
41 that are sparsely populated. So the testing point for  
42 today is rural or nonrural. It's not Native or non-  
43 Native, the law applies to both. And it's not  
44 subsistence or non-subsistence. Congress recognized that  
45 certain urban residents could engage in subsistence  
46 practices but it only granted the preference to rural  
47 Alaska residents.

48  
49 Thank you.  
50

1 CHAIRMAN FLEAGLE: I'm not sure if that  
2 clarified much, but thank you.

3  
4 (Laughter)

5  
6 CHAIRMAN FLEAGLE: I think we get your  
7 point, Keith, appreciate it.

8  
9 Gary.

10  
11 MR. EDWARDS: Mr. Chairman. I guess I'll  
12 rise to what our learned Solicitor said, and I guess from  
13 my perspective, despite what the Ninth Circuit Court said  
14 about the -- that the definition of the term urban is  
15 really straightforward and we all understand, I would  
16 argue that it isn't. And if you don't believe me go home  
17 this evening and Google the word, urban, and you will  
18 find many, many definitions of it, it varies across the  
19 country, it varies from government program to government  
20 program, it varies from state to state, it varies from  
21 city to city. And I don't think it's a well understood  
22 term.

23  
24 And in many cases I believe it's  
25 certainly in the eyes of the beholder. If you were  
26 somebody living in Kaktovik and you went to Kodiak you  
27 would be thinking you were going to the big city with its  
28 Wal-Mart and it's paved streets and its fancy airport,  
29 but by the same token if you were in Kodiak and come to  
30 Anchorage you would have the same feeling.

31  
32 And if I might tell a little story to  
33 illustrate that. When we first came to Anchorage, my  
34 youngest son was on a swim club, and they would have  
35 periodic meets here in Anchorage and it's very customary  
36 here in Alaska, is when kids from other communities would  
37 come to Anchorage, in order to save costs, you know, the  
38 parents here would put the kids up. And so one of our --  
39 and we were just here very shortly and there was a big  
40 swim meet here in town and we were going to put up four  
41 young fellows from Kodiak, and they were going to come  
42 and stay with us for a couple days. And their mother,  
43 being very responsible called my wife and wanted to make  
44 sure everything was going to be all right and she asked  
45 my wife, she said, would you have time that they could go  
46 to the mall and my wife -- we came from Northern  
47 California, and my wife's first response was, she says,  
48 my dear there's no malls here in Anchorage, and from my  
49 wife's perspective, you know, just first coming here,  
50 Anchorage was as rural as you could get. So I don't

1 think it's a very well defined term.

2

3                   We heard a lot of testimony yesterday and  
4 people's view of that and just from the testimony we  
5 heard it seems to me it's pretty clear that it's not a  
6 well understood term of what it is, but the reality is is  
7 that we're left with the terms rural and nonrural, and  
8 rightly or wrongly, it's the role of this Board to  
9 decide, you know, what determines that. And in making  
10 that determination, you know, certainly there are certain  
11 limitations, as I think was brought out and, you know,  
12 we're kind of charged with following those limitations.  
13 And the one that seems to be the key factors is this idea  
14 of population and density. And that's not the only  
15 factor but, again, as was pointed out, I think, it's a  
16 key factor. And we elected, you know, that's something  
17 the Board elected to accept that. You know, yesterday  
18 the first person who testified, I think it was Mr.  
19 Wallace [sic], you know, discussed the study that was  
20 done and that their conclusions, reached upon use of  
21 subsistence resources, was that Kodiak [sic] should be  
22 rural, and we had the option of going that direction but  
23 we elected not to.

24

25                   So as my grandfather often says, you  
26 know, we are where we are, and so the challenge for me  
27 personally has been to try to get past this population  
28 threshold which, in my mind, Kodiak clearly exceeds and  
29 find something else to base my decision on. And although  
30 we've heard a lot of wonderful testimony about why Kodiak  
31 should remain rural, again, like Keith, I'm not sure a  
32 lot of it was really relevant.

33

34                   But I guess the one thing that resonated  
35 with me from much of the testimony we heard yesterday and  
36 before and what the Mayor had to say and with the article  
37 that was in the paper yesterday, it seems to me that  
38 Kodiak is not a community on the rise, and it hasn't been  
39 really since the rural determination. In fact, it would  
40 seem that most of the indicators would lead one to  
41 believe that it may be a community in decline. So I  
42 guess I'm personally comfortable at looking at what has  
43 changed since the last determination and finding if there  
44 has been a change it hasn't been a positive change and it  
45 hasn't been an upward change, and, in fact, I think the  
46 community is going from rural to more rural.

47

48                   CHAIRMAN FLEAGLE: Thank you, Gary.

49 Other comments.

50

1 (No comments)

2

3 CHAIRMAN FLEAGLE: I support.....

4

5 MR. BSCHOR: Mr. Chair.

6

7 CHAIRMAN FLEAGLE: Oh, Denny, go ahead,  
8 please.

9

10 MR. BSCHOR: I have a comment also, and  
11 it basically supports what Gary has said.

12

13 Just to share with the audience that  
14 having not been familiar with the Kodiak area, it was  
15 very important and very enlightening to hear and see the  
16 situation in Kodiak. And how I differentiate that from  
17 other places I've been is that the economy is not very  
18 diverse. I think what Gary has said is correct, there's  
19 not a lot of leeway there. And the other thing I was  
20 impressed about is the access to Kodiak via boats and  
21 ships and the fact that there isn't a thriving, even a  
22 thriving tourism cruise ship type of economy there  
23 because of the accessibility.

24

25 So to me, looking beyond that threshold  
26 factor or population was very important, and in  
27 comparison to other places which are more vibrant.

28

29 Thank you, Mr. Chair.

30

31 CHAIRMAN FLEAGLE: Thank you, Denny. I  
32 agree with my two colleagues who have just spoke.

33

34 I think the problem that I see with this  
35 entire rural/nonrural determination process is found in  
36 our own regulations, Section 100.15 to where we have  
37 these numbers plugged in to look at. And we hear a lot  
38 of testimony that there's probably -- the opportunity is  
39 ripe to consider a change to the regulation that would  
40 make that regulation a little more understandable as to  
41 what rural means, if it's densely populated, maybe that  
42 could be a square mile, you know, population per square  
43 mile figure or something, but to have these set numbers,  
44 2,500 -- 2,500 to 7,000 and over 7,000 that are seemingly  
45 to me, very arbitrary, and maybe they were based on  
46 something when they were inserted in the regulation, they  
47 are arbitrary, especially when those numbers are followed  
48 up by language that just blows any opportunity to really  
49 be bound by those numbers. The language, you know, I'll  
50 quote from Section A, paragraph three:

1                   Unless such a community or area possesses  
2                   significant characteristics of a rural  
3                   nature.

4  
5                   My colleague over to the left, George,  
6 mentioned before that it's one of these things, well, how  
7 do you define rural, it's hard to define rural but I'll  
8 know it when I see it, and I agree with that statement.  
9 I think that I've been satisfied that Kodiak area  
10 possesses significant characteristics of a rural nature  
11 and that 7,000 number is arbitrary, it does not apply,  
12 it's rural, I've been there, it's rural. And I support  
13 the previous comments.

14  
15                   I think that based on my lead in  
16 cheatsheet description, if the Board chooses to take no  
17 action, no motion is necessary, the issue dies, the  
18 Proposed Rule goes away, Kodiak remains rural.

19  
20                   George.

21  
22                   MR. OVIATT: Well, seeing's you gave my  
23 story I guess I should also state, you know, I did work  
24 with a group, we were working on rural and nonrural  
25 determinations and it was not dealing with subsistence  
26 but it was other matters and the group was struggling  
27 with definition of rural and nonrural and there was a  
28 number of the people in that group that made that  
29 statement, that it's hard to define but you recognize it  
30 when you see it and experience it.

31  
32                   And my experience in Kodiak, along with  
33 what Gary and Denny had said leads me to believe that  
34 Kodiak is moving from rural to more rural than it is  
35 nonrural. You certainly have to want to go to Kodiak to  
36 get there, it is very remote. So I agree with my  
37 colleagues.

38  
39                   Thank you, Mr. Chairman.

40  
41                   MS. GOTTLIEB: Mr. Chair.

42  
43                   CHAIRMAN FLEAGLE: Judy.

44  
45                   MS. GOTTLIEB: Well, I guess I can add on  
46 to George, that, you really want to stay in Kodiak if you  
47 live there is my understanding from a lot of people, too.

48  
49                   I won't repeat much of what's said, I  
50 certainly share the same thoughts. We have an excellent

1 Staff analysis and recommendations. I learned a great  
2 deal from the public testimony that we had last year,  
3 that we had in September, as well as some of the points  
4 reiterated yesterday. About a thousand jobs have been  
5 lost from the fishing sector over the last few years,  
6 Kodiak is still as it was in 1990, a remote island  
7 location with very limited and expensive transportation  
8 on and off the island. In fact, probably in 1990 there  
9 used to be direct flights to Seattle which no longer  
10 exist, which probably shows, as we've said, the down turn  
11 in the economy. High levels of sharing and receiving,  
12 more and more unreliable ferry service, fairly unreliable  
13 airplane service, as some of us found out as well, and  
14 limited medical services and then of course there's the  
15 one blinking traffic light.

16

17                   We have the population thresholds as  
18 numbers, we have our five guidelines that we've looked at  
19 and examined quite carefully here. And among that is, of  
20 course, the use of fish and wildlife resources, which  
21 Kodiak does have high numbers for.

22

23                   The opportunity for subsistence uses as  
24 described in ANILCA includes deriving nutrition, sharing,  
25 which brings respect, self-esteem and caring for others.  
26 It includes ethics, that are passed among families and  
27 neighbors over generations, it involves, and I think this  
28 is important for our discussion today, the significance  
29 of place, what a certain place means to people. We heard  
30 from many testifiers about memories, values that resulted  
31 from being at a certain location and harvesting  
32 resources, and this was not just in Kodiak, and kinship  
33 that derived from that experience of that place, and that  
34 sense of belonging to the land and sea.

35

36                   And so for Kodiak I think we should leave  
37 things as they are.

38

39                   Thank you.

40

41                   CHAIRMAN FLEAGLE: Niles Cesar.

42

43                   MR. CESAR: I listened carefully to all  
44 of the presenters, both in Kodiak and here and to the  
45 Board members and I agree 100 percent that, if anything,  
46 Kodiak is slipping. I believe that we should leave it as  
47 it is.

48

49                   You know, I look back on my own life and  
50 in the '60s I spent three years on Adak and the

1 population then was 5,000 or so, I think, we were the  
2 fifth largest city in Alaska and up until this Board  
3 meeting, we were considered nonrural, that's hard to tell  
4 that to someone who's sitting out there, you know, at  
5 that time, you know, about 12 hours flight from Anchorage  
6 that you're nonrural but that's the life, that's what  
7 happened.

8  
9                   You know, I think we have to evaluate all  
10 of the information and I believe that we have to use our  
11 judgment and experience, both from the Staff Committee as  
12 well as ourselves and we have to have enough leeway to be  
13 able to make decisions that reflect common sense, and I  
14 think it's very common sensical to say don't fix it if it  
15 ain't broke, so I agree.

16  
17                   CHAIRMAN FLEAGLE: All right, we've heard  
18 from all the Board members and I didn't hear a motion  
19 wrapped up in there, I think that that dispenses with  
20 this subject, so appreciate everybody's participation.

21  
22                   Why don't we take a 10 minute break  
23 before we take up the Ketchikan area.

24  
25                   (Off record)

26  
27                   (On record)

28  
29                   CHAIRMAN FLEAGLE: Good morning. The  
30 Federal Subsistence Board is back on record after a  
31 break, and that was village time, 10 minutes village  
32 time.

33  
34                   (Laughter)

35  
36                   CHAIRMAN FLEAGLE: Gary Edwards,  
37 comments.

38  
39                   MR. EDWARDS: Mr. Chairman, before we  
40 move on to the next community I just wanted maybe to take  
41 a minute and maybe build upon some remarks that the State  
42 made. Yesterday I was, maybe, somewhat scolded by one of  
43 my Board members for putting some of the folks that  
44 testified on the spot because I was trying to get a  
45 better understanding of what their subsistence use was  
46 and what their patterns was, and if I did put anybody on  
47 the spot, I certainly would like to apologize to them.

48  
49                   But what I was trying to do, is just  
50 develop a better understanding because it became very

1 clear to me as I listened to the testimony when we were  
2 in Kodiak and the folks yesterday, that there appears to  
3 be, you know, a huge misunderstanding about the scope and  
4 the breadth of the Federal Subsistence Program and where  
5 it applies and who it applies to.

6  
7                   You know we heard a lot of testimony  
8 yesterday and a lot of it, you know, really didn't cover  
9 what falls under the jurisdiction of this Board. You  
10 know, we heard about Laws of the Sea and we heard about  
11 halibut subsistence fishing and others. And, you know,  
12 the reality is, you know, this Board doesn't address some  
13 of those issues, it's not within our purview, even if we  
14 would like to. And I don't really know what the reason  
15 -- why we had this huge misunderstanding, but it's pretty  
16 obvious. And Denny and I were, you know, talking as we  
17 listened to the testimony yesterday and I don't know what  
18 more we can do as a Board but it seems to me we do have a  
19 challenge out here that when people, you know, come  
20 before us that hopefully we can do a better job of  
21 educating them what, again, the breadth and the scope of  
22 our jurisdiction and our responsibility.

23  
24                   CHAIRMAN FLEAGLE: Appreciate those  
25 comments, Gary. Board members, anybody want to respond  
26 or have any additional discussion.

27  
28                   (No comments)

29  
30                   CHAIRMAN FLEAGLE: I don't disagree, I  
31 think that anything that we can do to provide adequate  
32 proper information, you know, rather than -- I'm not  
33 saying that we're providing misinformation but I think  
34 there was a lot of missperceptions. If we can somehow  
35 increase our efforts, I don't know how we'd do that, Pete  
36 and I can talk about that, you know, press releases or  
37 add to the web site. Everybody knows that OSM has a web  
38 site, right -- no, I just found it myself not too long  
39 ago.

40  
41                   All right, we're ready to move on then  
42 with the next area of consideration and this is the  
43 Ketchikan area. Council recommendations. Bert.

44  
45                   MR. ADAMS: Thank you, Mr. Chairman.  
46 Before I go on to Council recommendations for the  
47 Southeast RAC, I'd like to, if I might, you know, just  
48 add some personal observations that I have taken into  
49 account the last couple days of meetings here as well as  
50 some of the experiences that I've had in working with



1 tribal governments and being involved in much of the  
2 Federal system as well.

3

4                   You know we've been toying with this  
5 definition of subsistence, you know, for a long time now,  
6 and the Native people say that it is our traditional way  
7 of living, you know, it's our way of life, but to me it's  
8 a land based economy. We live on this land, we work on  
9 this land, we hunt and fish on these lands, and because  
10 of that, you know, it's different than a cash economy, in  
11 that we subsist and survive off of the land.

12

13                   I've also heard it said, you know, that  
14 -- well, I know this for a fact that, you know, ANILCA is  
15 designed to work from the bottom up and I've also heard  
16 it said, you know, that the Board also embraces that  
17 concept. And you've heard testimonies from Ketchikan and  
18 other -- from Kodiak and other people, you know, in  
19 regards to what they feel so strongly, some of them are  
20 emotional, inspiring, but when it comes right down to  
21 making brass tuck decisions, you know, you're going to  
22 have to use some real sound management tools in order for  
23 you to make the right and proper decision. And this idea  
24 of working from the bottom up, you know, has got to be  
25 one of the most important considerations that you, as a  
26 Board, are going to have to take.

27

28                   When the Indian Reorganization Program  
29 came into being in 1934 that gave Native Americans an  
30 opportunity to determine much more about their destinies  
31 rather than depending, you know, on the Federal  
32 government to provide them with all of the things that  
33 they needed. And Felix Cohen, who is an expert on Indian  
34 Law wrote an article in the Indian Report, I think it was  
35 in 1949 and he kind of describes what self-governance  
36 means. He said that self-governance does not really  
37 mean, and it's -- you know, many people have different  
38 views of what self-governance is, but self-governance in  
39 his view is where decisions are made, not by some throne  
40 in Washington, nor some throne in Heaven, but by the  
41 people who are directly affected by it. In other words,  
42 it is these people here out in the audience, who have  
43 come here and testified on how they feel their  
44 communities should be managed, and it is they who should  
45 be really considered, you know, the experts, the people  
46 who know about what's going in their communities rather  
47 than what you and I might think.

48

49                   The Declaration of Independence has some  
50 very important concepts imbedded in it as well. It says

1 that we are all recognized by the creator to have certain  
2 inalienable rights, and that those rights are the  
3 protection of our lives, our liberties and our pursuits  
4 of happiness.

5  
6 I've had a hard time saying that  
7 inalienable, but I think I got it down, I used to get my  
8 tang all tongued [sic] when I used to say that.

9  
10 But an inalienable right is a natural  
11 right, or a God-given right, and because it is a natural  
12 right or a God-given right, those rights are issues that  
13 cannot be changed, they cannot be repealed, they cannot  
14 be taken away, therefore, any government or department of  
15 government has the authority to take those rights away  
16 from us. And one of those rights is the right to be able  
17 to thrive off of our own lands, off of our own resources.

18  
19 In the Ariqwa (ph) nation, there is a  
20 structure of government there that the Federal government  
21 copied, and I'm sharing this with you because in a sense  
22 we are the Federal government. Everything begins from  
23 the tribal council, and if they couldn't solve their  
24 problem there then it went to a group known as the  
25 younger brothers. And if the younger brothers couldn't  
26 take care of that problem then it was elevated to a group  
27 known as the elder brothers, and then there were the fire  
28 keepers. Now, when the Founding Fathers became  
29 acquainted with the Native Americans they saw in that  
30 structure something that they thought was worthwhile to  
31 copy and so the tribal governments, you know, are  
32 correlated with our local governments, the younger  
33 brothers correlates along with the House of  
34 Representatives, and the elder brothers are the Senators  
35 or the Senate, and then the fire keepers are the  
36 administrators. Again, everything begins from the bottom  
37 and works its way up until the problem is solved.

38  
39 And so I just wanted to share those  
40 concepts with you as you go into deliberations on this  
41 important issue that we're faced with at this time.

42  
43 Now, I would like to go on to the  
44 Southeast Regional Advisory Council's position on these  
45 issues. First, I would like to thank the Board for  
46 holding hearings in Saxman, Ketchikan and Sitka. We  
47 realize the time and effort involved for Board members to  
48 travel to these communities and listen to the testimonies  
49 of the people from these communities and we appreciate  
50 the fact that you allowed the opportunity for people in

1 Southeast to be heard. Your willingness to hear from  
2 subsistence users showed responsiveness on the part of  
3 the Board and the Southeast Regional Advisory Council  
4 applauds that.

5  
6 We also appreciate your decision last  
7 December concerning Sitka. And, you know, Sitka is going  
8 to remain as it is and we are very happy for that.

9  
10 SERAC also concurs that Saxman should not  
11 be aggregated with Saxman. Although Saxman is located  
12 close to downtown Ketchikan it is within the Ketchikan  
13 Gateway Borough but they are strikingly different.  
14 Saxman was founded as a refuge for the Cape Fox Tlingit  
15 and has maintained a strong tribal government throughout  
16 its existence. Saxman residents have high estimate use  
17 of fish and wildlife and is characteristic of subsistence  
18 communities. Saxman is not culturally well integrated  
19 with greater Ketchikan and democratic educational and  
20 economic data bear this out. The State of Alaska Joint  
21 Boards of Fish and Game understood this when they classed  
22 Saxman as a rural place. This may be one of the rare  
23 times when the Southeast Regional Advisory Council, the  
24 Federal Subsistence Board and the Joint Boards of Fish  
25 and Game might have agreed.

26  
27 The Council petition to the Secretaries  
28 regarding the 700 [sic] threshold, I'd like to address  
29 that a little bit.

30  
31 First off, ANILCA rural determination are  
32 not required by ANILCA, there's nowhere in ANILCA that we  
33 can see where rural determination has been addressed.  
34 And the use of threshold are not also required in ANILCA.  
35 SERAC believes that Congressional intent was clear and  
36 that threshold population do not need to be used. Let me  
37 repeat that. We do not believe that population threshold  
38 should -- not be used, when you are trying to determine  
39 whether a community is rural or nonrural.

