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1 FISH AND WILDLIFE SERVICE FEDERAL SUBSISTENCE BOARD
2 EGAN CONVENTION CENTER
3 ANCHORAGE, ALASKA
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6
7 JUNE 28, 2001
8 1:00 o'clock p.m.
9 PUBLIC MEETING
10

11
12 MEMBERS PRESENT:
13

14 Mr. Mitch Demientieff, Chair
15 Mr. Fran Cherry, Bureau of Land Management
16 Mr. Gary Edwards, U.S. Fish and Wildlife Service
17 Ms. Judy Gottlieb, National Park Service
18 Mr. Niles Cesar, Bureau of Indian Affairs
19 Mr. Jim Caplan, U.S. Forest Service
20
21 Mr. Keith Goltz, Solicitor

P R O C E E D I N G S

(On record)

CHAIRMAN DEMIENTIEFF: We'll go ahead and call the meeting to order. My name is Mitch Demientieff, I'm the Chairman of the Federal Subsistence Board. And with that, I'll ask, beginning with Niles over here, ask the other Board members to introduce themselves and their agency affiliation, please.

MR. CESAR: I'm Niles Cesar, the Regional Director for the Bureau of Indian Affairs.

MS. GOTTLIEB: Judy Gottlieb, Associate Regional Director, National Park Service.

MR. CHERRY: Fran Cherry, State Director with Bureau of Land Management.

MR. EDWARDS: Gary Edwards, Deputy Regional Director, U.S. Fish and Wildlife Service.

MR. CAPLAN: Jim Caplan, Deputy Regional Forester for Natural Resources, Forest Service.

CHAIRMAN DEMIENTIEFF: If there are no corrections or additions to the agenda we shall go ahead and proceed. We're here today to consider request for reconsideration 00-02.

Good afternoon, ladies and gentlemen. The meeting of the Federal Subsistence Board is now called to order. On behalf of the Federal Subsistence Board I welcome you to this public hearing to address two requests for reconsideration. These requests were submitted by the Safari Club International, the Alaska Chapter of the Safari Club International, the Kenai Peninsula Chapter of the Safari Club International, the Kenai Peninsula Outdoors Coalition and the Cooper Landing Fish and Game Advisory Committee. These organizations request that this Board reconsider its decision of May 4th, 2000. There are communities located on the Kenai Peninsula are rural for the purposes of implementing Title VIII of the Alaska National Interest Lands Conservation Act.

As back ground, the Board's decision was made in response to a petition submitted to the Southcentral Regional Advisory Council by the Kenaitze Indian Tribe in March 1998. In March 1999, the

1 Southcentral Council recommended to the Board that all
2 communities on the Kenai Peninsula be determined rural in
3 support of the Kenaitze Indian Tribe's request. The
4 Board's May 2000 decision following the publication of a
5 proposed rule, request for public comments and a public
6 hearing in Kenai.

7
8 The procedure that the Board will use this
9 afternoon is presented on the agenda and will proceed as
10 follows: Mr. Tim Jennings will present a briefing on the
11 Staff analysis. Ms. Ann Wilkinson will follow with a
12 summary of written public comments and will present the
13 recommendation of the Southcentral Regional Advisory
14 Council. Ms. Peggy Fox will give the Staff Committee
15 recommendation. And the Alaska Department of Fish and Game
16 will provide their comments. And then we'll move onto
17 public testimony before the Board deliberation and
18 decision. We have Ann Seidman on line representing Safari
19 Club International and she will be leading off the public
20 testimony when we get to that point.

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22 With that, we'll call on Tim Jennings for
23 the Staff analysis.

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25 MR. JENNINGS: Thank you, Mr. Chair and
26 Board members. For the record, my name is Tim Jennings and
27 I am Chief of the Coastal Regions Division in the Office of
28 Subsistence Management. Also with me today is Pat
29 Petrivelli, Staff anthropologist for the Southcentral
30 Region and Ann Wilkinson, Council Coordinator for the
31 Southcentral Region. My presentation today is a summary of
32 the Staff analysis dated June 2001 for the request for
33 reconsideration of the Kenai Peninsula rural determination
34 of May 4, 2000. Further details and specifics related to
35 my briefing are contained in the full Staff analysis which
36 has been provided for you.

37
38 Before we proceed to the claims raised in
39 the request for reconsideration, I want to summarize the
40 rural determination methodology adopted and in use by the
41 Federal Subsistence Board. This will provide important
42 background and context in the subsequent discussion
43 regarding specific claims raised in the RFRs, the request
44 for reconsiderations.

45
46 The rural determination process followed by
47 the Federal Subsistence Board during the 1990 rural
48 determinations and for the Kenai Peninsula out of cycle
49 review has been described as a two-step methodology,
50 aggregation and then evaluation. During the 1990 rural

1 determination process, the Board determined that it was
2 appropriate to aggregate communities which were
3 economically, socially, and communally integrated. The
4 November 1990 Federal Register contained the following
5 information relating to the aggregation step. It is
6 recognized that communities of the same size may vary
7 greatly in character for a variety of reasons, therefore,
8 no single population number adequately serves as a dividing
9 line between rural and non-rural communities. Before
10 examining community characteristics, communities that are
11 socially and economically integrated were aggregated and
12 the criteria used to determine if communities are socially
13 and economical integrated includes the following three
14 criteria.

15

- 16 1. Do 15 percent or more of the
17 working people commute from one
18 community to another;
- 19 2. Do they share a common school
20 district; and
- 21 3. Are daily or semi daily shopping
22 trips made.

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These aggregation criteria were developed
by working with the Institute of Social and Economic
Research, the Alaska Department of Labor, and the
Municipality of Anchorage. Communities were aggregated
according to these criteria the populations for the
community areas were determined in preliminary rural and
non-rural screening of the communities than began.

The second step of the rural determination
process is evaluation. The November 1990 Federal Register
also contained the following information regarding the
evaluation step. The process to determine rural was
designed to incorporate the common meaning of rural and its
based on two rebuttal presumptions. A community or area of
less than 2,500 population is deemed rural unless it
exhibits characteristics of a non-rural nature or area or
as part of an urbanized area. The number 2,500 was
selected because it is the figure used by the U.S. Census
Bureau to divide rural from non-rural. A community between
2,500 and 7,000 bears no presumption as to its rural or
non-rural status. Some communities that fall in this
population range may have rural characteristics. And
finally communities 7,000 or greater in population are
presumed to be non-rural. The 7,000 population level was
chosen because Ketchikan, the smallest of non-rural

1 communities mentioned in the Senate report was
2 approximately that size when ANILCA was passed and
3 consequently is an indicator of Congressional intent.
4 Communities in Alaska can approach and may rarely exceed a
5 population level of 7,000 and still be rural in character.

6
7 After the initial screening and evaluation
8 step, using the population thresholds, community
9 characteristics are evaluated to make a final determination
10 regarding rural/non-rural status. This rural determination
11 methodology and process recognizes that population alone is
12 not the sole indicator of a rural or non-rural community.
13 This flexibility allows the Federal Board to look beyond
14 population size at additional indicators for rural and non-
15 rural. Indicators which the Federal Subsistence Board
16 evaluates to decide if a community is rural or non-rural in
17 character are contained in the following general
18 categories: Use of fish and wildlife, development and
19 diversity of the economy, community infra-structure,
20 transportation and educational institutions. The Federal
21 Subsistence Board utilizes 13 specific community
22 characteristics in the rural determination process and a
23 complete list of these 13 characteristics can be found in
24 Table 3 on Page 19 of the June 2001 Staff analysis.

25
26 And now turning to the claims associated
27 with the two requests for reconsiderations. As mentioned
28 in the opening remarks, the Safari Club International, et
29 al., and the Cooper Landing Fish and Game Advisory
30 Committee submitted requests to have the Federal
31 Subsistence Board reconsider the May 2000 Board
32 determination that the entire Kenai Peninsula is rural for
33 the purposes of implementing Title VIII of ANILCA. On
34 August 15, 2000, the Board decided that some of the claims
35 might have merit and instructed Staff to prepare an
36 analysis of the issues raised in the request for
37 reconsideration.

38
39 The two requests for reconsideration
40 contained 19 claims. Seven claims were found to merit
41 further consideration and were grouped into four issues.
42 The analysis of claims grouped by issue are:

- 43
44 1. Aggregation;
45
46 2. Population and Evaluation;
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48 3. Flawed Methodology; and finally,
49
50 4 ANILCA intent.

1 I will first summarize the claims
2 referenced as numbers 9 and 13 in the 2000 Staff analysis
3 as they were submitted by the requesters relating to Issue
4 No. 1, aggregation. The requesters state: The information
5 submitted to the Federal Subsistence Board, either through
6 the ISER report or through public testimony did not provide
7 the information necessary to change the non-rural
8 designation of the Kenai Peninsula. Furthermore, the
9 requesters assert the aggregation component of the analysis
10 is imposed by regulation. On May 4, 2000, the date upon
11 which the Federal Subsistence Board redesignated the Kenai
12 Peninsula, these three criteria were still the established
13 method for assessing aggregation. Consequently, under
14 established rural/non-rural designation criteria, the
15 communities of the entire Kenai Peninsula must be
16 aggregated and in this aggregated status, these Kenai
17 communities rise to the population levels that trigger the
18 presumption of non-rural status. Moreover, the requesters
19 continue these regulations require that communities with
20 populations of more than 7,000 shall be presumed non-rural,
21 unless the community or area possesses significant
22 characteristics of a rural nature and that the Federal
23 Subsistence Board ignored this presumption. The
24 regulations also require that communities or areas which
25 are economically, socially and communally integrated are to
26 be considered in the aggregate, the Board made no attempt
27 to aggregate any of the communities on the Kenai Peninsula.

28
29 The Staff analysis of these claims indicate
30 the following: The 1990 rural determinations aggregated
31 three areas on the Kenai Peninsula, Kenai, Homer and
32 Seward. And a map that depicts these three aggregated
33 areas is found on Page 2 of the Staff analysis.

34
35 The record from the May 2000 Board decision
36 is unclear and conflicting as to how the Board evaluated
37 the aggregation step for Kenai communities and, therefore,
38 comes before the Board for further consideration.

39
40 And finally, the Staff analysis conducted
41 in February 2000 and in the June 2001 analysis for this
42 request for reconsideration suggests that the 1990
43 aggregations on the Kenai Peninsula for the Kenai, Homer
44 and Seward areas are valid and reasonable.

45
46 We turn now to the Issue No. 2, population
47 and evaluation. The claims as submitted by the requesters
48 as they relate to Issue No. 2, population and evaluation
49 which are referenced as claims six and 13 are summarized by
50 the following: The requesters state, the Institute of

1 Social and Economic Research Report and consequently the
2 Federal Subsistence Board relied upon 10 year old data
3 despite the availability of more current population
4 statistics. The Federal Subsistence Board relied upon
5 these outdated statistics despite the fact that updated
6 data from the 2000 census were approximately a year away.
7 Since population is a key element in the rural and non-
8 rural process, the failure to acknowledge significant
9 population growth seriously poisons the accuracy of the
10 determination. Furthermore, the requesters assert that the
11 Board failed to follow Federal regulations governing the
12 rural determination process because the Board ignored the
13 regulatory guidelines that presume a community to be non-
14 rural if it's population is more than 7,000, that it made
15 no attempt to aggregate communities as required by
16 regulations and that it used outdated population data and
17 offered no explanation for its actions.