40  
41 Now, if the Board chooses to use a  
42 threshold level, it should reflect the population of the  
43 Ketchikan area at the time of the passage of ANILCA and  
44 this was in 1980 and that level was a bit more than  
45 \$11,000 -- \$11,000 -- 11,000 people, I think it was  
46 something more like 11,300 people there. So the Board  
47 should not act to classify a currently rural place as  
48 nonrural based on this faulty standard.

49  
50 Deference to Council recommendations.

1 SERAC believes that recommendations concerning rural  
2 status are due deference under Section .805. If a  
3 community is classified as nonrural, no taking of fish  
4 and wildlife under ANILCA protections can take place.  
5 The rule [sic] has requested a formal, legal opinion on  
6 this question. Staff lawyers have said there is no  
7 deference but it is not the same as formal, legal  
8 opinion.

9  
10 On aggregating Saxman with Ketchikan and  
11 the Saxman status. The Council has been more concerned  
12 with the rural determination for each community than with  
13 the aggregation question because the August 14th, 2006  
14 Proposed Rule did not aggregate Saxman with Ketchikan,  
15 the Council did not include the aggregation issues in its  
16 comments, however, the Council believes that Saxman is a  
17 very distinct community and it is evaluated on its own  
18 merits. Saxman is clearly a rural community for the  
19 purpose of the ANILCA priority.

20  
21 Let me address the Ketchikan  
22 classification for a minute. The Council is on record  
23 supporting the rural classification for Ketchikan in  
24 numerous Council resolutions and recommends over the  
25 years -- and recommendations over the years, these are  
26 the facts that the Council considered in recommending  
27 rural status for Ketchikan.

28  
29 The Legislative history for ANILCA  
30 mentions Ketchikan, along with Anchorage, Juneau and  
31 Fairbanks as examples of nonrural places. And of all of  
32 these communities Ketchikan was the smallest. Overall  
33 estimates of fish and wildlife harvests have been  
34 unavailable for Ketchikan until a 2006 Bureau of Indian  
35 Affairs, Ketchikan Indian Corporation household survey  
36 was completed. The overall harvest level estimates from  
37 this survey is estimated to be about 90 pounds per  
38 capita. This harvest level is significantly higher than  
39 that of Anchorage, Juneau and Fairbanks and it is in the  
40 lower range of the harvest levels for subsistence  
41 communities around the state. If you look at the ADF&G  
42 community profile data base shows that this harvest level  
43 is higher than or comparable to communities classified as  
44 rural. SERAC sees these data as an indication of the  
45 subsistence orientation of Ketchikan. And by contrast  
46 the harvest levels in the urban centers are much lower,  
47 they were estimated by Fish and Game several years ago to  
48 be about 22 pounds per capita and Ketchikan's harvest  
49 level is more than 400 percent of this ADF&G estimate for  
50 urban areas. Ketchikan has more of a rural subsistence

1 harvesting pattern than the typical -- than that is  
2 typical of urban areas.

3  
4 The Ketchikan economy has stagnated or  
5 declined in the 1980s to present interval. Ketchikan has  
6 failed to develop an urban center and has actually lost  
7 its main industry, the pulp mill and related high paying  
8 timber jobs. Public hearing testimony and testimony at  
9 Council meetings has indicated that an increasing  
10 reliance on subsistence foods in part due to the decline  
11 of the cash economy. SERAC believes that Ketchikan has  
12 more rural characteristics than it did in 1980.

13  
14 Ketchikan's population has barely held  
15 its own over the 1980 to present time period until the  
16 population of Alaska as a whole of the urban centers of  
17 Anchorage, Juneau and Fairbanks have increased  
18 significantly. And SERAC believes that classifying  
19 Ketchikan as nonrural on the basis of population is not  
20 justified.

21  
22 In summary, SERAC believes that Ketchikan  
23 has significant rural characteristics including a level  
24 of subsistence use of fish and wildlife and that is high  
25 compared to urban centers and it has become more of a  
26 rural place post-passage of ANILCA.

27  
28 I thank you, Mr. Chairman, for our  
29 comments and I won't be happy to take any questions, and  
30 I do have a policy if you're going to ask me a question,  
31 don't make it a hard one.

32  
33 Thank you.

34  
35 CHAIRMAN FLEAGLE: I'm not sure if we  
36 recognize RAC policies at this level.

37  
38 Questions.

39  
40 (No comments)

41  
42 CHAIRMAN FLEAGLE: I have a question.  
43 Bert, you said that you have data that shows that the  
44 subsistence use profiles of Ketchikan indicate 90 pounds  
45 per person on the average, which is like the lower levels  
46 of what our determined to be true rural subsistence  
47 areas. Do those survey data cover all of Ketchikan or is  
48 that just the household data of the Native population or  
49 how is that broken out, do you know?

50

1 MR. ADAMS: Let me just try to share the  
2 information. I skipped over this part here, I don't know  
3 whether this will be helpful to you, Mike, or not, but in  
4 comparison to other communities, for instance, Skagway,  
5 there's 48 pounds per capita in 1987 and Metlakatla 70  
6 pounds, in Southcentral region like Talkeetna, Trapper  
7 Creek, Cooper Landing, Gulkana and Glennallen had per  
8 capita harvest rates of less than 100 pounds and so  
9 forth. And with many other rural communities having  
10 harvest levels less than 130 pounds per capita. I don't  
11 know whether that answers your question or not, Mike,  
12 but, you know, this is what I have in front of me right  
13 now.

14  
15 CHAIRMAN FLEAGLE: Okay, thank you, Bert.  
16 I was just kind of curious as to what method that survey  
17 was applied and it's probably a State of Alaska  
18 subsistence survey; I can probably find an answer.

19  
20 MR. ADAMS: This was a survey that was  
21 done by the Bureau of Indian Affairs and the Ketchikan  
22 Indian Corporation.

23  
24 CHAIRMAN FLEAGLE: Okay, thank you.  
25 Anybody want to take a stab at answering the question.  
26 Glenn or Niles.

27  
28 MR. CESAR: Yeah, Glenn, why don't you  
29 answer it.

30  
31 CHAIRMAN FLEAGLE: Glenn Chen, BIA.

32  
33 DR. CHEN: Thank you, Mr. Chair. As I  
34 understand your question, you were asking about what  
35 survey populations those results apply to. And the  
36 survey that was done by the KIC attempted to ascertain  
37 the level of subsistence harvest by the entire community  
38 of Ketchikan. So the study design involved randomly  
39 selecting households within the entire community of  
40 Ketchikan. Over 200 households were interviewed and the  
41 data then represents what the community of Ketchikan is  
42 harvesting with regards to subsistence fish and wildlife  
43 resources.

44  
45 CHAIRMAN FLEAGLE: Thank you. That was  
46 the answer I was looking for. Other questions.

47  
48 MR. EDWARDS: Yeah.

49  
50 CHAIRMAN FLEAGLE: Gary.

1 MR. EDWARDS: Just one follow up. I  
2 mean, you know, isn't that what's sort of -- I mean  
3 wouldn't you expect a difference given that Ketchikan is  
4 a nonrural community and doesn't fall under the Federal  
5 Subsistence Program, would it be greater if it had the  
6 same -- if it did have rural status? I mean I'm trying  
7 to understand whether we're kind of comparing apples to  
8 oranges here or is that a good comparison.

9  
10 DR. CHEN: Mr. Chair. Mr. Edwards.  
11 There's likely a lot of factors that contribute to the  
12 patterns that we saw in the data that were collected by  
13 KIC. One factor could possibly be the fact that  
14 Ketchikan has not been designated a rural community, had  
15 not had opportunity to harvest under our regulations.  
16 That could be a potential explanatory factor. But the  
17 study did not delve into some of the reasons why these  
18 patterns were observed, it just merely collected data to  
19 demonstrate -- to document the levels of harvest.

20  
21 CHAIRMAN FLEAGLE: So I think the gist of  
22 your question, if I understood it was, if there were  
23 Federal recognition for a rural status, would those  
24 household -- or not household, but per capita numbers  
25 increase, right?

26  
27 MR. EDWARDS: Well, I'm just trying to  
28 get -- I'm not sure if it's appropriate, let's say, to  
29 compare a rural and a nonrural necessary community even  
30 though they're in close proximity because I'm assuming  
31 there's difference in pattern. Because under Title VIII,  
32 one community has additional opportunities -- I'm not  
33 that familiar, for example, with Ketchikan exactly, where  
34 that harvest occurs. I'm assuming one area would be Unit  
35 2, I'm assuming that the people in Saxman are able to  
36 participate in the Unit 2 deer hunt under the Federal  
37 regulations and folks under Ketchikan cannot. And,  
38 again, I don't know how much difference that makes, for  
39 example, on the harvest of deer for that total area.

40  
41 CHAIRMAN FLEAGLE: Glenn.

42  
43 DR. CHEN: Mr. Chair. Mr. Edwards. You  
44 know, I think some of those potential hypothesis are  
45 probably fairly speculative because they have not had  
46 that opportunity to participate under our Federal  
47 subsistence regulations. Potentially that could happen,  
48 but without redefining some sort of study to maybe ask  
49 people questions that could get at that data, we really  
50 can't say from the information that was gathered.

1 CHAIRMAN FLEAGLE: Other questions while  
2 we got Glenn on the spot.

3  
4 MR. BSCHOR: Just another clarifying  
5 question on that.

6  
7 CHAIRMAN FLEAGLE: Denny.

8  
9 MR. BSCHOR: I don't know that you can --  
10 thank you, Mr. Chair -- that you can answer this, but is  
11 there any way to determine what percentage of those  
12 resources are collected or harvested on Federal lands and  
13 waters. And I can assume that the land base will  
14 probably be Federal land, since there's mostly Federal  
15 land down there. Is there any percentage figure that way  
16 to know how much of the -- whether it's on -- in  
17 Ketchikan or in the rural area.

18  
19 DR. CHEN: Mr. Chair. Mr. Bschor. I'll  
20 ask my Staff anthropologist Pat Petrivelli to come up  
21 here, she was actually the main principal investigator  
22 that worked closely with the KIC folks.

23  
24 MS. PETRIVELLI: Mr. Chair. My name is  
25 Pat Petrivelli. And I was one of the principal  
26 investigators, well, Dolly Garza was the principal one  
27 and I was one of the investigators. We just did a  
28 standard ADF&G household harvest survey. We used their  
29 survey form and we used their format. But we did not do  
30 any mapping activities and we didn't ask any locations  
31 about locations. In the Ketchikan area it is a non-  
32 subsistence area and so they would have been harvesting  
33 under State regulations.

34  
35 CHAIRMAN FLEAGLE: George.

36  
37 MR. OVIATT: Mr. Chairman. Could you  
38 help me or answer, did this include just Ketchikan or did  
39 you include the remaining area, did you group those  
40 together?

41  
42 MS. PETRIVELLI: KIC wanted to do the  
43 study because OSM was using the 33 pounds per person  
44 average under ADF&G in the 2000 estimate and they felt  
45 concerned that they knew that that was a low number, and  
46 it's low for one reason because they use harvest ticket  
47 information. So they were just looking at harvest  
48 tickets and salmon permits returned. So they asked to do  
49 a survey and they did the whole sample of the Ketchikan  
50 area except for Saxman because they knew ADF&G did a



1 household harvest survey of Saxman in the year 2000 or  
2 1999, so our random sample was the whole Ketchikan area  
3 except Saxman. So that was the sampling universe. And  
4 we sampled 242 households and it was for the year 2005.

5  
6 MR. OVIATT: Another follow up question,  
7 I guess, is, do you know what the per capita take would  
8 have been on some of the outlining areas, such as  
9 Waterfall?

10  
11 MS. PETRIVELLI: We didn't break the  
12 different areas -- Waterfall would have been included in  
13 the universe so we didn't distinguish it and I don't  
14 think there's any way to do that, again, because it's all  
15 confidential. They just got lumped in there and there's  
16 no way to differentiate.

17  
18 CHAIRMAN FLEAGLE: Other questions, Board  
19 members.

20  
21 (No comments)

22  
23 CHAIRMAN FLEAGLE: All right, thank you  
24 both for your participation.

25  
26 Okay.

27  
28 MR. ADAMS: Mr. Chairman.

29  
30 CHAIRMAN FLEAGLE: Bert Adams, go ahead.

31  
32 MR. ADAMS: Yeah, I'd just like to make  
33 another remark here. I was handed a memorandum by Pat  
34 Holmes the other day, or yesterday, I guess it was and it  
35 was a memo that was written on September 18th, 1990, and  
36 the memo essentially says, you know, that Sitka and  
37 Kodiak, you know, have all of the characteristics of a  
38 rural community, but down here it also mentions Saxman.  
39 Saxman, who's current population supports a presumption  
40 of rural status was determined to be rural by a vote of  
41 the Joint Boards of Fisheries and Game of the State of  
42 Alaska. The distinct and separate existence of Saxman as  
43 a rural community apart from Ketchikan be verified by  
44 reference to the Saxman clan asserted its own aboriginal  
45 claims to Southeast lands, Saxman was identified as a  
46 Tlingit tribal community entitled to benefit of the  
47 Tlingit and Haida court of claims lawsuit, Saxman is a  
48 member of the community of Southeast tribal governing  
49 body, the Central Council of the Tlingit/Haida Indians,  
50 and Saxman's history of reliance upon subsistence hunting

1 and fishing was addressed in the Interior Department's  
2 1946 Haas, Goldschmidt report and also included in 1959  
3 court of claims decision.

4

5 And it also, you know, has some more  
6 information here but I just wanted to emphasize that, you  
7 know, way back in 1990, you know, Saxman was considered a  
8 rural community and that it was considered separate from  
9 Ketchikan.

10

11 CHAIRMAN FLEAGLE: Thank you for those  
12 comments, Bert.

13

14 Any other questions from the Council  
15 recommendation.

16

17 (No comments)

18

19 CHAIRMAN FLEAGLE: Hearing none, we'll go  
20 ahead, ADF&G additional comments.

21

22 MR. BROWER: Mr. Chairman.

23

24 CHAIRMAN FLEAGLE: Excuse me, do you want  
25 to refer to the Southeast RAC?

26

27 MR. BROWER: I just needed some  
28 clarification in terms of when the other Councils are  
29 going to be asked to comment on your process, in the  
30 process here you identified Council recommendations for  
31 individual Councils, but what about other Council  
32 recommendations?

33

34 CHAIRMAN FLEAGLE: Excuse me, that's a  
35 good point, I hadn't considered that. That would be  
36 appropriate at this time to include consideration from  
37 other Councils and I don't know, perhaps I should go  
38 around and ask each Council rep that's here if they have  
39 comments or if you guys just want to -- maybe I'll just  
40 open it up, that's a good point Harry. What I intended  
41 to do was just call on each RAC representative for the  
42 area that's in question but I think you have -- you raise  
43 a good point.

44

45 Sarah, I'll get back to you on the  
46 State's comments.

47

48 Mr. Brower, would you like to have  
49 comments on this issue.

50

1 MR. BROWER: Yes, thank you, Mr.  
2 Chairman. Harry Brower for the record, North Slope  
3 Regional Advisory Council Chairman. I just wanted to  
4 indicate the support of the North Slope Regional Advisory  
5 Council for the Saxman rural status at this time, Mr.  
6 Chairman.

7  
8 Thank you.  
9

10 CHAIRMAN FLEAGLE: Okay, thank you,  
11 Harry. Other Council representatives. Pat Holmes.  
12

13 MR. HOLMES: Mr. Chairman. I did submit  
14 a motion to the RAC but we ran out of time and I was sick  
15 and so it didn't receive a firm vote of our RAC, but we  
16 did have discussions and in the past our RAC has been  
17 very empathetic with any community that has a high Native  
18 population and a high portion of subsistence harvest and  
19 I would say that we probably -- we would support Saxman  
20 as a separate entity and also Ketchikan probably deserves  
21 some really serious consideration being it's had a  
22 decline in its economy and I suspect there's some direct  
23 parallels with Sitka and Kodiak.

24  
25 Thank you, Mr. Chairman.  
26

27 CHAIRMAN FLEAGLE: Thank you, Pat. Amy.  
28

29 MS. WRIGHT: I'm with the Eastern  
30 Interior Board and I can easily say that we would be very  
31 much supportive of Saxman to remain rural and I also  
32 think that Ketchikan needs some serious reevaluation.  
33

34 Thank you.  
35

36 CHAIRMAN FLEAGLE: Thank you. It looks  
37 like that covers it. Okay, we'll now turn to the State  
38 of Alaska for their comments.  
39

40 MS. GILBERTSON: Thank you, Mr. Chairman.  
41 I would just add that Ketchikan is a non-subsistence area  
42 under the State side and that if there are questions as  
43 to Ketchikan and Saxman's status, Dr. Jim Fall is in the  
44 audience and would be happy to speak to any questions  
45 with the State side of things.  
46

47 And then also on the issue of the  
48 Ketchikan Indian Community survey or report, there were  
49 some statements in there about ADF&G under estimating the  
50 level of use of fish and wildlife and I did ask some

1 questions internally about that, and the Ketchikan survey  
2 is a household survey whereas the Fish and Game number  
3 are coming from permits. And Marianne See, I believe,  
4 would like to comment on the difference between those  
5 data.

6

7

CHAIRMAN FLEAGLE: Marianne.

8

9

MS. SEE: Thank you, Mr. Chair. For the  
10 record my name is Marianne See, assistant director at  
11 Subsistence Division at Fish and Game. And there are  
12 different sources of information here being talked about.

13

14

And as Pat Petrivelli stated, and just to  
15 make sure this is really clear, the Fish and Game numbers  
16 mentioned at 33 pounds per person for Ketchikan were  
17 simply estimates derived from only two sources of  
18 information and those were from fish harvest information  
19 and harvest ticket information for deer. And the fish  
20 information was only for salmon. And we know in  
21 subsistence activities there's a wide array of resources  
22 used. So the household surveys are a much more detailed  
23 tool to get at the kind of information that would really  
24 reflect a full array of subsistence resource use, whereas  
25 the data that Fish and Game had and reported on in past  
26 years was simply two sources of information for which we  
27 had reported data.

28

29

So it's obviously going to be an  
30 indicator but not a full picture, and, in fact, you would  
31 expect that a number to be quite a bit lower than that  
32 which you would get with a household survey which is a  
33 much better tool for a full picture.

34

35

So it would be inappropriate to say that  
36 the Fish and Game's data were characterizing a full  
37 picture of use. We, in no way, ever intended the data to  
38 be used for that purpose, it was simply an indicator of  
39 use at the time given that we hadn't done a household  
40 survey. And the household survey, as noted by Pat  
41 Petrivelli did use ADF&G methodology.

42

43

Thank you, Mr. Chair.

44

45

CHAIRMAN FLEAGLE: Marianne, a question  
46 on that that comes to my mind is would your Subsistence  
47 Division agree with those data produced by the survey  
48 then?

49

50

MS. SEE: Mr. Chair. Some of our Staff

1 have looked at the survey and agreed that the methodology  
2 was consistent with what we would normally do and to my  
3 knowledge the information resulting from the survey is  
4 consistent with the kind of information we would have  
5 developed had we done the survey.

6

7 Thank you.

8

9 CHAIRMAN FLEAGLE: Thank you. Sarah, are  
10 you finished?

11

12 MS. GILBERTSON: (Nods affirmatively)

13

14 CHAIRMAN FLEAGLE: Other Board members,  
15 questions for the State.

16

17 (No comments)

18

19 CHAIRMAN FLEAGLE: All right, thank you,  
20 I appreciate the offer for additional resources, Dr. Fall  
21 is available like Sarah says, if we need to ask further  
22 questions in this deliberation.

23

24 So at this time then, we're now ready for  
25 the InterAgency Staff Committee recommendation. Steve  
26 Klein.

27

28 MR. KLEIN: Thank you, Mr. Chair. The  
29 Staff Committee recommendation is on Pages 3 to 7 of our  
30 handout and there's additional copies of that handout on  
31 the front table there for those that might not have it.

32

33 The Staff Committee found this a  
34 difficult issue, we could not reach consensus on our  
35 recommendation and what we present to the Board here  
36 today is a majority recommendation with a minority  
37 recommendation. And I would like to address those,  
38 first, beginning with the majority recommendation and  
39 then for each of the recommendations we have  
40 recommendations on the grouping as well as the  
41 rural/nonrural status.

42

43 So first to begin with the majority  
44 recommendation and grouping. And consistent with the  
45 Proposed Rule, the Staff Committee recommends to add to  
46 the Ketchikan area, those portions of the road system  
47 connected to the city of Ketchikan, not now included, and  
48 additional portions of Gravina Island. Based on the  
49 Board's guidelines and testimony received, also add the  
50 city of Saxman to the nonrural Ketchikan area.