18

19 The Staff analysis of these claims
20 associated with Issue No. 2 is summarized by the following:
21 Regulatory guidelines do require the use of the most recent
22 available population data. The February 2000 Staff
23 analysis used the most recent population data from the
24 State of Alaska, Department of Labor and we have further
25 updated the population data in the June 2001 Staff analysis
26 associated with this request for reconsideration by
27 including population data from the U.S. Census Bureau's
28 2000 census. Thus, the claim that the Board relied on 10
29 year old data in the ISER report does not appear to be
30 supported by the administrative record as the Board had the
31 most recent available population data for consideration.
32 The claim that the Board did not fully justify a rural
33 determination for communities or areas greater than 7,000
34 may be arguable and therefore comes before the Board for
35 further consideration. Finally, based upon the 2000 Census
36 data, the population figures for the Kenai Peninsula
37 aggregated areas are: The Kenai area 30,277, the Homer
38 area 7,825 and the Seward area 3,204.

39

40 We now turn to the third issue regarding
41 flawed methodology. Again, I will provide a summary of the
42 claims int his case referenced as claims number 12 and 17
43 as submitted by the requesters as they relate to Issue No.
44 3, flawed methodology. The requesters assert: The Federal
45 Subsistence Board's determination was based upon a method
46 of analysis that the Board and its inter-Agency Staff
47 Committee have both admitted to be flawed and in need of
48 change. At the May 4, 2000 meeting, the majority of the
49 inter-Agency Staff Committee recommended that a
50 determination be deferred until the 2000 Census data and

1 revised rural determination criteria were available. Thus,
2 the Federal Subsistence Board was aware of the inadequacies
3 of the process at the time it made the Kenai determination,
4 but chose to revise the rural determination process only
5 after the Kenai determination had been made. The Federal
6 Subsistence Board decision to revise the rural
7 determination process in the context of its analysis of the
8 Kenai rural determination shows that the Kenai
9 determination should not have been made. Furthermore, the
10 requesters continue as no factual and meaningful special
11 circumstances for an out of cycle determination are found
12 in the record. Requesters contend that any rural or non-
13 rural determination of the Kenai Peninsula should be made
14 in conjunction with the rest of Alaska and should be made
15 only after the 2000 Census information is available and new
16 analytical tools to determine rural and non-rural are
17 available to the Federal Subsistence Board. And finally,
18 the requesters state that the Board appears to be adopting
19 new criteria by adding the criteria used by other Federal
20 agencies without public notice.

21

22 The Staff analysis of the claims associated
23 with Issue No. 3, flawed methodology, is summarized by the
24 following: The February 2000 analysis carried out a
25 reevaluation using the 1990 process without new criteria or
26 indicators or introduction of weighted values on any of the
27 criteria or indicators presented. It did emphasize the
28 incompleteness of the analytical record and weakness in
29 existing rural determination methodology. But until new
30 methodology is developed, the Board applied a standard of
31 review to the Kenai Peninsula communities that was
32 consistent to the reviews conducted in 1990. Furthermore,
33 the Board adopted the present methodology in 1990 and
34 reaffirmed the use of this methodology for the out of cycle
35 Kenai Peninsula review. Finally, in early 2000, the Board
36 directed Staff to facilitate the development of an improved
37 rural determination methodology. This process is underway
38 using a third-party contracting process. However, the
39 results of this new methodology, if one is developed and
40 adopted by the Board will not be available until late 2002
41 or early 2003.

42

43 The claim that the Board introduced new
44 criteria into the rural determination process without
45 public notice may be arguable and therefore comes before
46 the Board for further consideration.

47

48 And finally, Issue No. 4, ANILCA intent.
49 Again, I will first summarize for the record, the claims
50 referenced as number 7 and 14 as submitted by the

1 requesters relating to Issue No. 4, ANILCA intent. The
2 requesters state: The Board ignored the models established
3 by Congress and thereby ignored Congressional intent in
4 designating rural and non-rural communities. The
5 requesters assert that the Board should have compared the
6 Kenai Peninsula with the communities that Congress
7 designated as rural as well as the designated non-rural
8 communities of Anchorage, Fairbanks, Juneau and Ketchikan.
9 Furthermore, the requesters stated that the Board failed to
10 compare the Kenai Peninsula with the rural characteristics
11 of the communities of Saxman, Sitka and Kodiak which are
12 referenced in its deliberations.

13

14 Staff analysis of the claims associated
15 with Issue No. 4, ANILCA intent, indicates these claims are
16 persuasive as there was not an evaluation in comparison of
17 the Kenai Peninsula communities with the ANILCA intent
18 communities in the February 2000 Staff analysis. We have
19 provided this evaluation and assessment in the June 2001
20 Staff analysis for this request for reconsideration.

21

22 In the ANILCA Legislative record, the
23 communities of Anchorage, Fairbanks, Juneau and Ketchikan
24 were suggested by Congress as examples of non-rural
25 communities. Barrow, Bethel, Dillingham, Kotzebue and Nome
26 were identified as examples of rural communities. In the
27 June 2001 Staff analysis, the population of the Kenai
28 Peninsula communities were compared with these ANILCA-
29 suggested communities for the years 1980, 1990 and year
30 2000. The Kenai Peninsula communities and areas were also
31 evaluated using community characteristic indicators
32 described in relation to the communities identified in the
33 Legislative history of ANILCA along with the six
34 communities contained in the ISER report and the Wasilla
35 area.

36

37 A summary of the conclusions of the Staff
38 analysis follows with these last three slides, whereby,
39 three decision options are presented for Board
40 consideration. As the Board is keenly aware, this analysis
41 was challenging and difficult for Staff. Within the
42 general public and the Federal land managing agencies,
43 there are diverse opinions about whether the Kenai
44 Peninsula should be considered rural for subsistence
45 management purposes. And although the most recent
46 available information and data is used in this Staff
47 analysis, the data and information supporting the rural
48 determination process has some limitations and can be
49 viewed differently by parties with opposing viewpoints, the
50 result of which can lead to opposing conclusions. In this

1 context, Staff provides the following three decision
2 options for Board consideration and the supporting
3 rationale for each of the three options.

4
5 Decision Option No. 1, would be to affirm
6 the May 2000 decision that the entire Kenai Peninsula is
7 rural. Analysis of the claims associated with Issue No. 1,
8 aggregation, suggests that the aggregation for the Kenai
9 Peninsula areas are valid and reasonable.

10
11 Our assessment of the claims associated
12 with Issue No. 2, population and evaluation is that two of
13 the aggregated areas have population levels above 7,000 and
14 are presumed non-rural. The Kenai area has 30,277 people,
15 the Homer area has 7,825. The Seward area with 3,204 falls
16 into the 2,500 to 7,000 category where there is no
17 presumption of rural or non-rural.

18
19 In the evaluation of community
20 characteristics, overall, the three aggregated areas have
21 mixed rural and non-rural characteristics similar to the
22 ANILCA-suggested examples of non-rural communities and the
23 communities identified in the ISER report of Kodiak and
24 Sitka. For example, in the economic indicators, the Kenai
25 and Homer areas are more similar to Kodiak and Sitka, both
26 of which have been determined to be rural. The Seward area
27 also parallels the ANILCA-suggested examples of rural
28 communities.

29
30 In regards to the use of fish and wildlife,
31 the limited data that is available indicates that the Kenai
32 Peninsula communities have harvest levels similar to other
33 road-connected rural communities.

34
35 For the claims associated with Issue No. 3,
36 flawed methodology, it is the Staff conclusion that the
37 Board adopted the present rural determination methodology
38 through a public process in 1990 and has reaffirmed its use
39 for the out of cycle review of the Kenai Peninsula
40 communities.

41
42 And finally, in regards to the claims
43 associated with Issue No. 4, ANILCA, it is the Staff
44 assessment that some community characteristics of the Kenai
45 Peninsula areas as compared to the ANILCA-suggested
46 examples, along with other examples suggested by the
47 requesters and ISER indicate that the three Kenai Peninsula
48 areas are of a predominately rural nature and that the
49 determination of the whole Kenai Peninsula as rural should
50 be affirmed.

1 We now turn to Decision Option No. 2, which
2 would rescind the May 2000 Kenai Peninsula rural
3 determination. Analysis of the claims associated with
4 Issue No. 1, aggregation, suggests that the aggregations
5 for the Kenai Peninsula areas are valid and reasonable.
6 This is the same assessment as for Decision Option No. 1.

7
8 Our assessment of the claims associated
9 with Issue No. 2, population and evaluation is that two of
10 the aggregated areas, again, have population levels above
11 7,000 and are presumed to be non-rural. As mentioned
12 previously the Kenai area has 30,277 people and the Homer
13 area 7,825. The Seward area with 3,204 falls into the
14 2,500 to 7,000 category where there is no presumption of
15 rural or non-rural. Again, this the same assessment for
16 Decision Option No. 1.

17
18 However, supporting rationale for Decision
19 Option No. 2 diverges from Option No. 1 in regards to the
20 assessment of community characteristics. All three of the
21 aggregated areas have relatively well developed and diverse
22 economies with employment and income patterns more similar
23 to non-rural communities.

24
25 For the use of fish and wildlife, the per
26 capita pounds harvested by Kenai is in the lowest 10
27 percentile of more than 150 Alaskan communities where such

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1 areas are of a predominately non-rural in nature. Among
2 the communities evaluated in this Staff analysis, Kenai
3 ranks next to the lowest in per capita pounds harvested of
4 fish and wildlife resources and is less than half of the
5 amounts harvested by the ANILCA-suggested rural
6 communities. For the community infrastructure and
7 transportation indicators, these community characteristics
8 more closely resemble non-rural communities than ANILCA-
9 suggested rural communities.

10
11 In summary, it is the Staff conclusion that
12 supporting rationale associated with Option No. 2 indicate
13 that the three Kenai Peninsula areas are of a predominately
14 non-rural nature and that the May 2000 Kenai rural
15 determination should be rescinded.

16
17 And finally, the third Decision Option No.
18 3, would defer the request for reconsideration decision and
19 delay any implementation of decisions relating to the May
20 2000 rural determinations of the Kenai Peninsula areas
21 until completion of a refined methodology. It is the Staff
22 assessment for this Decision Option, that a more defensible
23 methodology for reviewing statewide rural determinations is
24 being developed through a third-party contracting process
25 and should be available when the complete 2000 socio-
26 economic census data area available.

27
28 Rural determinations are among the most
29 significant decisions made by the Federal Subsistence
30 Board. In the present context, a decision to affirm or
31 rescind the Kenai Peninsula rural determination would be
32 made on the basis of what is viewed by some parties as
33 problematic methodology. The Board will begin conducting
34 the statewide review of rural determinations in late 2002
35 or early 2003 when the 2000 census data and the new
36 methodology area available. With these considerations it
37 would be better to withhold the decision for another year
38 in order to make a determination that more accurately
39 reflects the current Kenai Peninsula demographics.

40
41 Mr. Chair, this concludes my presentation
42 of the Staff analysis and we are available to answer any
43 questions.

44
45 CHAIRMAN DEMIENTIEFF: Thank you, Tim.
46 Ann Wilkinson with the summary of written public comments.

47
48 MS. WILKINSON: Thank you, Mr. Chairman,
49 Board members. We received a total of 10 written comments
50 from the public, eight of which I will summarize for you

1 now. The Alaska Department of Fish and Game and Anna
2 Seidman on behalf of Safari Club International submitted
3 written copies of their comments which they will present
4 later on the agenda.

5
6 The original comments in full are part of
7 the administrative record and copies of them are included
8 in your packets. The Cooper Landing Fish and Game Advisory
9 Committee, one of the requesters of this reconsideration
10 supports Option 3, stating that it would be the same as
11 their requested decision change, otherwise the committee
12 would support Option 2 even though it is more stringent.
13 They feel that adding 42,000 to the 8,000 that already have
14 a rural determination does not protect subsistence and
15 violates Title VIII.

16
17 Mr. John A. Nelson of Soldotna believes the
18 Kenai Peninsula should retain its rural designation. He
19 states that a subsistence priority and rural designation
20 for the Kenai Peninsula are critical in establishing the
21 use of fish as food for area residents.