1                   And the justification for this was that  
2 while some written and oral testimony advocated not  
3 including parts of the road system currently excluded  
4 from the nonrural Ketchikan area, and much testimony  
5 advocated not including the city of Saxman, other  
6 testimony asserted that the entire area should be treated  
7 consistent in a unified manner. All of the guidelines  
8 the Board charged Staff to use in evaluating grouping of  
9 communities and areas were fulfilled and fully support  
10 adding the outlying portions of the road system, not now  
11 included, additional portions of Gravina Island and the  
12 city of Saxman.

13

14                   And then for the rural/nonrural status.  
15 Consistent with the Proposed Rule, do not change the  
16 nonrural status of the Ketchikan area. Places added, as  
17 recommended above in the grouping discussion would take  
18 on the nonrural status of the grouping, following a five  
19 year waiting period.

20

21                   And the justification for the nonrural  
22 status is the Ketchikan area has been nonrural in status  
23 since the inception of the Federal Subsistence Management  
24 Program, was not proposed for change in the Proposed  
25 Rule, and testimony received does not make a compelling  
26 case that regulatory action is warranted to change the  
27 nonrural status at this time.

28

29                   This doesn't mean that subsistence is not  
30 important it means that a Federal subsistence priority on  
31 Federal public lands would not be in effect for those  
32 residents.

33

34                   And that concludes the majority  
35 recommendation.

36

37                   There was a minority recommendation. In  
38 terms of the grouping, the minority of the Staff  
39 Committee recommended to include in the nonrural  
40 Ketchikan area, those portions of the road system  
41 connected to the city of Ketchikan, not now included,  
42 except for the city of Saxman, and additional portions of  
43 Gravina Island. Excluding the city of Saxman from the  
44 Ketchikan area is consistent with the Board's decision in  
45 1990 and with the Southeast Alaska Regional Advisory  
46 Council's recommendation and the Proposed Rule for the  
47 present decennial review.

48

49                   It is further supported by numerous  
50 written public comments, public testimony received at

1 Southeast Alaska Regional Advisory Council and Federal  
2 Subsistence Board meetings and testimony provided at the  
3 public hearing held at Saxman and yesterday as well.

4  
5           The justification for the grouping, the  
6 Board received numerous public comments regarding the  
7 grouping criteria, and the application of these criteria  
8 to Saxman in determining whether to include it with the  
9 Ketchikan area. The grouping criteria used by the  
10 Federal Subsistence Program were developed to provide a  
11 consistent statewide approach in evaluating and  
12 determining whether communities or areas should be  
13 aggregated for the purpose of determining their rural  
14 status. The criteria are not specified in statute or  
15 regulation, they are guidelines.

16  
17           The minority believe that other  
18 considerations such as socio-economic features may be  
19 useful to assist the Board in making its decision on  
20 grouping.

21  
22           While Saxman meets the Board's three  
23 criteria for grouping it with the Ketchikan area, it  
24 possesses unique social and economic characteristics that  
25 distinguish it from Ketchikan. Saxman has had a separate  
26 identity from Ketchikan since its foundation by the Cape  
27 Fox Tlingit more than 100 years ago. Saxman has both a  
28 city government that is independent from the city of  
29 Ketchikan and a tribal government. Attempts at municipal  
30 annexation and consolidation have continuously been  
31 rejected by Saxman residents. Saxman also has its own  
32 Mayor, city council and city staff. The community has  
33 its own fire service and water and sewer systems. It  
34 relies on the State Troopers rather than Ketchikan's  
35 Police Department and it has its own sales tax.

36  
37           Further, looking at demographic data,  
38 Saxman shows that compared with the surrounded area  
39 residents have a higher unemployment rate, lower per  
40 capita income and a higher percentage of people with  
41 incomes below the poverty level than Ketchikan. And use  
42 of wild resources by Saxman residents is nearly two and a  
43 half times higher than the level documented for  
44 Ketchikan.

45  
46           So in terms of the grouping, the minority  
47 of the Staff Committee found that unique social and  
48 economic characteristics of Saxman differentiate it from  
49 Ketchikan. This was widely held in public testimony and  
50 is in the opinion of the minority more compelling than

1 the view that would support adherence to the three  
2 grouping criteria.

3  
4                   Then in terms of the other portions of  
5 the road system connected to the city of Ketchikan and  
6 additional portions of Gravina Island, they appear to  
7 meet the three grouping criteria and do not appear to  
8 possess unique social and economic characteristics  
9 sufficient to distinguish them from Ketchikan.

10  
11                   So that was the grouping. And then in  
12 terms of the nonrural/rural status from the minority of  
13 the Staff Committee. The minority states that consistent  
14 with the Proposed Rule, do not change the present  
15 nonrural status of the Ketchikan area. Places added as  
16 recommended in the grouping discussion would take on the  
17 nonrural status of the grouping following a five year  
18 waiting period. Saxman, which is excluded from the  
19 Ketchikan area under the minority recommendation would  
20 retain its present rural status consistent with the  
21 Proposed Rule.

22  
23                   And the justification for the nonrural  
24 and rural status was that not enough has changed to  
25 warrant reconsideration of Saxman's status. The  
26 population was 369 in 1990, 431 in 2000 and 405 in 2005.  
27 Saxman's population remains well below the Federal  
28 Subsistence Program's 2,500 person threshold.

29  
30                   Most Saxman residents are from families  
31 who have lived there for generations. No evidence shows  
32 that Saxman has assumed a more nonrural character since  
33 the Federal Subsistence Program's previous determination.  
34 Overall wildlife and fish harvest levels among Saxman  
35 residents on a per capita basis are consistent and  
36 characteristic of subsistence communities. The average  
37 per capita harvest is 217 pounds with a high diversity of  
38 food types and 97 percent of all households demonstrate  
39 use of subsistence resources.

40  
41                   Subsistence also forms the basis of  
42 Saxman's economy. Seasonal tourism jobs have become  
43 available in recent years with cultural presentations in  
44 the Saxman village providing part-time employment for  
45 some residents. These tourism related jobs provide some  
46 of the cash needed to support subsistence activities.

47  
48                   The State of Alaska Boards of Fisheries  
49 and Game determined that Saxman was a rural community in  
50 1986, but no evidence indicates that Saxman has assumed a



1 nonrural character since the initial State of Alaska  
2 rural determination or since the Federal assumption of  
3 management responsibilities.

4  
5                   And that concludes both my majority and  
6 minority recommendations of the Staff Committee.

7  
8                   Mr. Chair.

9  
10                   CHAIRMAN FLEAGLE: Thank you, Steve. I  
11 appreciate that report.

12  
13                   I know at the beginning of the meeting  
14 during some testimony there was some concern that the  
15 Staff Committee did come out with two -- essentially two  
16 different recommendations, the majority and minority that  
17 caused some confusion among some people, and there was a  
18 question of even whether the Staff Committee should come  
19 out with options or joint -- or concurrent  
20 recommendations when they can't reach a consensus and in  
21 this case the options were either for the Staff Committee  
22 to remain silent on the issue and just lay out their  
23 analysis or to produce a couple of choices for the Board  
24 to choose from, which is the option they chose. And so  
25 the Board now will consider their recommendations and  
26 once again I'm going to lead in with how the action would  
27 go.....

28  
29                   MR. EDWARDS: Can we ask some questions.

30  
31                   CHAIRMAN FLEAGLE: Yeah, we can, but I'm  
32 just going to lay this out right now while I still got it  
33 on the tip of my tongue.

34  
35                   That the Proposed Rule addresses,  
36 including outlying locations in the nonrural Ketchikan  
37 area. If there is no motion, the current regulations  
38 would remain unchanged and the Proposed Rule would be  
39 withdrawn which means those outlying locations would not  
40 be included in the nonrural Ketchikan area, nothing would  
41 change, Saxman would remain rural.

42  
43                   Now, questions on the InterAgency Staff  
44 Committee recommendations. Gary.

45  
46                   MR. EDWARDS: Thank you, Mr. Chairman.  
47 Steve, thank you for your presentation.

48  
49                   I guess one of my questions is, as I read  
50 the minority justification for why the community of

1 Saxman shouldn't be grouped. It seems to utilize other  
2 criteria and considerations that really address more of  
3 the question as to whether it should be rural or  
4 nonrural. Can you elaborate a little more on addressing  
5 our regulation, which talks about economic and socially  
6 and communally, can you address that more as opposed to  
7 kind of the question as what it's status is with regards  
8 to being rural or nonrural.

9

10 CHAIRMAN FLEAGLE: Steve.

11

12 MR. KLEIN: Well, I think I'll invoke  
13 Bert's rule of no hard questions.

14

15 (Laughter)

16

17 MR. KLEIN: I'll try to address that but  
18 I would invite Dr. Chen who really crafted the minority  
19 recommendation to add to it.

20

21 But for the minority opinion, the  
22 minority felt that the three criteria were insightful but  
23 really for the grouping of Saxman that there were other  
24 unique characteristics that should be considered, and  
25 coincidentally some of those are linked to the guidelines  
26 for rural versus nonrural but the minority really felt  
27 that we ought to be looking at additional items beyond --  
28 social economic items beyond just the three criteria.

29

30 And I'd invite Dr. Chen to add to that.

31

32 MR. EDWARDS: Okay, before you do that,  
33 maybe I can put my question in a little better context.

34

35 I guess what I was getting at, if you  
36 look at the Proposed Rule that we sent out in August  
37 there's a paragraph in there that talks about community  
38 characteristics and specific indicators that the Board  
39 used to evaluate rural and nonrural status and then that  
40 includes, and it has a list of several things, everywhere  
41 from economy, wage, employment, community infrastructure,  
42 fish and wildlife use, transportation and other things.  
43 But it seems that that's what the Board was utiliz -- is  
44 utilizing, those characteristics and ultimately making  
45 the decision on rural and not rural, not on the decision  
46 as to whether a community should be grouped or not  
47 grouped.

48

49 CHAIRMAN FLEAGLE: Glenn.

50

1 DR. CHEN: Thank you, Mr. Chair. Member  
2 Edwards.

3  
4 The basis for our viewpoint is founded on  
5 several things. One, is that the grouping criteria which  
6 were approved by the Board to analyze the integration of  
7 communities were guidelines, and they are useful  
8 guidelines but they are just that, they are guidelines.  
9 And given the diverse array of circumstances in Alaska  
10 with regards to geography, social networks, economy,  
11 transportation and so forth, I think it might behoove us  
12 to look at other things when we talk about grouping  
13 communities.

14  
15 We have communities located on islands,  
16 we have communities located on mainlands -- communities  
17 on the mainland where connected by road systems, and  
18 mainland communities that aren't connected by road  
19 systems. There's tremendous variability out there.

20  
21 With regards to things that we speak  
22 about in our recommendation, there is some overlap  
23 between what we are proposing to be considered on the  
24 grouping question for Saxman, some overlap with  
25 discussion about rural status, but there are also some  
26 items that are unique to answering the question about  
27 whether or not Saxman is separate or a part of the  
28 Ketchikan community. So, for example, we site the fact  
29 that there are city governments, that are separate for  
30 both Saxman and Ketchikan. This is a clear indicator of  
31 the distinction between the two areas.

32  
33 We talk about the social integration  
34 aspect and while the Board came up with the use of  
35 looking at high school, common high school attendance  
36 area, it came to our attention from testimony provided by  
37 people in Saxman that many of those students who attend  
38 the same high school, actually a fair number of them drop  
39 out, in fact, they have social networks within the  
40 community of Saxman and not with the larger of Ketchikan  
41 area.

42  
43 So, again, this is an example of where  
44 the criteria are useful guidelines but there is some  
45 other unique characteristics that need to be considered  
46 to fully evaluate this criteria in that context.

47  
48 MR. EDWARDS: A couple more questions if  
49 I can. In reading your justification there's a statement  
50 in there about the unique economic characteristics and

1 it's my understanding that about 65 percent of the people  
2 who work in Saxman work in Ketchikan and then there's  
3 another eight that work out, I mean it just seems to me  
4 that, you know, the issue of economically integrated, you  
5 know, that's a pretty significant indicator when you  
6 have, by far, the majority of the people in a community  
7 drawing their income outside of that community. What  
8 would be the other unique economic characteristics that  
9 would outweigh that?

10

11 DR. CHEN: Mr. Chair. Mr. Edwards. So  
12 when we look at the percentage of people commuting, that,  
13 again also needs to be placed in context of what that  
14 data really says. These are the people who are actually  
15 employed and describes where they are employed. It does  
16 not necessarily describe the greater population of people  
17 who perhaps may be unemployed, who may be are perhaps  
18 seeking jobs that don't have jobs presently. So that  
19 number, that 65 percent number needs to be considered in  
20 that context.

21

22 Saxman, as I understand it, hearing from  
23 folks in Saxman through testimony and so forth, they do  
24 have their own unique economy. For example, they provide  
25 cultural tours of the village, now, this is a substantial  
26 portion of their economy in the summertime, they present  
27 the aspects of their culture and their community and the  
28 history of their village and this is something that is  
29 very well received, for example, by outside visitors. In  
30 fact, Mr. Wallace, has provided a video that the tribe  
31 puts out to talk about Saxman, this was shown at one of  
32 the meetings down at Saxman. This is an example of one  
33 of the unique economic aspects of the Saxman community.

34

35 MR. CESAR: Mr. Chairman, when you get  
36 done, I'd.....

37

38 CHAIRMAN FLEAGLE: Yes.

39

40 MR. CESAR: Yeah, that's fine, after  
41 you're done.

42

43 CHAIRMAN FLEAGLE: Okay, I'll start a  
44 list, we got Niles and then George. Continue Gary.

45

46 MR. EDWARDS: All right. Just a couple  
47 other follow ups. I mean it seems to me if you look at  
48 this justification with regards to whether a community  
49 should be grouped or not, why wouldn't then we apply that  
50 same rationale as we continue on today to look at other

1 communities that we are going to be considering for  
2 grouping or why wouldn't we look at communities such as  
3 Eklutna and apply those same type of criteria.

4

5 CHAIRMAN FLEAGLE: Glenn.

6

7 DR. CHEN: Mr. Chair. Mr. Edwards. I  
8 think, Mr. Edwards, your question refers to the  
9 consistency of the approach and we feel very strongly  
10 that there are other aspects regarding consistency that  
11 need to be considered here.

12

13 Consistency of criteria is one argument.  
14 But the consistency that we're trying to promote that the  
15 fact that this Board, and this decennial review is to  
16 review changes in community characteristics. What we see  
17 that may not be consistent with that approach is the  
18 development of new criteria that are being applied in  
19 this case that weren't applied previously, that might not  
20 be a consistent approach. So consistency should also  
21 consider the charge that we have here, which is to review  
22 the status of communities, the prior determinations done  
23 by the Board, this Board, the Joint Boards of Fish and  
24 Game determined that Saxman was separate and rural.

25

26 CHAIRMAN FLEAGLE: Go ahead, Gary, one  
27 last question and then I'll start recognizing other  
28 speakers.

29

30 MR. EDWARDS: One last question. I guess  
31 I would have to say that I guess it was unfortunate that  
32 this majority [sic] view came out very late in the  
33 process. I wasn't able to read it until Monday. I'm  
34 unclear what type of review it took place within the  
35 Staff Committee and I'm also unclear of what kind of  
36 legal review that it underwent. Did you ask the  
37 Solicitor whether that this justification would pass  
38 legal muster or not?

39

40 CHAIRMAN FLEAGLE: Steve Klein.

41

42 MR. KLEIN: Mr. Edwards.

43

44 MR. EDWARDS: I meant the minority if I  
45 said majority.

46

47 CHAIRMAN FLEAGLE: Glenn Chen.

48

49 MR. KLEIN: Well, I can answer that.

50

1 CHAIRMAN FLEAGLE: Steve, go ahead.

2

3 MR. KLEIN: The Staff Committee met and  
4 formulated the two recommendations. There was some  
5 general discussion on the justifications for both the  
6 grouping and rural/nonrural status. And then a  
7 subcommittee was tasked to write up the minority opinion,  
8 the majority opinion was available at that meeting, and  
9 the Staff Committee members commented on it.

10

11 Once the minority recommendation,  
12 speaking directly to your question, was drafted, it was  
13 reviewed by both the other members of the InterAgency  
14 Staff Committee and had a Solicitor review before it was  
15 published.

16

17 MR. EDWARDS: And what that Solicitor's  
18 review said, or maybe the Solicitor.....

19

20 CHAIRMAN FLEAGLE: Yeah, why don't we get  
21 it right from the.....

22

23 MR. EDWARDS: .....is in a better  
24 position to say that.

25

26 CHAIRMAN FLEAGLE: .....Solicitor.  
27 Keith, are you prepared to speak to the question.

28

29 MR. GOLTZ: Well, I was consulted, and I  
30 gave the opinion that I thought the minority view would  
31 be very difficult to defend. I base that, first, on the  
32 visual effect itself. If you look at the map depiction,  
33 you see this long area of urban, Ketchikan, and right  
34 shining, right in the middle of it is this unit of Saxman  
35 and it's surrounded on all four sides by an urban area.  
36 So if the court looks at that, they're going to ask, how  
37 did you get there and the first thing they're going to  
38 question is was there a consistent application of the  
39 criteria and we find that there was. And then at the  
40 very end of the program we find people quarreling with  
41 the criteria. They've been in place for a year and  
42 they've been applied to nine of the 10 areas and now all  
43 of a sudden we're quarreling. And the court is likely to  
44 ask what's happening here, are you really testing whether  
45 it's rural or nonrural or are you smuggling in  
46 considerations of Native, non-Native or subsistence and  
47 non-subsistence.

48

49 And given that context, it was my view  
50 that the minority recommendation would be extraordinarily

1 difficult to defend.

2

3 CHAIRMAN FLEAGLE: Thank you, Keith.  
4 Let's digest that a little bit and I'll call on other  
5 Board members for questions, and then we can come back to  
6 the Solicitor if other people want to.

7

8 Niles.

9

10 MR. CESAR: Thank you, Mr. Chairman. And  
11 I just wanted to make the point, you know, that in terms  
12 of the economics of Saxman, as Glenn said, is my  
13 understanding of Saxman but also there's a fairly high  
14 Saxman oriented market for Native handicrafts. I mean  
15 they do a fair amount of that as well as, at least, maybe  
16 up until recently Saxman had its own gift shop that sold  
17 those kinds of handicrafts, so a lot of people who were  
18 not working in Ketchikan were, in fact, working in Saxman  
19 doing this type of activity. And as we know this takes  
20 on, depending on where you live, a larger and larger  
21 proportion of the employment in some of the villages.

22

23 I just wanted to point that out.

24

25 CHAIRMAN FLEAGLE: Thank you, Niles.  
26 George Oviatt.

27

28 MR. OVIATT: Thank you. Did anybody look  
29 at the unemployment rate of the outlying communities in  
30 comparison?

31

32 CHAIRMAN FLEAGLE: Larry Buklis.

33

34 MR. BUKLIS: Mr. Chairman. The  
35 statistics we reported to the Board in our June report  
36 were for the Ketchikan and Saxman, but Ketchikan is not  
37 broken down into finer units.

38

39 CHAIRMAN FLEAGLE: Board members, further  
40 questions for the report, ISC report.

41

42 MR. ADAMS: Mr. Chairman.

43

44 CHAIRMAN FLEAGLE: Where are we at, Bert.

45

46 MR. ADAMS: Mr. Chairman. I'd like to  
47 call David, from Ketchikan up here to kind of respond to  
48 the Solicitor's evaluation, you know, of the  
49 Ketchikan/Saxman issue. So if he could do that I'd  
50 appreciate it if it's permissible.

1 CHAIRMAN FLEAGLE: And David is a part of  
2 your Council?

3

4 MR. ADAMS: No.

5

6 CHAIRMAN FLEAGLE: Essentially reopening  
7 public participation. I need to get a ruling for the  
8 propriety of that before I go on that Bert. Keith Goltz,  
9 we have a request from a RAC Chair to bring a member of  
10 the public for further testimony; it's not something --  
11 anyway, give me your recommendation.

12

13 MR. GOLTZ: It's not normal. And ordina  
14 -- and you would guess the one time I needed them I  
15 didn't bring the guidelines, the meeting guidelines. But  
16 I -- I know.....

17

18 CHAIRMAN FLEAGLE: You can always ask an  
19 attorney Keith.

20

21 (Laughter)

22

23 MR. GOLTZ: It's not very clear. I think  
24 it's within the discretion of the Chair, I'd be inclined  
25 to let it occur in this case.