22
23 Mr. Paul Zobeck of Soldotna states that
24 nothing will create community unrest and hopelessness for
25 the non-subsistence users faster than gillnets in the Kenai
26 River. HE believes that there are better ways of
27 resurrecting cultural tribe in the Kenaitze Tribe.

28
29 Mr. Don Johnson of Soldotna wrote to
30 protest the use of subsistence gillnets and fishwheels in
31 any Alaskan stream and believes the Kenai Peninsula fish
32 cannot survive their use.

33
34 Mr. James Wilson of Soldotna thinks that
35 the rural designation for Kenai Peninsula is ridiculous.
36 Soldotna has more modern conveniences than many rural
37 communities in the Lower 48 states.

38
39 Roxanne and Allen Mathewson of Soldotna
40 believe that you should not allow a practice by many on the
41 basis of its success for a handful. The legitimate
42 concerns of the Kenaitze were appropriately compromised by
43 the educational fishery now in place.

44
45 The Douglas Indian Association Tribal
46 Government supports the Board's May 2000 designation of the
47 Kenai Peninsula as rural and respectfully asks that you
48 deny the request for reconsideration before you. They
49 state that the population of the Kenai Peninsula should not
50 be aggregated because the communities are dispersed and

1 consider themselves to be distinct, and that these
2 communities, for the most part, were established in places
3 that allowed the maximum opportunity for subsistence. They
4 believe the rural determination process was fair, embraced
5 the spirit of Title VIII and met the intent of Congress and
6 that a reversal of the Board's prior decision would
7 compromise the intent of Title VIII.

8

9 The Native American Rights Fund submitted a
10 written comment on behalf of the Kenaitze Indian Tribe in
11 the form of a 13-page letter which offers general comments
12 and comments specific to each RFR claim and included a six
13 page addendum. I have summarized their general comments
14 and those specific to the claims, grouped by issue in the
15 Staff analysis as follows: The Kenaitze Indian Tribe asks
16 the Board to affirm its May 2000 decision. They believe the
17 Board's decision was solidly founded, fair and just. They
18 urge the Board to reject Option 3, noting that the Board
19 has twice rejected efforts to defer this issue. In May
20 1999, the Board voted to reconsider the original Kenai
21 Peninsula determinations and again in May 2000 it rejected
22 the majority Staff's recommendation to defer a decision.
23 Rural determinations are among the most significant
24 decisions made by the Board therefore it is important that
25 the parties be given a final decision. They also state
26 that although the requests for reconsideration were timely
27 they provided no new information and raised no new
28 arguments that the Board failed to consider in the past.
29 Of the 19 claims presented, the Staff analysis finds only
30 seven warranted consideration and these were grouped into
31 four issues. All of these issues were fully discussed and
32 considered by the Board at the May 2000 meeting. While the
33 lifestyle on the Kenai Peninsula is diverse it can
34 generally be characterized as rural. Option 2 relies
35 heavily on Kenai's low ranking in terms of per capita
36 pounds harvested in an ADF&G survey of more than 150

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1 1990 rural determination process used on the Kenai
2 Peninsula using 1998 population data, not 10 year old data.
3 The Department of Labor has now published year 2000
4 estimates, however, the relevant social and economic data
5 will not be released prior to 2002 or 2003. It is clear
6 that the Board was given the relevant population data and
7 that it considered that data in making its decision to
8 designate the Kenai Peninsula communities as rural. Claim
9 No. 9, all of the information regarding the shortcomings in
10 the data for aggregation was before the Board in May 2000,
11 thus this claim should have been rejected as not meeting
12 the threshold for reconsideration. The additional
13 information brought to the Board through public testimony
14 indicates that areas on the Kenai Peninsula possess
15 significant characteristics of a rural nature. Claim No.
16 11, the Safari Club states that the record does not support
17 a non-rural determination, however, the record includes
18 more than the Staff analysis. It also the ISER report and
19 addendum, public testimony and hundreds of pages of written
20 public comment. The administrative record amply supports
21 the Board's decision as plainly indicated by the June 2001
22 Staff analysis. Claim No. 12, that the method of analysis
23 used by the Board in making rural and non-rural
24 determinations may be flawed does not do away with the
25 Board's legal responsibility to provide for a rural
26 priority under the existing Federal regulations. The Board
27 is bound to apply the same criteria to the Kenai Peninsula
28 communities that it applied in the rest of the state.
29 Claims 13 and 14, the Tribe asks that their communities be
30 evaluated under the criteria used by the Board for its
31 initial determinations and that they be judged by those
32 same standards. As was the case with Sitka, Kodiak and
33 Saxman, the Board evaluated whether the Kenai Peninsula
34 communities possess significant characteristics of a rural
35 nature based on an evaluation of the area characteristics.
36 The record fully supports the Board's May 2000 evaluation
37 and decision. Finally, the Tribe states that a rural
38 Federal priority will not cause serious economic harm to
39 the commercial and sportfishing industries or to the
40 tourist industry, the marine waters of Cook Inlet where all
41 commercial fishing and much of the sport and personal use
42 fishing takes place are not under Federal jurisdiction and
43 most of the rivers on the Kenai Peninsula are not within
44 public lands. The current State personal use fisheries on
45 the Kenai Peninsula are open to all Alaskans and these
46 fisheries have not caused economic harm to the sportfishing
47 industry.
48
49 Mr. Chairman, that's the conclusion of the
50 summary.

1 CHAIRMAN DEMIENTIEFF: Thank you, Ann. And
2 I also understand that you have the Southcentral Regional
3 Council recommendation.

4
5 MS. WILKINSON: Thank you, Mr. Chairman.
6 Chairman Lohse of the Southcentral Regional Council is
7 unable to attend today's meeting due to a very recent death
8 of a close friend. He asked me to make the following
9 statement in his place on behalf of the Southcentral
10 Regional Council.

11
12 And I quote: "The Southcentral Regional
13 Advisory Council stands by its previous recommendation to
14 the Federal Subsistence Board that the Kenai Peninsula
15 should be designated rural for the purposes of subsistence
16 management of fish and wildlife as authorized by Title VIII
17 of ANILCA. We feel that by any standards and in any other
18 part of the United States, the Kenai Peninsula would be
19 considered rural."

20
21 CHAIRMAN DEMIENTIEFF: Thank you. I will
22 now call on Peggy Fox for the Staff Committee
23 recommendation.

24
25 MS. FOX: Thank you, Mr. Chair. I'm Peggy
26 Fox, Deputy Assistant Regional Director for subsistence and
27 Chair of the InterAgency Staff Committee.

28
29 The InterAgency Staff Committee first
30 agreed that they would set aside Option 3, deferral, and
31 focus on Options 1 and 2. All agreed that a final decision
32 is needed on an issue that has been before the Board for
33 several years. As to Options 1 and 2, the members voted on
34 which option they preferred. I have summarized Staff
35 Committee recommendations presenting the majority and
36 minority viewpoints and as I present them, I will track
37 with the analysis of the claims by referring to the four
38 issues analyzed by Staff.

39
40 The majority of the Staff Committee members
41 favored rescinding the May 2000 decision that all
42 communities on the Kenai Peninsula are determined rural.
43 On the claims regarding whether or not the Board
44 appropriately followed its process specific to the
45 aggregation step, the majority of the Staff committee is
46 persuaded the claims have merit. The majority believes the
47 aggregations made in 1990 for the Kenai Peninsula were, for
48 the most part, valid and reasonable. The three aggregates,
49 the Kenai area, the Homer area and the Seward area
50 represented communities which were integrated economically,

1 socially and communally. Since 1990, the continued growth
2 and development of these communities has increased their
3 level of integration.

4
5 On the issue of whether population
6 thresholds were appropriately applied ties back to the
7 aggregation discussion. Based on the 2000 census figures
8 on population, the Kenai and Homer areas exceed the 7,000
9 population threshold and are presumed non-rural. The Kenai
10 area alone has more than 30,000 people, equal to the
11 population of Juneau and twice the population of Ketchikan,
12 both non-rural communities. Both the Kenai and Homer areas
13 demonstrate high rates of population growth over the past
14 decade indicating that they are continuing to grow further
15 beyond the threshold of 7,000 identified in the
16 regulations. The Seward area falls in the intermediate
17 population category between 2,500 and 7,000, for which no
18 presumption is made and for which the community
19 characteristics are more decisive.

20
21 With regard to the third issue, the use of
22 flawed methodology. The majority of the Staff Committee
23 noted that the February 2000 analysis identified some
24 weaknesses in the methodology used in 1990 to make rural
25 determinations. Despite these weaknesses, there is no
26 evidence to suggest that a better methodology or more data
27 would result in a rural determination for all communities
28 on the Kenai Peninsula. The three aggregated areas exhibit
29 primarily non-rural characteristics.

30
31 The fourth issue, that the Board did not
32 consider the intent of Congress in crafting ANILCA is
33 compelling. All three areas have relatively well-developed
34 and diverse economies with employment and income patterns
35 more similar to non-rural communities. The three have
36 relatively high rates of per capita income and generally
37 moderate costs of living when compared to the ANILCA-
38 suggested rural communities. Among the communities
39 evaluated in the Staff analysis, Kenai ranks next to the
40 lowest in per capita pounds of fish and wildlife harvested,
41 harvesting less than half of the amounts harvested by
42 ANILCA-suggested rural communities.

43
44 Evaluation of the merits of the claims led
45 the majority of the Staff Committee to conclude that the
46 three aggregated areas exhibit primarily non-rural
47 characteristics and the May 2000 decisions that all
48 communities on the Kenai Peninsula are rural should be
49 rescinded.

50

1 The minority position on the Kenai
2 Peninsula rural status took a different approach from the
3 options presented in the Staff analysis.

4
5 The Staff Committee minority position is to
6 support affirming the Board's designation of the entire
7 Kenai Peninsula rural, however, the minority does not find
8 any of the requests for reconsideration claims to have
9 merit. Based on review of the Staff analysis, claims
10 presented in the request for reconsideration to not appear
11 to meet the reconsideration threshold established in the
12 revised Board policy for RFRs.

13
14 Specifically, the requesters failed to
15 provide information not previously considered by the Board
16 that demonstrates the existing information is incorrect or
17 that demonstrates that the Board's interpretation of
18 information, applicable law or regulations is in error.
19 Although the Board has accepted this request for
20 reconsideration, it is evident, based on the Staff analysis
21 that there is no new information before the Board to
22 warrant reversal of the May 2000 decision.

23
24 The Staff minority support the public
25 process as implemented by the Southcentral Regional
26 Advisory Council which has, on three separate occasions,
27 voted to recommend that the Board reclassify the entire
28 Kenai Peninsula as rural. The primary purpose of the Board
29 is to afford a subsistence priority use over other uses to
30 those people dependent on that subsistence use. The public
31 testimony presented to the Board indicated a clear and
32 continuing subsistence need by the Kenaitze and other rural
33 users on the Kenai Peninsula.

34
35 With regard to the issues of aggregation
36 and flawed methodology, the minority position is that the
37 process is flawed and that aggregation is not a necessary
38 step. In 1990 the decision to aggregate 18 communities
39 into three areas within the Kenai Peninsula was an
40 important element in the Board's initial non-rural
41 determination. In 1998, research conducted by ISER
42 questioned the validity of the 1990 application of the
43 criteria used to aggregate these communities and suggested
44 that aggregation masked many rural characteristics. The
45 minority position questions the validity of aggregation and
46 disagrees with the current Staff analysis recommendation to
47 aggregate Kenai communities. The analysis did not fully
48 address the technical issues and concerns brought forth in
49 the ISER report. In fact, the technical peer review of the
50 February 2000 analysis expressed concerns about the

1 validity of the data for aggregation in 1990 and 1999
2 echoing those identified in the ISER report about the 1990
3 aggregations. The Board recognized that the information
4 used to establish non-rural areas on the Kenai did not
5 conclusively support the Staff majority recommendation and
6 based their May 2000 decision on several factors, not
7 population alone.