26

27 CHAIRMAN FLEAGLE: Any objection, Board  
28 members.

29

30 (No objections)

31

32 CHAIRMAN FLEAGLE: All right, I'll yield  
33 to your request, Bert, would you go ahead and please call  
34 on him.

35

36 MR. ADAMS: Thank you, Mr. Chair.

37

38 MR. JENSEN: Thank you, Mr. Chair.

39

40 CHAIRMAN FLEAGLE: State your name for  
41 the record again please.

42

43 MR. JENSEN: David Jensen with Ketchikan  
44 Indian Community Tribal Council.

45

46 In reference to Mr. Goltz' statement that  
47 the map of the Ketchikan/Saxman area with Saxman bordered  
48 on four sides with urban, the shaded area is the roaded  
49 area, I believe, and -- okay, Ketchikan nonrural area as  
50 proposed '06, that's what the shaded area is, it doesn't



1 say on the map that it's urban, it just says nonrural and  
2 most of the roads that you see go up the center are  
3 logging roads. They're just -- so there's no population  
4 there. And on the Gravina side, there's very little  
5 population. I think there may be 300 people on the  
6 island over there at the maximum.

7

8 So I was just thinking that it wasn't a  
9 true statement that this was all surrounded by urban  
10 area.

11

12 CHAIRMAN FLEAGLE: All right, thank you.  
13 I don't think we got that interpretation but, Keith, you  
14 have a response.

15

16 MR. GOLTZ: Right, that isn't what I was  
17 intending to convey.

18

19 My legal concern has to do with the  
20 surrounding area, and whether Saxman is different --  
21 treated differently from that surrounding area. Is it an  
22 island, is it an enclave within a larger area or is it a  
23 boundary area. Those are, to me, important legal  
24 considerations.

25

26 MR. JENSEN: Okay, thank you.

27

28 CHAIRMAN FLEAGLE: All right. Further  
29 questions of the Staff Committee recommendations.

30

31 MR. ADAMS: Mr. Chairman, I have -- over  
32 here.

33

34 CHAIRMAN FLEAGLE: Bert.

35

36 MR. ADAMS: I have another one, if I  
37 might, Mr. Chairman.

38

39 CHAIRMAN FLEAGLE: Of the committee  
40 recommendations?

41

42 MR. ADAMS: No, I'd like to ask a  
43 question of the Forest Service, if I might.

44

45 CHAIRMAN FLEAGLE: Okay. Can we wait  
46 until we get into deliberations before we start doing  
47 this.

48

49 MR. ADAMS: Sure, thank you.

50

1 CHAIRMAN FLEAGLE: Okay. If there's no  
2 more questions for the Staff Committee report and  
3 recommendations, I'm going to call for a 10 minute stand  
4 down and then we'll resume with deliberations.

5  
6 (No comments)

7  
8 CHAIRMAN FLEAGLE: Hearing none, we'll go  
9 ahead and there'll be an actual 10 minute stand down.

10  
11 (Off record)

12  
13 (On record)

14  
15 CHAIRMAN FLEAGLE: All right, the Federal  
16 Subsistence Board is back on record. And we have come to  
17 the point to where the Board needs to begin  
18 deliberations. Pete has a comment before we start that,  
19 but even before I turn to Pete I just want to raise a  
20 question that was raised by a Board member, we're 20  
21 minutes from the noon hour, we have an opportunity to  
22 take an early break for lunch and resume deliberations  
23 fresh or we can start deliberations and work on them for  
24 awhile, break and then come back, just think about that  
25 for a moment while I call on Pete and then I'll just get  
26 the will of the Board.

27  
28 Pete.

29  
30 MR. PROBASCO: Mr. Chair. I appreciate  
31 you taking that break. While the Board was asking  
32 questions the Staff Committee -- you saw Staff Committee  
33 members come up and whisper in my ear, and the concern  
34 was that we may not have accurately reflected the Staff  
35 Committee's recommendation. And so I asked Chairman  
36 Fleagle if we could take a break so I could bring the  
37 Staff Committee together to try to reach a better  
38 understanding on what the Staff Committee did. And where  
39 we landed, Mr. Chair, is that characterizing the Staff  
40 Committee's recommendation as a majority and a minority  
41 recommendation does not accurately reflect all the work  
42 that the Staff Committee did on this issue.

43  
44 It is, indeed, as everybody's heard a  
45 very difficult issue. We have the city of Ketchikan, you  
46 have the outlying area and you have the community of  
47 Saxman and there's all types of different options on how  
48 to look at that.

49  
50 So where we landed, Mr. Chair, is that

1 one we need to correct the record, that it should not be  
2 the -- the Staff Committee's recommendation should not be  
3 reviewed as the majority/minority and it should more  
4 accurately reflected as recommendation A and  
5 recommendation B. Mr. Chair, that accurately reflects  
6 how the six Staff Committee members dealt with this issue  
7 and accurately reflects their work.

8

9 Mr. Chair.

10

11 CHAIRMAN FLEAGLE: Thank you, Pete. So  
12 basically what we're saying is that the Staff Committee  
13 has issued two recommendations of equal status without a  
14 preference, I appreciate that.

15

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

17

18 CHAIRMAN FLEAGLE: Okay, thank you. Back  
19 to the lunch question.

20

21 (Laughter)

22

23 CHAIRMAN FLEAGLE: What's the will of the  
24 Board. Gary.

25

26 MR. EDWARDS: For me, personally, Mr.  
27 Chairman, you know, I don't like the idea of breaking  
28 when we're dealing with a very important issue. So I'd  
29 either suggest we continue on until we're finished or we  
30 break now and come back and start it fresh.

31

32 CHAIRMAN FLEAGLE: Okay, I need one or  
33 the other.

34

35 (Laughter)

36

37 MR. EDWARDS: I guess I'd prefer to go  
38 eat.

39

40 CHAIRMAN FLEAGLE: All right, let's do  
41 that. The Board will resume deliberations at 1:00  
42 o'clock. Let's break for lunch.

43

44 (Off record)

45

46 (On record)

47

48 CHAIRMAN FLEAGLE: Good afternoon. The  
49 Federal Subsistence Board is called back into session and  
50 everybody is present after engaging in downtown Anchorage

1 subsistence activities.

2

3 I would like to -- before we begin Board  
4 deliberations on the Ketchikan area issues, I have a  
5 request from Tom Carpenter who is representing the  
6 Southcentral Regional Advisory Committee who has to  
7 depart the meeting, does have comments on the areas that  
8 are under the Southcentral RAC's jurisdiction for  
9 consideration. So if it's okay with the Board I'd like  
10 to have him go ahead and give his presentation while he's  
11 still here.

12

13 Tom, please.

14

15 MR. CARPENTER: Thank you, Mr. Chair.  
16 Members of the Board. I appreciate you fitting me into  
17 this schedule today. Unfortunately I have to fly to  
18 Cordova and get on another plane and go to Seattle. But  
19 anyway you'll find our RAC comments in the book.

20

21 The comments are pretty straight forward,  
22 and I think the Staff recommendations represent the same  
23 opinion that the Southcentral RAC had. But a couple of  
24 things that we did discuss at the RAC meeting and it's  
25 actually been brought up a couple times in the last  
26 several sessions, and I think it actually has something  
27 to do with what you've been talking about in the  
28 Southeast situation, and if you look at the Kenai  
29 Peninsula as a whole, if you get in a car from Homer and  
30 you drive to Kenai, you don't see much difference in the  
31 geography and the lay of the land and a lot of the  
32 communities that are in that area have the same general  
33 make up.

34

35 But the guidelines that the board is  
36 supposed to follow and that the Staff uses to interpret  
37 rural characteristics find us picking and choosing  
38 between communities within the same geographic areas and  
39 we find that a little concerting.

40

41 We feel that the criteria to determine  
42 rural characteristics equally aren't necessarily equal --  
43 determined equally statewide. And I guess the big  
44 concern that the Southcentral RAC has is that the  
45 communities in this area have a road system that is  
46 unlike any other road system in the state, and a lot of  
47 these communities seem to be being put together in an  
48 aggregate manner in regards to subsistence management  
49 solely and we find this a little disheartening. This  
50 region's transportation corridors will continue to affect

1 growth because roads are a direct avenue for growth. And  
2 a lot of the communities that the Southcentral RAC  
3 represents feel that if the criteria is being used is the  
4 sole method for determining rural status, would it be  
5 possible that in 20 years we would have no real  
6 communities in Southcentral Alaska because there's going  
7 to continue to be growth.

8

9                   One of the concerns is directly involved  
10 with State and Federal governments in regards to the way  
11 the population is determined for these communities.

12

13                   What would happen if the Federal  
14 government were to build a prison in Glennallen or put a  
15 military base in, you know, in Cordova, that would  
16 totally change the make up and the population estimate in  
17 regards to the rural communities.

18

19                   Basically we just think that the criteria  
20 needs to -- that's used by the Board and the Staff needs  
21 to be reviewed and scrutinized with a fine -- and refined  
22 so that some of these questions that we may not be able  
23 to answer now we will be able to answer the next time  
24 this process takes place.

25

26                   So I appreciate the Chair letting me  
27 speak early and the Board, and hopefully your  
28 deliberations on these very tough proposals this  
29 afternoon will go smoothly, so thanks a lot.

30

31                   CHAIRMAN FLEAGLE: Thank you, Tom. And  
32 thank you for your continued participation in the  
33 process. We value your work and your committee's as  
34 well.

35

36                   Questions, Board members, on any of that.

37

38                   (No comments)

39

40                   CHAIRMAN FLEAGLE: All right, thanks,  
41 Tom. We'll take those comments into consideration,  
42 appreciate those.

43

44                   At this time we're going to go ahead and  
45 take back up the Ketchikan area. I'm open for  
46 deliberative discussion, Board members.

47

48                   (No comments)

49

50                   CHAIRMAN FLEAGLE: Anybody who wants to

1 lead us off.

2

3 Denny.

4

5 MR. BSCHOR: Mr. Chair, I'll do that and  
6 just make a few points here.

7

8 As we have begun this process and worked  
9 through it, it's apparent to me that we are talking about  
10 some definitions of rural that have to be put into a  
11 context and, in fact, even several times during the  
12 testimony we heard jokes about that which were quite  
13 funny, but really on target as far as how do we look at  
14 this and relative to our task, this, today. And  
15 personally I've had to look at the context, the Alaska  
16 context, if we compare towns in Alaska to anywhere else  
17 that isn't going to be a fair comparison either. So as I  
18 proceed I'm going to be doing that relative to my input  
19 here.

20

21 And also want to say that as we approach  
22 the Ketchikan/Saxman issue here, that we -- no action  
23 means continue what we're doing right now. And part of  
24 what that -- after hearing the testimony on Kodiak and  
25 hearing that if we had grouped Kodiak in a way that it  
26 would become divisive between rural and nonrural, that  
27 that's not a good thing, and we have that right now in  
28 Ketchikan, I just want to make that point. And to what  
29 extent that is divisive I won't comment on because  
30 there's others in the room who probably realize that that  
31 is a problem or not, but it is a situation so I want to  
32 bring that out as far as just kind of a baseline look.

33

34 And the other thing I would urge the  
35 Board and I'm going to try to do myself, to look at the  
36 difference between the letter of the law and spirit of  
37 the law and what we need to do to make sure that we can  
38 at least keep that in mind.

39

40 And just a couple other things, as far as  
41 the criteria are concerned, we've got the three criteria  
42 which we've discussed all along as far as proximity to  
43 rural accessible areas, sharing high school attendance,  
44 30 percent or more of the people working from one  
45 community to the other, and we have the community  
46 characteristics and those community characteristics are  
47 something that, to me, this whole process of hearings and  
48 dealing with this issue over the past year, I guess  
49 probably year and a half now, if you look at comparisons  
50 and you look at context, I think there's differences

1 between the particular towns and cities that we're  
2 looking at that I hope come out in our deliberations a  
3 little bit more relative to the health of the economy,  
4 the transportation systems, the gentleman just spoke  
5 about, having a road system on Southeast Alaska, we have  
6 a Marine Highway System, we have a lot of commerce that  
7 comes through there that doesn't occur in a place like  
8 Kodiak.

9  
10 We have an economy which can be debated  
11 and I know that it's not really what you would call  
12 greatly on the upswing or improving drastically but it is  
13 also not going the other way. And relative to the  
14 diversity, I think that's another thing that we need to  
15 keep in mind as you look at the context between a place  
16 like Kodiak and Ketchikan, that the diversity of the  
17 economy is much healthier in Ketchikan. Now, is the  
18 level of economy real high, I won't debate that, but it's  
19 certainly not -- doesn't appear to be going backwards.

20  
21 So that's just the context that I'm  
22 looking at things and I just wanted to make sure the rest  
23 of the Board knew that.

24  
25 Thank you, Mr. Chair.

26  
27 CHAIRMAN FLEAGLE: Thank you, Denny.  
28 Other comments.

29  
30 (No comments)

31  
32 CHAIRMAN FLEAGLE: Okay, Bert Adams.

33  
34 MR. ADAMS: Thank you, Mr. Chair. I  
35 wonder if it would be appropriate, you know, if I could  
36 ask Jim -- I can't say your last name -- if he could come  
37 -- if it would be appropriate for him to come up, you  
38 know, we've heard Keith's side of the story and I'd like  
39 to see if we can, you know, get another opinion here if  
40 that's possible.

41  
42 CHAIRMAN FLEAGLE: I don't see any heads  
43 shaking in objection, so, sure.

44  
45 MR. ADAMS: Thank you. And then I'd like  
46 to just say something, you know, in conclusion before you  
47 do your deliberations.

48  
49 Thank you.

50

1 CHAIRMAN FLEAGLE: Yeah, come on up, Jim.  
2 We're debating on the proper pronunciation of your last  
3 name.

4  
5 (Laughter)

6  
7 CHAIRMAN FLEAGLE: So it just suffices to  
8 say that I'm calling to the microphone Jim U, and you can  
9 fill in the blanks.

10  
11 MR. USTASIWSKI: I pronounce it  
12 Ustasiwski. And you said you didn't see any heads  
13 shaking but I think actually I might have been shaking my  
14 head.

15  
16 (Laughter)

17  
18 CHAIRMAN FLEAGLE: All right. I'm not  
19 sure if you understood the intent of Bert requesting you  
20 to come up but there was a question asked earlier about  
21 the location of Saxman within the Ketchikan greater area  
22 and its separability or whatever the case may be and  
23 Bert, do you want to just rephrase what you're trying to  
24 get as a response from him in a question.

25  
26 MR. ADAMS: I'm just wondering if Jim,  
27 I'm not going to say your last word because I'll get my  
28 tang all tongued [sic], if you just have an opinion, you  
29 know, as to what that scenario that was described to us  
30 earlier, what your feelings are on that issue.

31  
32 MR. USTASIWSKI: Well, actually I agree  
33 with what Keith Goltz had to say. He said that it would  
34 be difficult to defend looking at that make where you see  
35 a one square mile area that is rural in context of a  
36 larger nonrural area. I don't say that it can't be  
37 defended, I just say that it's not easy and I think  
38 that's something that the Board should address.

39  
40 So I guess my basic condition, and you  
41 hear me say this a lot, is I agree with what Keith had to  
42 say. If you were looking for an alternative opinion from  
43 Keith's you're going to have to look a little harder than  
44 that, I think.

45  
46 CHAIRMAN FLEAGLE: Okay, thank you.  
47 Bert, then you had additional comments. Thank you, Jim.  
48

49 MR. ADAMS: Yeah, I just -- and I didn't  
50 mean to put you in a spot, Jim, and I wasn't looking for



1 something that would be contrary to, you know, what Keith  
2 had said, you know, although it would have been welcomed.

3

4 (Laughter)

5

6 MR. ADAMS: Just, you know, food for  
7 thought here, Mr. Chairman.

8

9 I mentioned earlier, you know, that we've  
10 all -- and I quoted -- referred to the Declaration of  
11 Independence, where it clearly says, you know, that we  
12 are endowed with certain inalienable rights and the right  
13 to be -- and that these rights are, you know, the  
14 protection of our lives, our liberties and our pursuit of  
15 happiness. It also says in a sentence or two right after  
16 that, and for this purpose was governments to governments  
17 instituted among men. And that it also says that when  
18 governments no longer do those things, then it is up to  
19 the people, it is the people that you listened to  
20 yesterday and somewhat today to either alter or abolish  
21 that and then start a new one that is based on those very  
22 same principles and that is the protection of our lives  
23 and our liberties and our properties and our pursuit of  
24 happiness.

25

26 And I also, you know, would remind you of  
27 the statements I made earlier about working from the  
28 bottom up, and the self-governance concept, but I also  
29 want to say something that is taken out of the  
30 Constitution itself, and it says that:

31

32 No law should be made without the consent  
33 of the governed.

34

35 And I think that applies also to  
36 regulations. And so I just want, you know, to leave that  
37 with you as food for thought as you go into your  
38 deliberations.

39

40 Thank you, Mr. Chairman.

41

42 CHAIRMAN FLEAGLE: Thank you, Bert,  
43 appreciate your comments.

44

45 Gary.

46

47 MR. EDWARDS: (Shakes head negatively)

48

49 CHAIRMAN FLEAGLE: No. Are we ready to  
50 start grappling with the issue, anybody want to start

1 debating the question before us.

2

3 Denny.

4

5 MR. BSCHOR: Mr. Chair. I think in this  
6 situation it probably deserves a motion to debate, in  
7 order to get the issues on the table in a way that we can  
8 debate them in an organized way.

9

10 CHAIRMAN FLEAGLE: The floor is ripe for  
11 a motion.

12

13 MR. BSCHOR: Then I would like to propose  
14 the following motion, Mr. Chairman, consistent with the  
15 Proposed Rule.

16

17 I move to group, currently rural portions  
18 of the Ketchikan area road system, except Saxman, and  
19 additional portions of Gravina Island into the nonrural  
20 Ketchikan area.

21

22 In explanation, this grouping would  
23 include those areas shown as the Ketchikan nonrural area  
24 on Page 35 of the document entitled Rural Determinations  
25 Decennial Review dated November 27, 2006. As part of my  
26 motion, any future road connected areas would  
27 automatically become part of the Ketchikan grouping.  
28 Also so there is no confusion, as in the Proposed Rule,  
29 my motion has adopted these boundaries, new boundaries  
30 that Ketchikan would be nonrural.

31

32 Following a second I would provide my  
33 rationale for my motion.

34

35 CHAIRMAN FLEAGLE: Thank you. Do I have  
36 a second.

37

38 MR. OVIATT: I'll second.

39

40 CHAIRMAN FLEAGLE: All right, we do have  
41 a second. Denny, would you go ahead and please provide  
42 your rationale for the motion.

43

44 MR. BSCHOR: Mr. Chairman. My reasons  
45 are fairly long here so bear with me as I read through  
46 some of my main points.

47

48 Regulations for the Federal Subsistence  
49 Program at paragraph 15 and 36 CFR 242 state that  
50 communities or areas which are economically, socially and

1 communally integrated shall be considered in the  
2 aggregate. Now, with the public input and comment in  
3 early 2005 the Board developed criteria for implementing  
4 this regulation, and those criteria area and I'll repeat  
5 them just for the record:

6

7                   Are the communities or areas in proximity  
8                   and road accessible to one another;

9

10                   Do they share a common high school  
11                   attendance area; and

12

13                   And do 30 percent or more of the working  
14                   people commute from one community or area  
15                   to another.

16

17                   All areas of the Ketchikan road system  
18 addressed in my motion meet all three of these criteria,  
19 all areas are road accessible to one another, there's  
20 only one high school attendance area as you've heard, and  
21 in those areas with housing, 30 percent or more of the  
22 working people commute into the Ketchikan area for work.

23

24                   As for Gravina Island, portions of the  
25 island are already part of the Ketchikan nonrural area.  
26 There are areas of the island and non-Federal ownership  
27 adjacent to the current nonrural area on which  
28 development has occurred or is imminent, depending what  
29 happens with access to Gravina Island.

30

31                   Under the current classifications, some  
32 areas along the Ketchikan road system are rural while  
33 others are nonrural, we've heard a lot about this.  
34 Except for Saxman, which is not proposed for a change in  
35 the Proposed Rule and, therefore, is not included in my  
36 motion. These currently rural areas are towards the  
37 north and south ends of the Tongass Highway. Neighbors  
38 on one side of the seemingly arbitrary line are different  
39 under Federal subsistence regulations than those on the  
40 other side of the line and I don't believe that is right  
41 and is socially divisive.

42

43                   We received a lot of public testimony,  
44 both oral and written concerning grouping of areas and  
45 communities in the Ketchikan area.

46

47                   We also received the recommendation from  
48 the Southeast Alaska Subsistence Regional Advisory  
49 Council.

50

1                   Testimony has been on both sides of this  
2 issue, that all areas should be treated the same, that  
3 certain areas such as the Waterfall area along the north  
4 Tongass Highway should remain rural and not be included  
5 in Ketchikan nonrural area. The view or the need for  
6 consistency of treatment, while not as widely held in  
7 testimony as the view arguing for differential treatment  
8 is more compelling. In those areas where people  
9 currently live it is essentially indistinguishable  
10 between the rural and nonrural areas. Further, and we  
11 received testimony concerning this, it makes no sense to  
12 me that friends or relatives living on one side of a line  
13 should be granted different rights than those on the  
14 other side of the line.

15  
16                   I recognize that quite a lot of public  
17 input as well as the Southeast Alaska Subsistence  
18 Regional Advisory Council recommended that the whole  
19 Ketchikan area should become rural. For reasons stated  
20 in the Proposed Rule on the bottom of the Page 46420 and  
21 the top of Page 46421 of the Federal Register, Volume 71,  
22 No. 156, I disagree and believe that this area should  
23 remain nonrural. Ketchikan was named as an example of a  
24 nonrural place of the U.S. Senate Report associated with  
25 ANILCA in 1979. The report also stated that it is not  
26 intended that the nature of communities is static and  
27 that the economic development and rural character may  
28 change over time. However, when I compare Ketchikan of  
29 1980 with a population of about 11,000, with Ketchikan of  
30 2005 with a population of 13,000 and consider what  
31 changes have occurred affecting economic development  
32 rural character there's really nothing that leads me to  
33 think that Ketchikan is more rural.

34  
35                   In some ways I think Ketchikan's economy  
36 may be healthier than it once was and I explained that  
37 earlier as far as the diversity of the economy.

38  
39                   So with those comments, Mr. Chairman,  
40 concludes my rationale for my motion.

41  
42                   CHAIRMAN FLEAGLE: Okay, thank you,  
43 Denny. Do we have anybody that wants to speak to those  
44 comments.

45  
46                   MR. EDWARDS: Yes.

47  
48                   CHAIRMAN FLEAGLE: Gary.

49  
50                   MR. EDWARDS: Mr. Chairman. Before I do

1 that, for purposes of discussion, I would like to offer  
2 an amendment to that motion that would, in addition, to  
3 the communities that were identified, that the community  
4 of Saxman would also be included. And if I do get a  
5 second to that motion, before I talk further about it, I  
6 do have a couple of issues that I'd like to raise to help  
7 me in my deliberation.

8

9 CHAIRMAN FLEAGLE: Okay. Is there a  
10 second to the motion for an amendment to add Saxman.

11

12 MR. OVIATT: Mr. Chairman. For the  
13 purposes of listening to the discussion I will second  
14 that.

15

16 CHAIRMAN FLEAGLE: Thank you, George. We  
17 do have your second. We now have before us an amendment  
18 to add Saxman to the area of consideration that would be  
19 considered nonrural. And, Gary, would you like to speak  
20 to your amendment.

21

22 MR. EDWARDS: Yeah. Yes. The one thing  
23 I guess I would like some help on, in listening to the  
24 testimony yesterday, the one thing that gave me pause and  
25 it was brought up, I believe by, at least one of the  
26 attorneys, was it raised the issue and process that we  
27 were shifting -- that there was a shift in the Saxman  
28 status that was coming very late in the process and I  
29 just wanted to make sure that we have laid the proper  
30 ground work in order to bring that up.

31

32 The other issue had to do with, I think  
33 because the term consistency had been used, it was also  
34 challenged whether the fact that we're using consistency  
35 in kind of making our deliberation, is that a new  
36 criteria or not, and, therefore, if it is a new criteria  
37 do you have to have rulemaking in order to say that  
38 you're going to try to conduct your business in a  
39 consistent manner.

40

41 So those were two issues that certainly  
42 gave me pause when they were brought up and I just want  
43 to make sure that we are on good grounds on both of those  
44 issues.

45

46 CHAIRMAN FLEAGLE: All right. Since I  
47 can't answer that I'm going to turn to Keith on the issue  
48 of going outside of the scope of the Proposed Rule and  
49 adding Saxman at a rather late stage in the game and  
50 putting that out to the public; is that appropriate or

1 allowable?

2

3 MR. GOLTZ: Thank you, Mr. Chairman. Can  
4 I deal with the consistency question first.

5

6 CHAIRMAN FLEAGLE: Sure, go ahead.

7

8 MR. GOLTZ I don't know if Dave Case is  
9 in the room, but he's the one who brought it to our  
10 attention yesterday. It was not Mr. Shaw that said  
11 consistency is the hobgoblin of little minds, it was  
12 actually Emerson in his essay on self reliance, and the  
13 full quotation is:

14

15 A foolish consistency is the hobgoblin of  
16 small minds

17

18 And I don't really think we need a rule  
19 that says we shouldn't be foolish, I think that's assumed  
20 in the course of our deliberations.

21

22 As to the more serious question that was  
23 raised by Heather Kendall-Miller, I don't know if she's  
24 in the room, Dave is here, he raised the question and  
25 Carol Daniel raised it, and those are the three attorneys  
26 that we heard from yesterday and maybe this gives me a  
27 chance to talk about consistency of legal  
28 interpretations. I don't see Bert, he seems to have --  
29 but I'm the one who seems to get tasked with being up  
30 front and catching the arrows and I think that's  
31 basically because I've managed to live longer than the  
32 rest of them. There's no other reason that I can tell  
33 for that.

34

35 (Laughter)

36

37 MR. GOLTZ: But the cooperation between  
38 attorneys has been extraordinary over the full length of  
39 this program, and I include Jim in that and Ken Lord and  
40 all the other agency attorneys we've had to deal with,  
41 including the Department of Justice. And I also include  
42 the attorneys that I just named. I think that our legal  
43 interpretations have always been remarkably close.

44

45 We sometimes differ over the precise  
46 application and we sometimes end up in litigation, but I  
47 think the Native community has been extraordinarily  
48 blessed with dedicated attorneys who have God-given legal  
49 talent, and I think if you haven't seen that work you  
50 wouldn't fully appreciate it and we have so many new

1 names here -- this issue has brought out some new cases  
2 -- or new faces, and I think it's incumbent on me to say  
3 that you've been very well represented through this whole  
4 process.

5  
6 As to whether our process is defective,  
7 there are -- there were legal arguments raised, policy  
8 questions or process questions are always big questions  
9 when you're litigating, and Judge Holland, I think, has  
10 been extraordinarily attentive to process questions and  
11 has actually sent our 70/30 rule back to us twice. So I  
12 wouldn't minimize the possibility that there might be a  
13 third time.

14  
15 Nonetheless, I think in this case we've  
16 had extensive public hearings and the issue has been well  
17 presented, I think, to the general public over the course  
18 of a year and that leads me to believe that action at  
19 this point is defensible. The notice itself says that we  
20 will have this meeting here today and that changes may be  
21 made at that time. The public testimony indicates to me  
22 that nobody's been misled. The process questions came  
23 from the attorneys not from the general public, and even  
24 Sitka showed up and they weren't even on the list.

25  
26 And there are some built in protections  
27 in this particular case.

28  
29 Should the Board act on this question  
30 today, the matter will be open to an RFR process, which  
31 will give the Board an opportunity to deal with this  
32 process question if it wants to at a later time, and  
33 there's also a five year waiting period, which presumably  
34 could be used for corrections.

35  
36 But my main conclusion is that the  
37 process is probably not perfect, we don't have the luxury  
38 of an Ivory Tower, we have to make things work, we're  
39 pressed by the calendar every year and I think where we  
40 are and the way we've gotten here is defensible.

41  
42 CHAIRMAN FLEAGLE: Gary.

43  
44 MR. EDWARDS: With that said, Mr.  
45 Chairman, I'll a few remarks.

46  
47 It seems to me that the question before  
48 us is should the community of Saxman and these other  
49 communities be aggregated, you know, the question is not  
50 whether it be designated rural or nonrural, but, you

1 know, the question is very straightforward, should these  
2 communities be aggregated. And to guide us in this  
3 decision we do have a regulation and that regulation  
4 tells us that we -- that communities shall, not  
5 communities may, but communities shall, you know, be  
6 aggregated if they're economically, socially, and  
7 communally integrated, and I think it's appropriate for  
8 us to follow our regulations.

9  
10 Last month when we addressed the issue of  
11 C&T on the Kenai the Chairman, in his remarks, when he  
12 made his vote, you know, said he relied heavily upon the  
13 regulations in making those and I know several of us  
14 Board members commended him for his support and for using  
15 the regulations. And in the case of these regulations  
16 we've come up with some criteria to help guide the Board  
17 as we make these decisions and these criteria were not  
18 just pulled out of a hat, these criteria went through a  
19 lot of Staff work to try to find criteria and guidelines  
20 that would be helpful, it went through public review, the  
21 Regional Advisory Councils reviewed those and there was  
22 agreement on those. I mean I guess we could have come up  
23 with some other criteria, you know, we could have looked  
24 at such things do communities have self-government, do  
25 communities have movie theaters, do communities depend  
26 upon subsistence but we didn't, those are the ones we  
27 choose so that's now, in my mind, is we have this  
28 regulation and these guidelines that we have to do with.  
29 And I'm certainly one to acknowledge, I think I find  
30 myself in somewhat of a dilemma because we have these  
31 regulations and guidelines that might not let us get to  
32 where we might want to go but this issue isn't about  
33 whether these communities should be given subsistence  
34 rights under Title VIII, it's about whether they should  
35 be aggregated.

36  
37 And I guess I just find, you know,  
38 difficulty, you know, looking at those and coming up with  
39 any other conclusions but that they should be aggregated.

40  
41 My guess is, is that if Ketchikan was  
42 currently rural we probably wouldn't be having this big  
43 debate whether these communities should be aggregated or  
44 not, my assumption is we would say they should be  
45 aggregated because they fall within the regulations and  
46 they fall within the guidelines.

47  
48 And the other thing where I guess I have  
49 real personal problem is I don't understand how we can  
50 apply these criteria in one place and then later on here



1 today we're going to be looking at other communities and  
2 not use that same criteria and apply it to those, and  
3 whether that's consistency or what, I don't know. But  
4 there -- and not only these communities, but we heard  
5 yesterday a fellow from Palmer who made the argument that  
6 Palmer shouldn't be aggregated and that, in fact, even, I  
7 think, argued that it shouldn't be rural [sic], one of my  
8 favorites is Eklutna, we don't -- we aggregate it but in  
9 many ways it has these other characteristics. And the  
10 one that I guess troubles me the most is the folks on the  
11 Kenai, the Kenaitzes, who, many times we have had come in  
12 front of this Board, and certainly if I had the  
13 wherewithal to draw the lines the right way it certainly  
14 seems to me that that's a community that exhibits  
15 everything that we think about of a community that  
16 depends upon subsistence but our process doesn't let us  
17 get there and I just think that it is important, as we  
18 look at these communities, we look at them all in the  
19 same way and we do follow our process and we do follow  
20 our regulation and guidelines.

21

22 CHAIRMAN FLEAGLE: Comments. Judy.

23

24 MS. GOTTLIEB: Thank you, Mr. Chair. I  
25 had a comment going back to what Denny had mentioned and  
26 then a few other comments about the grouping.

27

28 One thing Denny said was the divisiveness  
29 that exists today between rural and nonrural users in the  
30 Ketchikan area, and while that may be -- certainly is an  
31 unfortunate circumstance, it certainly would be an  
32 unintended consequence of this program or our decisions,  
33 but it's not one of the guidelines or criteria that we  
34 use in making that decision today.

35

36 People have read the regulations to you a  
37 couple of times today so I'm not going to reread some of  
38 those parts but the guidelines, these three factors that  
39 we use for grouping, those were used to assist us in  
40 wrapping our arms around the concept of aggregation. And  
41 for most of the circumstances, most of the areas we  
42 looked at, I think those three factors are adequate. But  
43 I have to question, I guess, or wonder, I guess whether  
44 there's sufficient indicators to accurately make our  
45 determination today on whether Saxman should be grouped.  
46 Our regulations do give us some flexibility to examine  
47 the unique social and economic circumstances as stated in  
48 the proposed regulation. These characteristics or maybe  
49 further information that we need can help add further  
50 definition and meaning to our conclusions today, and we

1 kind of just applied some of that flexibility just in our  
2 Kodiak decision.

3  
4 I think we've heard many of the facts  
5 about Saxman. It's been independently identified as a  
6 distinct and separate -- as distinct and separate from  
7 Ketchikan for over 100 years and has maintained that  
8 identity in the eyes of State law by incorporating itself  
9 as a city under State laws and voting repeatedly to  
10 remain separate from the Borough of Ketchikan. Saxman  
11 residents repeatedly self-identify themselves as  
12 residents of Saxman, and that's a place that they believe  
13 to be fully separate and distinct and not in the sense of  
14 our word, integrated with Saxman.

15  
16 We were talking about human population on  
17 the landscape, the density in Saxman 1.6, quite a bit  
18 lower than Ketchikan, 2.43. And we have heard statistics  
19 from the high school for drop out rates and information  
20 from our own criteria on unemployment, wages, per capita  
21 income that are markedly different from Ketchikan and  
22 portray a more rural community.

23  
24 I guess lastly I'll mention at this point  
25 in time and have some other comments for later, there's  
26 really quite a difference in the level of sharing and  
27 receiving between the residents of Saxman and Ketchikan.  
28 From the two surveys that were mentioned, Ketchikan  
29 receives resources 61.2 percent, in Saxman it's 91.8  
30 percent, and in Ketchikan people give 33.9 percent, in  
31 Saxman the number of people giving 69.9 percent.

32  
33 CHAIRMAN FLEAGLE: Board members, other  
34 discussion on the amendment.

35  
36 George Oviatt.

37  
38 MR. OVIATT: Thank you, Mr. Chairman.

39  
40 You know I think that the three criteria  
41 that we have employed and description of those criteria  
42 are very strong indicators, at least, to me they are  
43 very, very strong indicators of when we should be  
44 grouping communities together. And it takes, I think, a  
45 high bar to move beyond those criteria in determining if  
46 a community is so unique. I go back to the map that  
47 Keith had shown and Saxman is surrounded. It's difficult  
48 to -- for me to determine that Saxman is so unique in its  
49 characteristics that it should be separated and  
50 segregated by itself.

1 I look at and I heard the testimony, both  
2 in Ketchikan and in Saxman about their needs for  
3 subsistence and how they rely upon that, but I also heard  
4 that same testimony from the people at False -- what's  
5 that -- Waterfall, that they choose to live there because  
6 they want to live that subsistence lifestyle. And so I  
7 look at what really is so unique about Saxman that sets  
8 it apart and moves it beyond the three criteria, which I  
9 think we've used across the board consistently. And I  
10 think we've used it across the Board consistently is  
11 because it's such strong indicators for grouping.

12  
13 So, I, too, am having difficulty  
14 wondering how we can separate Saxman from the other  
15 communities and just how unique it is. I tried to get  
16 some information in comparison with the outlying  
17 communities with Saxman but obviously we don't have that  
18 information, didn't gather it in order to compare. So,  
19 I, too, am having difficulty in not supporting moving  
20 Saxman in with the rest of the grouping.

21  
22 Thank you, Mr. Chairman.

23  
24 CHAIRMAN FLEAGLE: Niles Cesar.

25  
26 MR. CESAR: Thank you, Mr. Chairman. I  
27 guess I'm still a little bit confused by Denny's motion.  
28 I wonder if I could have that restated for me.

29  
30 CHAIRMAN FLEAGLE: Certainly. Well,  
31 actually we're on the amendment right now.....

32  
33 MR. CESAR: Okay, yeah, yeah, I'll speak  
34 to the amendment then.

35  
36 CHAIRMAN FLEAGLE: .....that Gary --  
37 yeah, let's stick to the amendment and then we'll come  
38 back to the motion.

39  
40 The amendment is to add Saxman to those  
41 areas that are being added to the group.

42  
43 MR. CESAR: Yeah, and, I guess, Mr.  
44 Chairman, the only -- the bit of confusion I had was that  
45 I thought that Denny's motion did not add Saxman to the  
46 group and so the amendment would, in fact, then add  
47 Saxman to the grouping.

48  
49 And I'm having a lot of difficulty not  
50 looking at Saxman as a separate community. I think it

1 has historically been there. I realize that the three  
2 criteria that we have chosen give us a strong indication  
3 that they are, in fact, linked to Ketchikan, but I do  
4 think that Saxman is separate, it has its own government,  
5 it has its own pretty -- pretty much overwhelming  
6 majority of people there are of the same ethnic  
7 background and have been practicing subsistence over a  
8 substantial period of time. And so for me the bar, I  
9 guess, is not as high as has been indicated. And  
10 although I hear our lawyers, rightfully, telling us that  
11 it is substantially, may be more difficult to defend, I  
12 didn't hear the words, indefensible, and it becomes then  
13 a subjective call on my part as to what I believe is the  
14 likelihood of success if someone, in fact, chooses to sue  
15 us over the issue. And, you know, that's anybody's  
16 guess, I suppose.

17  
18 So I think at this point now, that I am  
19 not in favor of adding Saxman to the -- aggregating it in  
20 a group.

21  
22 CHAIRMAN FLEAGLE: Thank you, Niles.  
23 Further discussion on the amendment.

24  
25 MS. GOTTLIEB: Mr. Chair.

26  
27 CHAIRMAN FLEAGLE: Judy.

28  
29 MS. GOTTLIEB: Well, knowing that this  
30 has been an issue that's been discussed, you know,  
31 somewhat since 1990. I went back to look at some of the  
32 transcripts of those discussions that previous Board  
33 members had and it seems like little has changed in terms  
34 of the data relevant to the guidelines and the grouping  
35 and the status regarding Saxman. And what one of the  
36 Board members said in 1990, acknowledging it was a very  
37 difficult decision was that they decided to, as they  
38 said, transcend the criteria and follow, sort of their  
39 overall sense of an appropriate outcome using the  
40 flexibility given to them through the guidelines, and  
41 maybe that goes a little bit to spirit of the law that  
42 Denny was talking about.

43  
44 I think part of our conflict here, too,  
45 part of the difficulty of this decision is the lead  
46 agency indicating one way right now and our legal advice  
47 being a little bit different, and so that's our  
48 challenge.

49  
50 CHAIRMAN FLEAGLE: One of our challenges.

1 (Laughter)  
2  
3 CHAIRMAN FLEAGLE: Other comments.  
4  
5 MR. EDWARDS: I guess.....  
6  
7 CHAIRMAN FLEAGLE: Gary.  
8  
9 MR. EDWARDS: I guess my only comment  
10 would be and I certainly don't have any problems with  
11 transcending, I'd like to think I transcend in a lot of  
12 different ways. But I guess I have trouble that we kind  
13 of pick and choose when we transcend and I guess that's  
14 the thing that I guess I'm having the most difficulty  
15 dealing with.  
16  
17 CHAIRMAN FLEAGLE: All right, on the  
18 amendment to add Saxman to the aggregate grouping of the  
19 Ketchikan area and the proposed additions.  
20  
21 I'm like everybody else, I don't have a  
22 real clear cut determination that it's the right thing to  
23 do or not. I do hear Gary's argument that we do have the  
24 criteria spelled out in regulation and that we are  
25 obligated to follow the statutes and regulations, I agree  
26 with that. The problem that I see with this particular  
27 case is that the regulation contains many nebulous  
28 characteristics that we're supposed to subjectively look  
29 at in making a determination so it's not so cut and dried  
30 for me in this case as the past decision was on just  
31 looking at the statute and Title VIII on the C&T  
32 determination. I do find a lot more room for Board  
33 subjectivity on the issue.  
34  
35 Now, where I'm having a greater issue is  
36 that a lot of the comments that have been brought before  
37 the Board have been why are we proposing changes to all  
38 of these areas that the Board is looking at when there  
39 haven't been really substantial changes to the overall  
40 flavor of the community in the last 10 years, you know,  
41 is it driven purely by measuring against the population  
42 numbers that are in regulation, which are obviously  
43 couched with language that allows the Board to, again,  
44 subjectively make a determination that falls outside of  
45 those population numbers. I don't personally see, other  
46 than the argument that everything should be treated alike  
47 in an area, I don't personally see the benefit in  
48 changing Saxman's status at this time.  
49  
50 And I guess I just tipped my hand right

1 there, I'm not going to support the motion for the  
2 amendment. And I'll be more specific as to why.