8

9

10 On the question of whether population
11 thresholds were appropriately applied, the minority
12 viewpoint is based on the assumption that aggregation is
13 not appropriate. In 1990 and 2000 no single community on
14 the Kenai Peninsula exceeded the 7,000 population threshold
15 to be presumed non-rural. According to Federal
16 regulations populations of 2,500 or less shall be deemed to
17 be rural, populations of 2,500 or above but not more than
18 7,000 will be determined rural or non-rural, populations
19 more than 7,000 shall be presumed non-rural unless such a
20 community or area possesses significant characteristics of
21 a rural nature. Based on Federal regulation and 2000
22 population census information, 11 of the 18 communities
23 within the three aggregation areas are rural. The seven
24 remaining communities fall between the 2,500 and 7,000
25 population range. For example, Kenai is at 6,942, Homer
26 3,946 and Seward at 2,830. The Ninth Circuit Court and the
27 ISER report, both, discuss the total Kenai Peninsula
28 population in relation to the area and suggest that based
29 on population density, regardless of aggregation, the
30 entire Kenai Peninsula is rural, and has a population
31 density similar to other areas of the state considered
32 rural.

32

33

34 It is clearly documented that population
35 figures alone are not the sole determinant of rural or non-
36 rural status. The Board must also consider other factors,
37 such as the fact that the State regulations have
38 systematically restricted subsistence uses and prohibited
39 subsistence altogether on the Kenai Peninsula since
40 statehood. These restrictions must be considered when
41 relying upon fish and game harvest data as a measure of
42 subsistence use on the Kenai Peninsula. When subsistence
43 is not recognized there can be no data showing subsistence
44 use or harvest. The State categories of personal use and
45 sports use are not considered as subsistence use and
46 therefore not counted as subsistence harvest. In addition,
47 as documented in the ISER report, subsistence users are
48 severely restricted by lost opportunity or competition from
49 non-local users. Finally, testimony to the Board
50 emphasized the time-depth and cultural significance of the
subsistence harvest traditions of the Kenaitze and other

1 rural residents on the Kenai Peninsula. In addition, Fish
2 and Game, in their testimony, pointed out that they
3 recognized the subsistence through cultural and educational
4 permits.

5
6 These and other factors led the minority
7 Staff to conclude that, although the lifestyle on the Kenai
8 Peninsula is diverse, it can generally be characterized as
9 rural.

10
11 Mr. Chair, that concludes my report.

12
13 CHAIRMAN DEMIENTIEFF: Thank you very much.
14 Alaska Department of Fish and Game comments, Polly, is that
15 you?

16
17 MS. WHEELER: Thank you, Mr. Chair. I'm
18 Polly Wheeler with the Division of Subsistence, Department
19 of Fish and Game and I'm co-Chair, along with Peggy Fox of
20 the State and Federal MOA team. Dr. Jim Fall is here
21 today, also with the Division of Subsistence, and he's
22 going to provide the State comments.

23
24 DR. FALL: Thank you, Mr. Chairman, for the
25 opportunity to testify before the Board this afternoon and
26 to provide comments on behalf of the Department of Fish and
27 Game, State of Alaska. I would refer to our written
28 submission which is a letter from Commissioner Frank Rue to
29 the Chair of the Federal Board dated June 21st, 2001, that
30 has two attachments. One is an earlier letter that we
31 submitted in August 29th of 2000 raising questions and
32 comments about the Board's decision in May about rural and
33 non-rural characterization of the Kenai Peninsula, and a
34 second attachment contains more detailed comments on the
35 Staff analysis.

36
37 These submissions are based upon numerous
38 prior documents and testimony that the Department has
39 provided you, for example, the testimony that we provided
40 at the May 2000 Board of Fisheries meeting and a set of
41 attachments to those written comments including extensive
42 comments on the original Staff analysis from February 2000,
43 the extensive Joint Board of Fisheries and Game findings
44 regarding subsistence and non-subsistence areas in Alaska
45 and Staff reports that were used to make those findings,
46 which we suggest are very relevant for the process that the
47 Federal Board uses. An earlier attachment was Technical
48 Paper 61, Resource Use and Socio-Economic Systems Case
49 Studies of Fishing and Hunting in Alaskan Communities,
50 which is one of the Division's primary statements about

1 rural and non-rural characteristics in Alaska and is the
2 primary basis of the theory of rural and non-rural
3 communities in Alaska that we have developed over the last
4 20 years. An earlier attachment also that we draw on now
5 was a Department of Labor 1999 report on the increasing
6 diversification and strength of the Kenai Peninsula
7 economy. And in addition, there were earlier letters on
8 earlier phases of this process.

9

10 At this point we recommend the Board adopt
11 Option 2, to rescind the May 2000 decision regarding the
12 rural classification for all of the Kenai Peninsula Borough
13 and await the development of a new methodology based upon
14 their contracted research and the availability of updated
15 data from the 2000 Federal census before making further
16 adjustments to these classifications.

17

18 The rest of my comments, I'm not going to
19 read our letter or anything like that, but I'd like to
20 focus on four points that primarily emphasize what we think
21 is critical here, which is a credible process that is data-
22 based and a solid public record that illustrates how
23 decisions were made.

24

25 Our first point pertains largely to Claim
26 17 as very usefully outlined by your Staff, and that's that
27 the May decision did not follow existing regulations and
28 adhere to a clear process. We note that the decision to
29 classify the entire Kenai Peninsula Borough as rural
30 basically was based on a rejection of the majority Staff
31 Committee recommendation to make no change, which itself
32 was based upon the Staff analysis. That Staff analysis
33 followed very precisely the existing procedures that the
34 Board is obligated by its own regulations and statutes to
35 follow.