3  
4 I feel compelled by the arguments that  
5 were raised by testifiers, including those of the legal  
6 bent that have suggested that doing so -- by taking an  
7 action that is outside of the Proposed Rule, that is such  
8 a drastic action with very little opportunity for  
9 additional public review, I think, is probably unfair.  
10 In the overall scheme of things, would I look at Saxman  
11 as being grouped with Ketchikan, maybe, but I think that  
12 just whole process question kind of really troubles me on  
13 this one. And that's not to say that in the future I  
14 would take the same vote if it were called on me. I  
15 think that there is really compelling reasons, you know,  
16 for the consistency, it's just to be cognizant of the  
17 continuity of the communities, but in this case I'm going  
18 to not support the amendment just for the process.

19  
20 Other discussion.

21  
22 (No comments)

23  
24 CHAIRMAN FLEAGLE: Ready for the  
25 question. Do you want a break.

26  
27 (Board nods affirmatively)

28  
29 CHAIRMAN FLEAGLE: Ten minutes.

30  
31 (Off record)

32  
33 (On record)

34  
35 CHAIRMAN FLEAGLE: Good afternoon,  
36 Federal Subsistence Board resumes. And we left with  
37 discussion on the amendment to add Sitka [sic] to the  
38 aggregate grouping.

39  
40 MR. PROBASCO: Saxman.

41  
42 CHAIRMAN FLEAGLE: I'm sorry, why did I  
43 say Sitka because it starts with an S.

44  
45 (Laughter)

46  
47 CHAIRMAN FLEAGLE: Do we want to add any  
48 more S communities while we're at it.

49  
50 Saxman, thank you, Peter. And we have,

1 Gary, additional comments.

2

3 MR. EDWARDS: Well, I just maybe wanted  
4 to respond to some of your comments. I mean as I said  
5 earlier in my remarks, I also was given pause by what was  
6 raised yesterday about, you know, shifting Saxman and the  
7 statute coming very late in the process, and that's why I  
8 asked the question that I did, because I wanted to make  
9 sure and I did think we got a very strong answer and a  
10 very detailed answer as to why that we are following our  
11 process and why it certainly would be appropriate to do  
12 that.

13

14 You also commented about on the  
15 regulations, that you thought these particular  
16 regulations were somewhat ambiguous, maybe, maybe  
17 compared to your last decision but I guess I would argue  
18 that I don't think any of our regulations are more  
19 ambiguous than those that deal with C&T, so I guess I'm  
20 not sure that I agree with you. And we did come up  
21 guidelines and as I said before, you know, we just didn't  
22 make these guidelines up. These guidelines went through  
23 an extensive process. All the RACs reviewed them, there  
24 was total agreement, well, maybe total's not the word,  
25 but they went through an extensive process and people  
26 agreed that these are the appropriate guidelines so it's  
27 not, again, like these came up so, you know, I guess I'd  
28 just encourage us that we look at our regulations and we  
29 look at our guidelines and we look at how they were  
30 developed and use those to guide us in our decision-  
31 making.

32

33 CHAIRMAN FLEAGLE: Thank you. Denny.

34

35 MR. BSCHOR: Yeah, Mr. Chair. As we all  
36 feel, I'm sure, this is a very difficult decision to vote  
37 on. And I think I need to be clear as far as where I am  
38 relative to this vote, you know, that while I respect and  
39 really understand the uniqueness of Saxman as a  
40 community, being culturally different, history of over  
41 100 years, economy is different, not a lot has changed in  
42 Saxman related to its individual ruralness, but when it  
43 comes to the grouping and the criteria we've used with  
44 that grouping, I find it hard to not group it so I will  
45 be voting for grouping it.

46

47 CHAIRMAN FLEAGLE: Other comments on the  
48 amendment.

49

50 (No comments)

1 CHAIRMAN FLEAGLE: Are we ready for the  
2 question.  
3  
4 (No comments)  
5  
6 CHAIRMAN FLEAGLE: It looks like we are.  
7 Pete on the amendment to add Saxman to the aggregate  
8 grouping of the Ketchikan area, please poll the Board.  
9  
10 MR. PROBASCO: Thank you, Mr. Chair. And  
11 I did randomly draw the names based on our last meeting  
12 so we will start out with Mr. Oviatt, to the amendment.  
13  
14 MR. OVIATT: Aye.  
15  
16 CHAIRMAN FLEAGLE: Ms. Gottlieb.  
17  
18 MS. GOTTLIEB: Well, I guess from the  
19 current legal advice that we're hearing it appears as  
20 though we have to follow the court's direction regarding  
21 the Kenai Kenaitze case and be cautious on how we do this  
22 so I will have to vote aye.  
23  
24 MR. PROBASCO: Mr. Bschor.  
25  
26 MR. BSCHOR: Aye.  
27  
28 MR. PROBASCO: Mr. Cesar.  
29  
30 MR. CESAR: I intend to vote no and I  
31 understand the bar is high and it may -- if this were not  
32 to pass and we left Saxman out to fend on its own under  
33 rural or nonrural it may present us some problems but I  
34 still believe that it has been demonstrated for me that  
35 in spite of the fact that it, in fact, did meet the three  
36 criteria that I believe they've demonstrated enough of --  
37 they've demonstrated a significant difference from  
38 Ketchikan and I intend to vote no.  
39  
40 MR. PROBASCO: Mr. Fleagle.  
41  
42 CHAIRMAN FLEAGLE: No.  
43  
44 MR. PROBASCO: Mr. Edwards.  
45  
46 MR. EDWARDS: Aye.  
47  
48 MR. PROBASCO: Mr. Chairman, motion  
49 carries, four/two to the amendment to the motion.  
50



1 CHAIRMAN FLEAGLE: Thank you, Pete. We  
2 do have, now, the main motion before the Board as amended  
3 which would include Saxman into the aggregate grouping  
4 for consideration for nonrural, including the roaded --  
5 the additional roaded areas.

6  
7 Further discussion on the main motion, as  
8 amended.

9  
10 (No comments)

11  
12 CHAIRMAN FLEAGLE: Pete, you have a  
13 clarification.

14  
15 MR. PROBASCO: Thank you, Mr. Chair. It  
16 is on Page 35 and I'll read it for the record.

17  
18 CHAIRMAN FLEAGLE: Thank you.

19  
20 MR. PROBASCO: By Mr. Bschor, motion and  
21 seconded by Mr. Oviatt.

22  
23 Motion to accept the proposed nonrural  
24 area to include all parts of the road  
25 system connected to the city of Ketchikan  
26 and based on the amendment, Saxman,  
27 Pennock Island, and parts of Gravina  
28 Island. Further, if the road system  
29 connected to the city of Ketchikan  
30 expands, the newly connected areas would,  
31 by regulation, be included in the  
32 nonrural Ketchikan area.

33  
34 Mr. Chair.

35  
36 CHAIRMAN FLEAGLE: Ready for discussion,  
37 further discussion on the main motion.

38  
39 Niles, you were going to talk about the  
40 main motion when we were on the amendment, do you have  
41 any comments on it now.

42  
43 (No comments)

44  
45 CHAIRMAN FLEAGLE: Anybody.

46  
47 (No comments)

48  
49 CHAIRMAN FLEAGLE: Ready for the  
50 question.

1 Question on the main motion, Pete.  
2  
3 MR. PROBASCO: Thank you, Mr. Chair. And  
4 then I'll move the person that voted first the last time  
5 down to the bottom so this time it will be Ms. Gottlieb.  
6  
7 MS. GOTTLIEB: Aye.  
8  
9 MR. PROBASCO: Mr. Bschor.  
10  
11 MR. BSCHOR: Aye.  
12  
13 MR. PROBASCO: Mr. Cesar.  
14  
15 MR. CESAR: Aye.  
16  
17 MR. PROBASCO: Mr. Fleagle.  
18  
19 CHAIRMAN FLEAGLE: Aye.  
20  
21 MR. PROBASCO: Mr. Edwards.  
22  
23 MR. EDWARDS: Aye.  
24  
25 MR. PROBASCO: Mr. Oviatt.  
26  
27 MR. OVIATT: Aye.  
28  
29 MR. PROBASCO: Mr. Chair. Motion  
30 carries, six/zero.  
31  
32 CHAIRMAN FLEAGLE: Thank you, Pete. That  
33 dispenses with the Ketchikan area discussions.  
34  
35 We're now prepared to move down on our  
36 agenda, next up is Adak.  
37  
38 And we'll first go to the Council  
39 recommendations, Pat Holmes.  
40  
41 MR. HOLMES: Mr. Chairman. The  
42 Kodiak/Aleutian RAC has discussed this quite a bit and we  
43 had even recommended that it not even be discussed  
44 because the decision is so easy.  
45  
46 We think that it should be rural without  
47 any doubt. When it was a Military Base, and interesting  
48 to hear that one of your colleagues there was out there  
49 when I was there at one time long ago, but we would like  
50 to see it remain rural and I guess that's all I need to

1 say.

2

3 I think that it was nonrural based on  
4 Military status rather than on population status, but I'd  
5 just like to add that as clarification as best my grey  
6 brain remember.

7

8 Thank you.

9

10 CHAIRMAN FLEAGLE: Thank you, Pat. Board  
11 members, any questions of that recommendation.

12

13 (No comments)

14

15 CHAIRMAN FLEAGLE: Other Council,  
16 comments.

17

18 (No comments)

19

20 CHAIRMAN FLEAGLE: All right, hearing  
21 none, we'll move on to the ADF&G, do you have any  
22 comments on the Adak proposal.

23

24 MS. GILBERTSON: Thank you, Mr. Chairman.  
25 Our only comment was that the analysis should have been  
26 expanded to evaluate subsistence use of fish and wildlife  
27 by the current population in light of the proposed  
28 designation of rural status rather than just mentioning  
29 only the use of salmon.

30

31 Thank you.

32

33 CHAIRMAN FLEAGLE: Thank you, Sarah.

34

35 MR. PROBASCO: Mr. Holmes.

36

37 CHAIRMAN FLEAGLE: Pat Holmes.

38

39 MR. HOLMES: I guess to answer Fish and  
40 Game because I was with them at the time, that's all the  
41 data there is. The population at Adak now is primarily,  
42 beings it was an Aleut Corporation venture, is primarily  
43 folks from Unalaska, Atka and the Pribilofs and so those  
44 folks bring their cultural values and their experience  
45 and their ways of harvest with them from their respective  
46 islands.

47

48 Thank you.

49

50 CHAIRMAN FLEAGLE: All right, thank you.

1 Now, go to the InterAgency Staff Committee  
2 recommendations. Steve Klein.

3

4 MR. KLEIN: Thank you, Mr. Chair. The  
5 Staff Committee recommends that the status of Adak change  
6 from nonrural to rural given the population decline from  
7 4,600 in 1990 to just over 300 in 2000, recommend a  
8 nonrural -- excuse me, rural.

9

10 The community is rural because of its low  
11 population and it's lack of significant characteristics  
12 of a nonrural nature. And this recommendation is  
13 consistent with the Proposed Rule, the Council  
14 recommendation and the recommendations presented in the  
15 June 23rd, document.

16

17 Mr. Chair.

18

19 CHAIRMAN FLEAGLE: Thank you. Board  
20 members, deliberations. Gary.

21

22 MR. EDWARDS: Just one question for  
23 Steve. Right now from a C&T standpoint, all Federal land  
24 on Adak is currently open to all qualified Federal  
25 subsistence users; is that correct?

26

27 MR. KLEIN: That's my understanding, yes.

28

29 CHAIRMAN FLEAGLE: Further questions,  
30 Niles.

31

32 MR. CESAR: Yeah, I have a question for  
33 Gary, I suppose. Gary, given that caribou were  
34 introduced to the island, although that was many years  
35 ago now, I was wondering, is Fish and Game have any --  
36 Fish and Wildlife, excuse me, have any plans to ship them  
37 to Hagemeister from there.

38

39 (Laughter)

40

41 MR. EDWARDS: Well, I mean I think that's  
42 a valid question actually. We did kind of bring this up  
43 a week or so ago because as you indicated, that they are  
44 introduced, I guess the ironic thing is that the Fish and  
45 Wildlife Service was the one that -- what -- they  
46 introduced them, and my understanding was when the  
47 Military was there it provided additional recreation and  
48 all. And, you know, I think if you ask our Refuge  
49 manager we would prefer not to have caribou on the  
50 island. And, you know, we have one of our few endangered

1 plants in this state occurs -- the Aleutian fern occurs  
2 on Adak and obviously there's some concerns that we don't  
3 want, you know, caribou munching on the fern. And so one  
4 of the Refuge manager's concerns was, well, if we make  
5 Adak rural then would that prohibit us down the road if  
6 the population crashed on its own, let's say, and we  
7 thought we had an opportunity to remove a few animals,  
8 would that issue be raised up, well, no, you can't do  
9 that. But I'm not sure that's actually -- the fact that  
10 it's currently available for, you know, all other users  
11 to use it, I'm not sure that it -- I'm not sure the issue  
12 would matter whether we do anything with Adak or not. I  
13 mean that would be my assumption.

14

15                   And I'm assuming as, you know, the land  
16 manager, if we felt that there was a need to cull the  
17 herd or whatever, then I think we could do that. I mean  
18 it is an interesting situation down there right now  
19 because the bag limit and seasons is 24 hours a day, 360  
20 days a year, shoot all you can, so I'm not sure we've got  
21 a subsistence issue down there as far as ability to  
22 harvest. But we did address the question that you  
23 raised.

24

25                   MR. CESAR: Mr. Chairman, if I might.

26

27                   CHAIRMAN FLEAGLE: Niles.

28

29                   MR. CESAR: I guess I was, you know,  
30 concerned just concerned about Hagemeister, I didn't want  
31 to get Hagemeister back involved with the slaughter.

32

33                   CHAIRMAN FLEAGLE: All right. Any other  
34 questions for the Staff Committee report.

35

36                   (No comments)

37

38                   CHAIRMAN FLEAGLE: Deliberations. Board  
39 comments.

40

41                   (No comments)

42

43                   CHAIRMAN FLEAGLE: Motions.

44

45                   (No comments)

46

47                   CHAIRMAN FLEAGLE: We would need a  
48 motion, no wait let me read the cheatsheet.

49

50                   The Proposed Rule addresses changing the

1 status of Adak from nonrural to rural, if there isn't a  
2 motion the current regulation would remain unchanged,  
3 which means that Adak would remain nonrural in status,  
4 so, therefore, in order to adopt the Proposed Rule, we  
5 would need a motion to do so.

6

7 Niles.

8

9 MR. CESAR: Mr. Chairman, thank you. I  
10 move that we change the status from nonrural to rural for  
11 Adak.

12

13 MR. EDWARDS: Second.

14

15 CHAIRMAN FLEAGLE: I was just about to  
16 say motion dies for a lack of -- but, anyway, we got it.  
17 Further discussion from the Board.

18

19 MS. GOTTLIEB: Mr. Chair.

20

21 CHAIRMAN FLEAGLE: Judy.

22

23 MS. GOTTLIEB: I think there has been a  
24 thorough analysis of this and I intend to support the  
25 motion.

26

27 CHAIRMAN FLEAGLE: Gary.

28

29 MR. EDWARDS: I guess I agree with the  
30 RAC, I do believe this is kind of a slam dunk and I think  
31 Mr. Cesar's observation, even in its hay day, if you  
32 haven't been to Adak, it's not close to anywhere,  
33 absolutely not anywhere and you wonder maybe even how we  
34 made that determination. Maybe the fact that it had a  
35 McDonald's out there during its hay day was one of the  
36 factors that made it nonrural, I don't know, but I'm  
37 certainly going to vote in favor of the motion.

38

39 CHAIRMAN FLEAGLE: Ready for the  
40 question.

41

42 (Board nods affirmatively)

43

44 CHAIRMAN FLEAGLE: All right. Pete, on  
45 the motion to change the Adak status to rural, please  
46 poll the Board.

47

48 MR. PROBASCO: Thank you, Mr. Chair. Mr.  
49 Bschor.

50

1 MR. BSCHOR: Aye.  
2  
3 MR. PROBASCO: Mr. Cesar.  
4  
5 MR. CESAR: Aye.  
6  
7 MR. PROBASCO: Mr. Fleagle.  
8  
9 CHAIRMAN FLEAGLE: Aye.  
10  
11 MR. PROBASCO: Mr. Edwards.  
12  
13 MR. EDWARDS: Aye.  
14  
15 MR. PROBASCO: Mr. Oviatt.  
16  
17 MR. OVIATT: Aye.  
18  
19 MR. PROBASCO: Ms. Gottlieb.  
20  
21 MS. GOTTLIEB: Aye.  
22  
23 MR. PROBASCO: Motion carries, Mr. Chair,  
24 six/zero.  
25  
26 CHAIRMAN FLEAGLE: Thank you. And if you  
27 guys are wondering why your voting order is getting mixed  
28 up, after that first September 5 meeting when I was put  
29 on the unfortunate spot of having to cast the deciding  
30 vote that made the lawsuit and made the newspaper, I  
31 decided that I didn't want to have that privilege at  
32 every vote.  
33  
34 (Laughter)  
35  
36 CHAIRMAN FLEAGLE: So I asked Pete if he  
37 would mix up that voting order so I could share that  
38 honorable distinction with my colleagues on the Board so  
39 we're doing a voting order that changes with each action  
40 and I think it just gives us an opportunity to not rely  
41 on a pattern and it gets me a little bit off the hook  
42 maybe.  
43  
44 Item D, Prudhoe Bay. We have Council  
45 recommendations, Harry Brower.  
46  
47 MR. BROWER: Thank you, Mr. Chairman.  
48 The North Slope Regional Advisory Council passed a motion  
49 to change the designation of Prudhoe Bay from rural to  
50 nonrural. Staff analysis supports the community's

1 knowledge of the Prudhoe Bay complex as an industrial  
2 area.

3

4                   There are no families living in it with  
5 children. There are no schools or churches. There are  
6 no public utility services provided except for industrial  
7 complexes. None of the characteristics of the community  
8 exist. There's no subsistence harvest. It is not an  
9 area that is used by people for subsistence activities.  
10 Only industrial activity occurs in the Prudhoe Bay area.

11

12                   Mr. Chairman.

13

14                   CHAIRMAN FLEAGLE: Thank you. Any  
15 questions of the Council recommendation.

16

17                   (No comments)

18

19                   CHAIRMAN FLEAGLE: Other Council  
20 recommendations or discussion.

21

22                   (No comments)

23

24                   CHAIRMAN FLEAGLE: Hearing none, we'll go  
25 ahead and move on to the State for its comments, Sarah.

26

27                   MS. GILBERTSON: Thank you, Mr. Chairman.  
28 You've seen our written comments. But there are reported  
29 moose harvests in Game Management Unit 26(B) and our  
30 comments were mainly questions, what, if any, impact on  
31 fish and wildlife uses would result from this proposed  
32 change, especially in an area that contains limited or no  
33 Federal lands. And finally we had a question as to what,  
34 if any, affect, would this nonrural designation have on  
35 other North Slope resident's customary and traditional  
36 uses of this area.

37

38                   So mainly just questions.

39

40                   Thanks.

41

42                   CHAIRMAN FLEAGLE: Board members.

43

44                   MR. EDWARDS: Are there answers to those  
45 questions.

46

47                   CHAIRMAN FLEAGLE: I'm kind of curious  
48 myself.

49

50                   Larry Buklis.



1 MR. BUKLIS: Mr. Chairman. We addressed  
2 those questions in our Staff report dated November 27th  
3 and it's found in Appendix B, Page 45 of that report,  
4 takes up the questions raised by the State.

5  
6 Did you want me to read those into the  
7 record?

8  
9 CHAIRMAN FLEAGLE: Sure, would you,  
10 please.

11  
12 MR. BUKLIS: Yes, Mr. Chairman. In our  
13 report we state the analysis notes:

14 That the estimate for the permanent  
15 population of Prudhoe Bay was five people  
16 in the year 2000, two people in 2005 and  
17 is no reportedly zero with virtually or  
18 literally no permanent population. There  
19 are not impacts to fish and wildlife uses  
20 operative with a change in status.

21  
22  
23 A nonrural determination is unrelated to  
24 whether Federal lands are present in the  
25 vicinity. Use of Federal public lands  
26 open to subsistence take by rural  
27 residents is not affected by designation  
28 of nonrural status for residents of part  
29 of that geographic area.

30  
31 State data base updates since 2001 may  
32 include harvest data for reported  
33 residents of Prudhoe Bay. Because of  
34 customary and traditional use  
35 determinations the only large mammals  
36 that could have been taken under Federal  
37 subsistence regulations by persons  
38 claiming Prudhoe Bay residency were black  
39 bear, caribou and sheep. However, there  
40 are few to no people that are actually  
41 residents of Prudhoe Bay, at least  
42 according to the U.S. Census and the  
43 Alaska Department of Labor and WorkForce  
44 Development.

45  
46 It might have been more correct for the  
47 OSM report to have stated that given the  
48 doubtful residency in Prudhoe Bay and the  
49 other characteristics and restrictions  
50 described, subsistence use of fish and

1 wildlife is not a factor.

2

3 Thank you, Mr. Chairman.

4

5 CHAIRMAN FLEAGLE: Thank you. All right,  
6 InterAgency Staff Committee recommendations. Steve  
7 Klein.

8

9 MR. KLEIN: Thank you, Mr. Chair.  
10 InterAgency Staff Committee recommends for Prudhoe Bay  
11 that it change from rural to nonrural. This is in  
12 support of the Regional Advisory Council and in support  
13 of the Proposed Rule.

14

15 Prudhoe Bay is an industrial area built  
16 for the sole purpose of extracting oil and gas. In  
17 addition, no permanent residents are known to live there.  
18 This community is nonrural because it lacks significant  
19 characteristics of a rural nature.

20

21 Mr. Chair.

22

23 CHAIRMAN FLEAGLE: I guess that just  
24 raises the question that kind of this decision is kind of  
25 moot because if nobody lives there, how can you have a  
26 community.

27

28 (Laughter)

29

30 CHAIRMAN FLEAGLE: I don't know, I'm not  
31 sure what we would be accomplishing, but, anyways, if we  
32 pass this we're not going to harm anybody so maybe it's  
33 okay.

34

35 Keith, can you explain why we're even  
36 considering an area that has no real population.

37

38 MR. GOLTZ: No, I can't explain it. I  
39 can't imagine anything more rural than that Slope area  
40 with no people in it. And I haven't, myself, been in  
41 Prudhoe, but I've been in Kuparuk, and I -- how could you  
42 conceive of anything more rural, it baffles me. I'm not  
43 going to make any strong statements about it because I  
44 don't see that it makes any practical difference but it,  
45 quite frankly, seems like a rural area to me.

46

47 CHAIRMAN FLEAGLE: Gary.

48

49 MR. EDWARDS: Just to play the Devil's  
50 Advocate, can you have a rural area when there's no

1 people? If rural is defined by Judge Holland that is an  
2 area that is sparsely populated, then an area that is not  
3 populated, by that definition would not be rural.

4

5 MS. GOTTLIEB: Mr. Chair.

6

7 MR. GOLTZ: I'm lost in the math, but I  
8 guess Larry can help us.

9

10 CHAIRMAN FLEAGLE: Isn't zero as sparse  
11 as you can get. Larry Buklis.

12

13 MR. BUKLIS: Mr. Chairman. I think what  
14 the Council was doing in requesting that this be analyzed  
15 and now Mr. Brower providing the Council's support for  
16 the action that's proposed before you is because there  
17 has been an issue, as I indicated in my response on the  
18 question of fish and wildlife use just now, of people  
19 claiming residency and it becoming an issue for other  
20 people in the area, in the region.

21

22 Prudhoe Bay is an industrial site and  
23 there are many people there doing shift work, but there's  
24 been an issue at times of people claiming residency and  
25 because it's not specified in our regulations as a  
26 nonrural place, it is therefore a rural place and so  
27 they're able to claim to be rural Alaskans. So I think  
28 that is the issue.

29

30 It is an industrial site, but there's  
31 been an issue of people claiming residency at times. And  
32 also I'm reminded that there has -- as an example, of  
33 people asking for C&T claiming Prudhoe Bay residency.

34

35 CHAIRMAN FLEAGLE: Okay, I appreciate  
36 that. Judy, did you have a question.

37

38 MS. GOTTLIEB: Well, I was just going to  
39 say similar to what Larry was saying, but I mean I  
40 respect that the RAC supported this change and I guess  
41 I'd like to see the Board carry through with that.

42

43 CHAIRMAN FLEAGLE: Sure. Okay, are we  
44 all done with discussion on the Staff Committee  
45 recommendation.

46

47 Pat Holmes.

48

49 MR. HOLMES: On behalf of the KRAC, I'd  
50 like to support the motion from our colleagues in the

1 north based on the justification that they present, I  
2 think they're quite valid.

3

4 Thank you.

5

6 CHAIRMAN FLEAGLE: All right, thank you.  
7 Board deliberations.

8

9 I think it makes sense to me now. I just  
10 couldn't quite put a handle on trying to create a status  
11 for a community that essentially doesn't exist but if we  
12 do have people that are trying to claim residency there  
13 and that's posing a problem to the system then I see the  
14 merit. I will support it as well.

15

16 Other Board members.

17

18 (No comments)

19

20 CHAIRMAN FLEAGLE: We don't have a  
21 motion, okay, sorry.

22

23 MR. CESAR: Mr. Chairman.

24

25 CHAIRMAN FLEAGLE: Niles.

26

27 MR. CESAR: I'd like to move that the  
28 Board change the status of Prudhoe Bay from rural to  
29 nonrural and I would just caution the Chairman not to  
30 look for sense in everything we're doing here.....

31

32 (Laughter)

33

34 MR. CESAR: .....because I don't think  
35 you'll be able to find it.

36

37 CHAIRMAN FLEAGLE: Do we have a second.

38

39 MR. EDWARDS: Second.

40

41 CHAIRMAN FLEAGLE: All right, Gary  
42 seconds. Now, discussion on the motion and my comments  
43 that I gave prior to the motion carry, I do support the  
44 motion.

45

46 Do we want any additional comments or are  
47 we ready for the vote.

48

49 (No comments)

50

1 CHAIRMAN FLEAGLE: The question is called  
2 on the motion for Prudhoe Bay, Pete.  
3  
4 MR. PROBASCO: Thank you, Mr. Chair.  
5 Prudhoe Bay to change from the current rural status to  
6 nonrural status. Mr. Cesar.  
7  
8 MR. CESAR: Aye.  
9  
10 MR. PROBASCO: Mr. Fleagle.  
11  
12 CHAIRMAN FLEAGLE: Aye.  
13  
14 MR. PROBASCO: Mr. Edwards.  
15  
16 MR. EDWARDS: Aye.  
17  
18 MR. PROBASCO: Mr. Oviatt.  
19  
20 MR. OVIATT: Aye.  
21  
22 MR. PROBASCO: Ms. Gottlieb.  
23  
24 MS. GOTTLIEB: Aye.  
25  
26 MR. PROBASCO: Mr. Bschor.  
27  
28 MR. BSCHOR: No.  
29  
30 MR. PROBASCO: Mr. Chair, the motion  
31 carries, five/one. I'm going with Niles.  
32  
33 (Laughter)  
34  
35 CHAIRMAN FLEAGLE: Thank you. Up next we  
36 have discussion on some areas around Homer, that being  
37 Fritz Creek East.....  
38  
39 MR. PROBASCO: Point MacKenzie.  
40  
41 CHAIRMAN FLEAGLE: Oh, I just checked it,  
42 that's why, okay, Point MacKenzie first, I'm sorry. The  
43 proposed action is to include this in the nonrural  
44 Wasilla/Palmer area.  
45  
46 The Council recommendation was given. Do  
47 we have other Council comments.  
48  
49 (No comments)  
50

1 CHAIRMAN FLEAGLE: Hearing none then  
2 Alaska Fish and Game comments.  
3  
4 MS. GILBERTSON: Thank you, Mr. Chairman.  
5 No comments at this time.  
6  
7 CHAIRMAN FLEAGLE: Staff Committee.  
8 Steve Klein.  
9  
10 MR. KLEIN: Staff Committee recommends  
11 that Point MacKenzie be included in the nonrural  
12 Wasilla/Palmer area grouping.  
13  
14 Point MacKenzie is economically, socially  
15 and communally integrated with the Wasilla/Palmer area.  
16 All three grouping criteria clearly are met.  
17  
18 Mr. Chair.  
19  
20 CHAIRMAN FLEAGLE: Board questions to the  
21 Staff Committee recommendation. Gary.  
22  
23 MR. EDWARDS: Steve, I don't know whether  
24 you can best answer this or the Staff, where is the  
25 current line in looking at the map, I mean can somebody  
26 just kind of characterize it? I'm assuming it's not --  
27 it's currently non -- it's currently rural so there's a  
28 cut off somewhere.  
29  
30 MR. KLEIN: Mr. Chair. Mr. Edwards. On  
31 Page 29 is the map that shows the nonrural area as well  
32 as the Point MacKenzie area proposed for inclusion, and  
33 that's Page 29 of the review.  
34  
35 MR. EDWARDS: Just one other quick  
36 question, can somebody just kind of quickly characterize  
37 Point MacKenzie, how many people sort of live there, is  
38 it a community or what exactly is it?  
39  
40 CHAIRMAN FLEAGLE: Larry Buklis.  
41  
42 MR. BUKLIS: Yes, Mr. Chairman. Mr.  
43 Edwards. The June 23rd Staff report that Mr. Klein  
44 referenced does have a brief description of the history  
45 of Point MacKenzie and it gets into the grouping criteria  
46 and how they are met. It was the top of Page 30 in that  
47 report.  
48  
49 Point MacKenzie was named in 1794. The  
50 site served as an alternate landing area

1 for the community of Knik during the  
2 building of the Alaska Railroad.  
3 Settlement in the Point MacKenzie area  
4 began in the late 1950s.  
5  
6 And then we go into the grouping  
7 criteria.  
8  
9 Point MacKenzie CDP is 15 miles southwest  
10 of Wasilla located on the south shore of  
11 Knik Arm of Cook Inlet.  
12  
13 It talks about students in the Point  
14 MacKenzie CDP are in the attendance area  
15 for Wasilla High School.  
16  
17 And during the 2000 U.S. Census, there  
18 were 29 workers in Point MacKenzie CDP,  
19 no unemployment. 50 percent of the  
20 workers residing in Point MacKenzie CDP  
21 commute to areas within the Wasilla area  
22 grouping.  
23  
24 Mr. Chairman.  
25  
26 MR. EDWARDS: Thank you.  
27  
28 CHAIRMAN FLEAGLE: Other questions for  
29 the Staff Committee recommendation.  
30  
31 (No comments)  
32  
33 CHAIRMAN FLEAGLE: Ready for  
34 deliberations.  
35  
36 (No comments)  
37  
38 CHAIRMAN FLEAGLE: Discussion.  
39  
40 (No comments)  
41  
42 CHAIRMAN FLEAGLE: Motion.  
43  
44 MS. GOTTLIEB: Mr. Chairman.  
45  
46 CHAIRMAN FLEAGLE: Judy.  
47  
48 MS. GOTTLIEB: Thank you. I move that  
49 the Point MacKenzie area be grouped with the  
50 Palmer/Wasilla area consistent with the recommendations

1 that we've heard today.

2

3 CHAIRMAN FLEAGLE: Do we have a second.

4

5 MR. OVIATT: I'll second.

6

7 CHAIRMAN FLEAGLE: All right, we do have  
8 a motion to follow the Staff Committee recommendations to  
9 add Point MacKenzie to the Wasilla/Palmer area. Any  
10 discussion on the motion.

11

12 (No comments)

13

14 CHAIRMAN FLEAGLE: Are we satisfied that  
15 the Staff Committee's recommendation adequately addresses  
16 all the concerns and if we have are we ready for the  
17 question.

18

19 (Board nods affirmatively)

20

21 CHAIRMAN FLEAGLE: All right, the  
22 question is called on Point MacKenzie, Pete.

23

24 MR. PROBASCO: Thank you, Mr. Chair.  
25 Motion to include the Point MacKenzie area in the  
26 nonrural Wasilla/Palmer area grouping.

27

28 Mr. Fleagle.

29

30 CHAIRMAN FLEAGLE: Aye.

31

32 MR. PROBASCO: Mr. Edwards.

33

34 MR. EDWARDS: Aye.

35

36 MR. PROBASCO: Mr. Oviatt.

37

38 MR. OVIATT: Aye.

39

40 MR. PROBASCO: Ms. Gottlieb.

41

42 MS. GOTTLIEB: Aye.

43

44 MR. PROBASCO: Mr. Bschor.

45

46 MR. BSCHOR: Aye.

47

48 MR. PROBASCO: Mr. Cesar.

49

50 MR. CESAR: Aye.



1 MR. PROBASCO: Mr. Chair, motion carries,  
2 six/zero.

3  
4 CHAIRMAN FLEAGLE: Thank you, Pete. Now,  
5 we move to the Homer area with the proposed addition of  
6 Fritz Creek East and North Fork Road area.

7  
8 Council recommendation has been given.  
9 Is there any other Council comments from Councils  
10 present.

11  
12 (No comments)

13  
14 CHAIRMAN FLEAGLE: Hearing none, State  
15 ADF&G comments.

16  
17 MS. GILBERTSON: Thank you, Mr. Chairman.  
18 Nothing to add at this time.

19  
20 CHAIRMAN FLEAGLE: Thank you. Staff  
21 Committee recommendation. Steve.

22  
23 MR. KLEIN: The Staff Committee  
24 recommends that Fritz Creek East and the North Fork Road  
25 area be included in the nonrural Homer area grouping.

26  
27 Both areas are economically, socially and  
28 communally integrated with the Homer area and the three  
29 criteria are sufficiently met.

30  
31 Mr. Chair.

32  
33 CHAIRMAN FLEAGLE: Any questions of  
34 the.....

35  
36 MR. EDWARDS: Yeah, just one follow up.  
37 I know that, I guess, in the original Staff  
38 recommendation it actually provided two options and I  
39 think part of it was because some of the three criteria  
40 were not maybe as clear cut as they would like it. Did  
41 the Staff Committee, you know, deliberate on those two  
42 options in coming to their final conclusion?

43  
44 CHAIRMAN FLEAGLE: Steve Klein.

45  
46 MR. KLEIN: The Staff Committee  
47 discussion focused on the single option, at least the  
48 Staff Committee meeting I attended. I guess prior to our  
49 meeting there could have been earlier discussions and I'd  
50 refer to Mr. Buklis.

1 CHAIRMAN FLEAGLE: Larry.

2

3 MR. BUKLIS: Yes, Mr. Chairman. I concur  
4 with Mr. Klein's comment. The development of these  
5 recommendations looked primarily at the Proposed Rule and  
6 the comments received since the Proposed Rule and didn't  
7 go back and revisit the work back in June that led to the  
8 Proposed Rule.

9

10 So your Proposed Rule would have these  
11 areas added. And there wasn't significant adverse  
12 comment to that action. So it wasn't a revisiting of  
13 former options that led to your Proposed Rule.

14

15 CHAIRMAN FLEAGLE: Gary.

16

17 MR. EDWARDS: I guess I'm just trying to  
18 figure out is that a good thing, in rereading, you know,  
19 back in June it did seem that, you know, there was  
20 concern and I guess maybe I'm just trying to stay  
21 consistent with, you know, our three criteria and how we  
22 were applying them and it just seemed there was a  
23 statement in there or something about that the case for  
24 economic and social integration with Homer is not  
25 definitive, but apparently since that time we're  
26 comfortable that it is definitive and that we are  
27 properly applying our three criteria.

28

29 CHAIRMAN FLEAGLE: Larry.

30

31 MR. BUKLIS: Mr. Chairman. As I think I  
32 responded yesterday on a question of how the grouping  
33 criteria were applied and how options were developed back  
34 in June, these criteria were applied in a consistent way,  
35 including these areas and without going back into the  
36 details from back in June, I concur with you that they  
37 weren't clearly met on all points in this case, but it  
38 was felt that they were sufficiently met to group and  
39 that's what the Board proposed. And then the Proposed  
40 Rule comment period did not bring forward significant  
41 adverse comment. And so the Staff Committee's position  
42 was to, as Mr. Klein said, to advance the proposed change  
43 for Board consideration.

44

45 And I understand the Council's comment  
46 was similar.

47

48 CHAIRMAN FLEAGLE: Other questions.

49

50 (No comments)

1 CHAIRMAN FLEAGLE: Board deliberations,  
2 ready to discuss the issue.  
3  
4 (No comments)  
5  
6 CHAIRMAN FLEAGLE: How about a motion.  
7  
8 George.  
9  
10 MR. OVIATT: Mr. Chairman, I'll propose a  
11 motion. This is Fritz Creek, right, Fritz Creek East,  
12 not including.....  
13  
14 CHAIRMAN FLEAGLE: Yeah, that word.  
15  
16 MS. GOTTLIEB: Voznesenka.  
17  
18 MR. OVIATT: .....Voznesenka and the  
19 North Ford Road area are economically, socially and  
20 communally integrated within the Homer area according to  
21 Staff recommendations.  
22  
23 CHAIRMAN FLEAGLE: Is there a second.  
24  
25 MR. EDWARDS: Second.  
26  
27 CHAIRMAN FLEAGLE: Gary seconds. On the  
28 motion, discussion.  
29  
30 (No comments)  
31  
32 CHAIRMAN FLEAGLE: Are we adequately --  
33 do we feel that the Staff recommendations are adequate to  
34 move forward with a vote, ready for a vote.  
35  
36 MS. GOTTLIEB: Mr. Chair.  
37  
38 CHAIRMAN FLEAGLE: Judy.  
39  
40 MS. GOTTLIEB: I think consistent with  
41 the Southcentral RAC's Council recommendation and the  
42 thorough Staff analysis that was done, I think we have  
43 adequate information to do this grouping.  
44  
45 CHAIRMAN FLEAGLE: Okay, thank you for  
46 that justification. Are we ready for the vote, Board.  
47 Pete, please poll the Board.  
48  
49 MR. PROBASCO: Thank you, Mr. Chair.  
50 Motion to include Fritz Creek East, not to include

1 Voznesenka, and the North Fork Road in the nonrural Homer  
2 area.  
3  
4 Mr. Edwards.  
5  
6 MR. EDWARDS: Aye.  
7  
8 MR. PROBASCO: Mr. Oviatt.  
9  
10 MR. OVIATT: Aye.  
11  
12 MR. PROBASCO: Ms. Gottlieb.  
13  
14 MS. GOTTLIEB: Aye.  
15  
16 MR. PROBASCO: Mr. Bschor.  
17  
18 MR. BSCHOR: Aye.  
19  
20 MR. PROBASCO: Mr. Cesar.  
21  
22 MR. CESAR: Aye.  
23  
24 MR. PROBASCO: You're last, Mr. Fleagle.  
25  
26 CHAIRMAN FLEAGLE: Aye.  
27  
28 MR. PROBASCO: Motion carries, six/zero.  
29 Mr. Chair.  
30  
31 CHAIRMAN FLEAGLE: Thank you, Pete. That  
32 now puts us into the Central Kenai Peninsula area,  
33 Sterling. We've heard the Council recommendations, are  
34 there other Council comments.  
35  
36 (No comments)  
37  
38 CHAIRMAN FLEAGLE: Hearing none, we'll  
39 move to the State for their comments.  
40  
41 Sarah.  
42  
43 MS. GILBERTSON: Thank you, Mr. Chairman.  
44 Nothing to add at this time.  
45  
46 CHAIRMAN FLEAGLE: Thank you. Staff  
47 Committee recommendations.  
48  
49 MR. KLEIN: I'll refer the Board to Page  
50 25 of the review and the map on that page. The CDP now

1 includes an area not within the Sterling -- or not within  
2 the nonrural area so the Staff Committee recommends  
3 including the entire Sterling CDP in the nonrural Kenai  
4 area grouping. And if you look at the map that's that  
5 area just above Sterling that's currently not in the  
6 grouping. Including this area in the grouping is  
7 appropriate entire Sterling CDP is economically, socially  
8 and communally integrated with the Kenai area and all  
9 three grouping criteria are clearly met.

10

11 Mr. Chair.

12

13 CHAIRMAN FLEAGLE: Thank you. Questions.

14

15 (No comments)

16

17

18 CHAIRMAN FLEAGLE: Steve, on that map on  
19 Page 25, you have an area that's -- well, a couple areas  
20 that have the hash marks in it that indicate that it is  
21 now nonrural and then you have the 2000 CDPs. Does that  
22 little white area there next to -- or just north of  
23 Kenai, that doesn't mean that that now becomes rural,  
24 right, just because the 2000 CDPs don't cover it?

24

25 MR. BUKLIS: Mr. Chairman.

26

27 CHAIRMAN FLEAGLE: Larry.

28

29 MR. BUKLIS: Thank you. If you're  
30 looking at Page 25 of the June 23rd Staff report, you're  
31 correct to note that the hash marks are indicating the  
32 current nonrural area. The overlay of the shaded places  
33 show the Census Bureau's census designated place  
34 boundaries and so your action would not change the  
35 nonrural boundary as defined for anywhere else around the  
36 Kenai area except to reach out and now include the  
37 Sterling CDP that has been defined to the north of the  
38 current subsistence program boundary.

39

40 CHAIRMAN FLEAGLE: Thank you. And I see  
41 that now on the map on Page 32 of the November 27th  
42 summary report, so I appreciate that clarification.

43

44 Other Board comments, questions. Gary.

45

46 MR. EDWARDS: Larry, do you know if the  
47 -- well, would that now include Kenai Keys or not?

48

49 MR. BUKLIS: Mr. Chairman. I'm not  
50 familiar with the geography to that point to be able to

1 respond to that question. Others may be able to help.

2

3 CHAIRMAN FLEAGLE: Gary.

4

5 MR. EDWARDS: Well, I guess I was just  
6 curious because it's a little community down there just  
7 between the upper and the lower Keili Rivers on the -- I  
8 forget what side it would be on, the right side going  
9 down river -- north side.

10

11 CHAIRMAN FLEAGLE: Steve Klein.

12

13 MR. KLEIN: Kenai Keys is below Skilak  
14 Lake.

15

16 MR. EDWARDS: It's in between, I think,  
17 the upper Keili and the lower Keili.

18

19 MR. KLEIN: So looking at the map on Page  
20 25 what -- I mean we do have the Funny River in there,  
21 would that not be included, perhaps Mr. Probasco could  
22 shed some insight.

23

24 CHAIRMAN FLEAGLE: Pete Probasco.

25

26 MR. PROBASCO: Mr. Chair. Mr. Edwards.

27

28 CHAIRMAN FLEAGLE: Use your mic.

29

30 MR. PROBASCO: Mr. Chair. Mr. Edwards.  
31 I think what you're pointing to is, and I whispered over  
32 to you, we'd actually need a USGS map because it's right  
33 in that area where that line is that -- right below  
34 Skilak where we're talking about and I'm not sure how far  
35 that boundary goes over. So it's -- I'd need a better  
36 map.

37

38 Mr. Chair.

39

40 CHAIRMAN FLEAGLE: Other questions.

41 Niles.

42

43 MR. CESAR: Mr. Chair. I have friends  
44 who live down there in the summertime and that's about a  
45 -- I was trying to think about how many people reside  
46 down there in the summertime, it's more than just a  
47 little camp, you know, and I guess I'm curious as to  
48 whether it should be or shouldn't be.

49

50 MR. EDWARDS: I am, too, I don't know. I

1 guess I mean my first reaction, if it isn't, maybe it  
2 should be, and I do think there are some people that may  
3 actually live down there year-round also, I mean I don't  
4 know it would be interesting to know. I guess if it is  
5 then I don't -- I'm not sure that that necess -- does  
6 that mean that we don't look at it for another 10 years,  
7 or what does that actually mean?

8

9 CHAIRMAN FLEAGLE: Let's just stand down  
10 for a five minute at ease and see if we can find the  
11 answer here while we're here on the subject. I see  
12 people are looking.

13

14 (Off record)

15

16 (On record)

17

18 CHAIRMAN FLEAGLE: All right. It was  
19 suggested to me that we get this show on the road, so I  
20 guess we'll reconvene. It appears that the question to  
21 the answer -- or the answer to the question that was  
22 posed right before the break is that the area that Gary  
23 was asking about is already considered nonrural.

24

25 So with that, are we ready for a motion  
26 for the Sterling nonrural Kenai area.

27

28 (No comments)

29

30 CHAIRMAN FLEAGLE: I can't make one.

31

32 (Laughter)

33

34 MR. EDWARDS: Mr. Chairman. I move that  
35 the portion of the current Sterling CDP that is not now  
36 part of the Kenai area grouping be included in that  
37 grouping.

38

39 CHAIRMAN FLEAGLE: A second.

40

41 MR. OVIATT: I'll second.

42

43 CHAIRMAN FLEAGLE: All right. Got a  
44 motion and a second. Discussion.

45

46 MS. GOTTLIEB: Mr. Chairman.

47

48 CHAIRMAN FLEAGLE: Judy.

49

50 MS. GOTTLIEB: I believe that this motion

1 is consistent with the recommendations and the analysis  
2 that has been accomplished so I intend to support it.  
3  
4 CHAIRMAN FLEAGLE: Any other discussion.  
5  
6 (No comments)  
7  
8 CHAIRMAN FLEAGLE: Ready for the vote.  
9  
10 (Board nods affirmatively)  
11  
12 CHAIRMAN FLEAGLE: The question is called  
13 on the motion. Pete, poll the Board.  
14  
15 MR. PROBASCO: Thank you, Mr. Chair. The  
16 motion is to take the remainder of the Sterling CDP and  
17 include it in the nonrural Kenai area.  
18  
19 Mr. Oviatt.  
20  
21 MR. OVIATT: Aye.  
22  
23 MR. PROBASCO: Ms. Gottlieb.  
24  
25 MS. GOTTLIEB: Aye.  
26  
27 CHAIRMAN FLEAGLE: Mr. Bschor.  
28  
29 MR. BSCHOR: Aye.  
30  
31 MR. PROBASCO: Mr. Cesar.  
32  
33 MR. CESAR: Aye.  
34  
35 MR. PROBASCO: Mr. Fleagle.  
36  
37 CHAIRMAN FLEAGLE: Aye.  
38  
39 MR. PROBASCO: And, Mr. Edwards.  
40  
41 MR. EDWARDS: Aye.  
42  
43 MR. PROBASCO: Mr. Chair. Motion carries  
44 six/zero.  
45  
46 CHAIRMAN FLEAGLE: Thank you, Pete. That  
47 concludes the Board's consideration on rural and nonrural  
48 determinations.  
49  
50 Out of the course of the last couple of



1 days and perhaps even before there's been quite a bit of  
2 question and interest raised, at least in my mind, and  
3 seems like in several others as well as to the regulation  
4 that we -- that we're referring to that included the  
5 population numbers and Judy had spoken with me on the  
6 break about this, and I would just like to turn the floor  
7 to Judy. Would you like to pose the question we talked  
8 about, please.

9

10 MS. GOTTLIEB: Thank you, Mr. Chair.  
11 Surely. I think as many of you know the Southeast  
12 Regional Advisory Council has sent a petition to the  
13 Secretary's office asking that there be a change to these  
14 regulations and that's something the Board has discussed  
15 on and off as well based on many of the comments we've  
16 heard about the applicability 25 years later, after  
17 ANILCA to these population thresholds and so on and so  
18 forth.

19

20 So I wondered if we have any update on  
21 the status of that petition request to the Secretary.

22

23 CHAIRMAN FLEAGLE: Pete Probasco.

24

25 MR. PROBASCO: Thank you, Mr. Chair. Ms.  
26 Gottlieb. In the normal practice of letters being sent  
27 to the Secretary's office, they are then sent out for a  
28 draft response, that has been completed and sent back to  
29 the Secretary's office. I know it's currently at that  
30 level and we have not seen the final letter. But based  
31 on the response developed, it was looking favorably at  
32 the process of reevaluating the thresholds.

33

34 MS. GOTTLIEB: Okay.

35

36 CHAIRMAN FLEAGLE: Pete, what would that  
37 process entail, just curious. I mean this obviously  
38 wouldn't be a public proposal, it sounds like it's a  
39 whole different process that's initiated through the  
40 Secretary's office. Would it be a rulemaking process,  
41 where something is proposed and then it goes out for  
42 consideration like these actions here today or how would  
43 that work.

44

45 MR. PROBASCO: On the proper procedures,  
46 as far as rulemaking, I would have to turn to Mr. Goltz,  
47 I believe that would be the case but I'm not 100 percent  
48 sure.

49

50 CHAIRMAN FLEAGLE: Keith.

1 MR. GOLTZ: The answer to your question  
2 is, yes, it would be a rulemaking.

3  
4 The way the process works is there's a  
5 special provision that allows for provision to the  
6 Secretaries. If the Secretary accepts that petition, in  
7 this case it would require a rule change, and a rule  
8 change would require public process and hearing. So  
9 depending on what the Secretary decides, they can reject  
10 the petition and then there is nothing further to do or  
11 they can accept it with instructions to the Board.

12  
13 But in this particular case, since the  
14 population thresholds are in regulation, a change would  
15 require public notice and hearing.

16  
17 CHAIRMAN FLEAGLE: Okay, I appreciate  
18 that. And is there any indication, I don't know -- I'm  
19 not aware of the content of the petition from the  
20 Southcentral RAC.

21  
22 MR. PROBASCO: Southeast RAC.

23  
24 CHAIRMAN FLEAGLE: Or Southeastern RAC,  
25 but would that proposed action propose new numbers or an  
26 elimination of numbers, how would that work?

27  
28 MR. GOLTZ: It proposes higher  
29 thresholds.

30  
31 CHAIRMAN FLEAGLE: Okay, thank you.

32  
33 MR. EDWARDS: I guess the other question,  
34 would that allow us to look at the broader issue or would  
35 we just have to stick to whether it should be a bigger  
36 number, but by opening that rule, does it give us a lot  
37 of lead way as we look at the whole issue?

38  
39 CHAIRMAN FLEAGLE: Keith.

40  
41 MR. GOLTZ: Well, it could. When you're  
42 talking about (a) and (b) regulations, you're talking  
43 about Secretarial level regulations so much would depend  
44 on our instructions from the Secretary. But I think if  
45 the Board thought it wise to open up the broader  
46 questions, that's something that we could address with  
47 the office of the Secretary.

48  
49 CHAIRMAN FLEAGLE: All right, well,  
50 thanks, that just gives me a better understanding, I

1 think, of the process used here and just give us an  
2 opportunity to remain involved as this issue unfolds and  
3 see where we can go with it, if we feel it's necessary.

4  
5                   Anyways, I have no other comments as  
6 relating to the business of the Board today. Any other  
7 Board members, other business to come before the Board.

8  
9                   MR. EDWARDS: Mr. Chairman.

10  
11                   CHAIRMAN FLEAGLE: Gary.

12  
13                   MR. EDWARDS: Tom is not here from the  
14 Southcentral, but I personally want to and I'm sure the  
15 other Board members share this, to commend that RAC for  
16 the decision they made, I believe, it was last week to go  
17 forward with a stakeholder's group to address the  
18 subsistence fishing on the Kenai Peninsula. If that  
19 group has, you know, half the success that we have had  
20 with our other kind of stakeholder's groups that have  
21 been handled under the RAC process, I'm very hopeful and  
22 feel, somewhat, assured that we're going to come out with  
23 a good outcome. So if he was here, you know, I -- I  
24 personally thanked him, but I do think it was the right  
25 thing for them to do and I am very pleased that they  
26 reached that decision.

27  
28                   CHAIRMAN FLEAGLE: Thank you, Gary.  
29 Other Board member comments.

30  
31                   Judy.

32  
33                   MS. GOTTLIEB: Mr. Chair, thank you. I  
34 wanted to thank the Council members and -- Council  
35 Chairs, excuse me, and the membership that you represent,  
36 all the work that you've put into this and thank you for  
37 sitting through this the last couple days. I want to  
38 thank Staff and all our analysts who put a lot of time  
39 into getting us where we got to today, and once again  
40 those in the audience who sat through and participated  
41 with us over the last couple days.

42  
43                   CHAIRMAN FLEAGLE: Thank you, Judy.  
44 Other Board comments.

45  
46                   Bert Adams.

47  
48                   MR. ADAMS: Thank you, Mr. Chairman. You  
49 know this is my first trip up here to participate, you  
50 know, in a meeting such as this and it has been a

1 learning experience for me and I really appreciate, you  
2 know, the hard work that the Board has devoted into these  
3 deliberations.

4  
5 We, of course, are disappointed, you  
6 know, that it didn't work out well for us with Ketchikan  
7 and Saxman, but, you know, I think that, you know, the  
8 hard work that was put into this, you know, is still  
9 going to be there, we're going to pledge on and try to,  
10 you know, represent those people in a way that we really  
11 should be, that -- in a way that I really think that we  
12 should.

13  
14 Again, you know, I really want to  
15 emphasize, you know, those points that I made on my  
16 personal comments, you know, on working from the bottom  
17 up, I think that's very important. We do have  
18 inalienable rights, and the right to be able to subsist  
19 and work off of our lands, you know, they can't be taken  
20 away from us. In many cases I think that there are some  
21 impediments that need to be removed such as the criteria,  
22 you know, that was emphasized so much today and if those  
23 criteria, stumbling blocks that is going to prevent, you  
24 know, our access to those resources then those  
25 impediments need to be removed so that the way is opened  
26 up, you know, for the people, you know, to subsist off of  
27 the lands.

28  
29 Again, I want to emphasize the fact that  
30 no law or regulation and it's imbedded right in our  
31 Constitution, should be made without the consent of the  
32 governed, and you've heard testimony yesterday, you know,  
33 that was very strong in favor of Kodiak and we applaud  
34 that, I commend the Board for looking at the testimonies  
35 or seriously taking the testimonies that were presented  
36 yesterday.

37  
38 Now, if it's okay, Mr. Chairman, I think  
39 it would have been better if I'd have shared this story  
40 that I'm going to share with you right now, at the  
41 beginning, because it probably would have set the whole  
42 tone of this meeting if it was done, but I would just  
43 like to share that with you, if I can, at this point,  
44 with your permission.

45  
46 CHAIRMAN FLEAGLE: (Nods affirmatively)

47  
48 MR. ADAMS: I come from the Yakutat area.  
49 And in the Yakutat area, you know, there are Tlingit  
50 people who live there, we comprise of three main stock of

1 people, there's the Eyaks, the Athabascans and the  
2 Tlingit people who congregated there, inter-married and  
3 now we have today what is known as the Yakutat Tlingit.  
4 We are distinct in language and customs and so forth from  
5 other parts of Southeast Alaska, although when we speak  
6 the language among us we can understand it, but it  
7 comprises of all of these three different stocks of  
8 people.

9  
10                   It is also where Raven did all of his  
11 creations. When Raven created (In Tlingit), we know that  
12 today as Mt. St.-Elias, it stands 18,000-so many feet up  
13 into the air. And then about 200 miles southwards  
14 there's (In Tlingit) or Mt. Fairweather standing 15,300  
15 feet into the air. And in between that there's these  
16 mountain rangers and glaciers and streams and so forth.  
17 At one time (In Tlingit) and (In Tlingit) were married  
18 and the mountains in between them are their children.  
19 And for 200 miles wide, or long and about 11 miles wide  
20 is what is known as (In Native) which is an Eyak word  
21 that means a peaceful place in which you can park your  
22 canoe. And down under the protection of (In Tlingit)  
23 there is a place called (In Tlingit) and (In Tlingit) is  
24 where several tribal houses were constructed in the  
25 earlier days but before that, when Raven had created all  
26 of these areas and everything, he needed to find out how  
27 the people were going to be fed, and he was flying way up  
28 into the air one time thinking and pondering upon this  
29 and out in the ocean he sees this real large object  
30 bobbing up and down over the swells and so he flies out  
31 there and as he gets closer and closer he realizes that  
32 this is a real large canoe and it had a house on top of  
33 it. And he gets closer and closer and lands on the large  
34 canoe and investigates it and in the canoe there was  
35 these animals and the birds and the fishes. And so he  
36 flies back to the mainland and he carves out from a  
37 couple of alder bushes a long staff that was fashioned  
38 after an octopus arm and he even puts those little  
39 suckers on it, and then he flies out to that large canoe  
40 and he snaps on to it and he begins to tow that large  
41 canoe to shore and he pulls and pulls and finally gets up  
42 into the mainlands and he sinks his claws into the -- or  
43 his foot into the sand and he pulls that thing right up  
44 on to the beach.

45  
46                   Today down off of the Aquia (ph) River  
47 there is this two and a half mile or so of sand, nothing  
48 grows there and that's Raven's foot prints when he pulled  
49 in that real large arc. And there he lets out all of the  
50 animals and the birds and the fishes and he treated the

1 salmon a little bit different, you know, they were all in  
2 compartments. First he lets out the king salmon, and  
3 then a little while later the sockeye and then the  
4 humpies and the dog salmon and then finally the coho and  
5 that's why we have these different seasons.

6  
7 And so he tells the Tlingit people, he  
8 says, this area is for your use, these animals, the birds  
9 and the fishes upon the seas, you know, are yours to use  
10 for your benefit and his admonition to them also is that  
11 when you begin to misuse these products, when you begin  
12 to not use them properly then these things are going to  
13 be disappearing. And so the commission that he gave to  
14 his people is that we need to be good stewards of the  
15 land and the resources. And that message, you know,  
16 rings out all over Tlingit land and I would say among  
17 all of the land of Alaska, that we need to be good  
18 stewards of the resources that we have responsibility  
19 over.

20  
21 And I hope, it is my prayer that we will  
22 continue to do that. And when we listen to the, you  
23 know, testimonies of people who come to these meetings  
24 who are from the communities in which they reside and say  
25 that we need to be listened to, and, again, you know, I  
26 go back to that statement that no law or regulation  
27 should be made without the consent of the governed. I  
28 hope and pray that we will continue the process of being  
29 good stewards of the land and of the resources so that  
30 they can be here for our grandchildren and their  
31 grandchildren and their grandchildren.

32  
33 And, thank you, Mr. Chairman, for  
34 allowing me to share that story with you and I think  
35 there is a strong message there for each and every one of  
36 us.

37  
38 Gunalcheesh.

39  
40 CHAIRMAN FLEAGLE: Thank you, Bert,  
41 really appreciate that -- those comments, and share those  
42 concerns with you.

43  
44 Thank you.

45  
46 I just want to close the proceedings by  
47 also thanking all the people that stayed with us through  
48 the two days and testifiers, RAC representatives,  
49 Chairmen, Staff, and also my hat's off to the Board who I  
50 feel do an admirable job of working through the

1 testimonies and comments and enter the deliberations, had  
2 some really good discussions. I just really felt like  
3 even though there was some very difficult decisions to be  
4 made, we did it professionally and that can be commended  
5 to all Board members present, you know, just defend the  
6 process and ability for us to have this ability to do  
7 that, to work together.

8

9 I want to thank all the Board members.

10

11 And thanks, Sarah, for your participation  
12 from the State, and I guess we've got another comment.

13

14 Keith.

15

16 MR. GOLTZ: Well, I should have jumped in  
17 before your summation but I hated to follow so closely  
18 beyond Bert's poetry with some harsh bureaucratic prose  
19 but I have to add an addendum to my comments on the  
20 Secretarial Rulemaking. I was responding to the petition  
21 which asks for a rule, and I'm told by the other  
22 attorneys who have been more close to this than I have  
23 that my answer may have been incomplete, there are other  
24 ways to respond to the petition including an  
25 interpretative rule, so I just wanted to add that to the  
26 record.

27

28 My comments were not intended to be an  
29 assurance that there will necessarily be notice and  
30 rulemaking but we'll work that through later.

31

32 CHAIRMAN FLEAGLE: All right, thank you.  
33 Any other business before the Board.

34

35 (No comments)

36

37 CHAIRMAN FLEAGLE: Ready for a motion to  
38 adjourn.

39

40 MR. CESAR: So moved.

41

42 CHAIRMAN FLEAGLE: A motion, any  
43 objection.

44

45 (No objections)

46

47 CHAIRMAN FLEAGLE: All right, we're  
48 adjourned, thank you.

49

50 (END OF PROCEEDINGS)

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C E R T I F I C A T E

UNITED STATES OF AMERICA                    )  
  )ss.  
STATE OF ALASKA                                )

I, Joseph P. Kolasinski, Notary Public in and for the State of Alaska and reporter for Computer Matrix Court Reporters, do hereby certify:

THAT the foregoing pages numbered 128 through 229 contain a full, true and correct Transcript of the FEDERAL SUBSISTENCE BOARD PUBLIC MEETING, VOLUME II taken electronically by Nathan Hile on the 11th day of December 2001, beginning at the hour of 8:30 o'clock a.m. at the Egan Convention Center in Anchorage, Alaska;

THAT the transcript is a true and correct transcript requested to be transcribed and thereafter transcribed by under my direction and reduced to print to the best of our knowledge and ability;

THAT I am not an employee, attorney, or party interested in any way in this action.

DATED at Anchorage, Alaska, this 20th day of December 2006.

\_\_\_\_\_  
Joseph P. Kolasinski  
Notary Public in and for Alaska  
My Commission Expires: 03/12/2008