36

37 As an aside right now, we did want to make
38 one comment on the minority Staff recommendation before you
39 right now where we were a little puzzled to read that
40 Federal regulations require that communities be reviewed by
41 population and then aggregated, in other words, a view that
42 classification occurs first and then aggregation. This is
43 basically a reverse of the process that has been followed
44 up until now and we would urge the Board to continue to
45 follow the logical sequence of first identifying the
46 communities that you are evaluating through aggregation
47 process and then evaluate them with your rural/non-rural
48 criteria.

49

50 The reason why we think that Claim 17 has

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1 analysis.

2

3 CHAIRMAN DEMIENTIEFF: Jim, can I get you
4 to pause, we just lost Anne Seidman and I'm sure she wants
5 to hear your report.

6

7 (Pause)

8

9 CHAIRMAN DEMIENTIEFF: We'll just stand at
10 ease for a moment.

11

12 (Pause)

13

14 CHAIRMAN DEMIENTIEFF: Okay, please sit
15 down, we've established our communication with Ms. Seidman.
16 And I'll just note for the record, as soon as it become
17 apparent that we lost you, we just had Mr. Fall stop in the
18 midst of his presentation, he'll now conclude.

19

20 DR. FALL: Thank you, Mr. Chairman. That
21 was actually a good place to take a break because I was
22 about to fumble with my papers. So thank you telephone
23 company or whoever did that.

24

25 The last point is I did want to urge the
26 Board to pay special attention to harvest information and
27 information about fish and wildlife uses. The Staff report
28 did include some updated tables with information regarding
29 this. We do think that a lot more could be done to
30 elucidate this -- to inform this process and to come up
31 with really solid decisions using the available information
32 about resource harvest and uses.

33

34 In our letter, we do cite an analysis that
35 we did in Technical Paper 253 that compares various
36 communities on the Kenai Peninsula regarding overall
37 harvest levels per capita and note that there is a
38 statistically significant difference between the
39 indisputedly rural places of Nanwalek and Port Graham and
40 Seldovia in comparison with the city of Kenai and Kenai can
41 certainly stand as a surrogate as a representative of
42 places nearby such as Soldotna and Sterling and Ridgeway.
43 This kind of analysis can be also made more broadly to
44 other communities throughout the state and we did site an
45 analysis we did for the Minerals Management Service
46 comparing communities in non-subsistence areas in Alaska
47 including the Kenai Peninsula with places that are
48 classified outside the non-subsistence area by the Joint
49 Board and again found that there is a very sharp
50 distinction between those communities in terms of harvest

1 levels. Even communities that are rural along the road
2 system, such as in the Copper Basin and in the Upper Tanana
3 area, they have indeed suffered from competition and
4 regulatory restrictions, still exhibit significantly higher
5 levels of harvest than urban places reflecting their
6 culture, their traditions, their economy, their economic
7 needs.

8

9

 A second point that wasn't as well
10 developed, I think, in our letter as it could be, is that,
11 it isn't just harvest levels that the analysis can focus in
12 on and use, but also such key indices of ruralness and
13 subsistence use as the diversity of resource uses that
14 occur in communities. And again, in Technical Paper 253,
15 which by the way we did under contract for the Office of
16 Subsistence Management, we also look at what we call at
17 diet breadth or the average number of resources used by
18 households in different communities in a particular year.
19 And once again, Nanwalek and Port Graham stand-alone,
20 really, in terms of that diversity with over 18 different
21 kinds of resources used on average by household, and that's
22 actually down a little bit from 10 years ago because of the
23 Exxon Valdez Oil Spill. This is a significantly different
24 measure or total than Kenai which is a little under seven
25 different kinds. And this, again, is reflective of a
26 variety of things. It's a reflective of culture, it's a
27 reflective of traditions, it's reflective of the kinds of
28 activities that people are engaged in over the course of a
29 year, that harvest and uses structure, a season around
30 activities. And instead in non-rural places, what we find
31 is focus on a few resources, usually some salmon species,
32 maybe halibut and moose activities that are not unimportant
33 but are usually done in conjunction with breaks from work
34 and is basically fitted into an economic schedule that is
35 more structured by a cash economy and wage employment.

36

37

 On this point, something that I decided I
38 needed to add here, sort of at the last minute, is that we
39 weren't given an opportunity -- or we did see this morning
40 for the first time, the extensive comments prepared by the
41 Native American Rights Foundation and I didn't have a
42 chance to read everything that was in there but I took
43 special interest in their points that were also brought up
44 earlier in the summary related to the usefulness of harvest
45 information. And on the second page of that document, the
46 second full paragraph, there is a good point that's made,
47 that harvest information needs to be evaluated in light of
48 regulatory history and opportunity. Good point. We
49 shouldn't take these number at face value without
50 understanding history and context.

1 However, there is a puzzling statement that
2 I think I do need to clear up because it's connected to our
3 urging you to use this information. And it says in the
4 middle of that statement, as ADF&G has pointed out in their
5 studies, "the subsistence harvest levels of residents on
6 the Kenai Peninsula must be assumed to have been
7 artificially low at times of this study," referring to the
8 study used in Technical Paper 61, "since regulatory changes
9 over the past 30 years contributed to inconsistent harvest
10 patterns." I was puzzled by this quotation because I was a
11 contributor to this report and I asked our data management
12 person, Charles Utomole, to do a text search to see where
13 in that, rather thick, technical paper, that quotation was
14 and it's not an accurate quotation of our position and
15 really does misstate, I'm afraid, our conclusion in that
16 technical paper. It is a little confusing the way the
17 quotation marks appear in the paragraph, the second part,
18 which says, "regulatory changes over the past 30 years
19 contributed to inconsistent harvest patterns," I did find
20 the quote that says "regulatory changes over the past
21 several years have contributed to inconsistent harvest
22 patterns by Ninilchik households." The context here has to
23 do with inconsistent use of gear types. No question, in
24 the early 1980s when we did this study, there was a flux in
25 terms of gear that was allowed for harvest for home use.
26 And what we found in Ninilchik is that when certain non-
27 commercial setnet fisheries were closed, people had to turn
28 to rod and reel, they turned to dipnets, they turned back
29 to setnets, they turned to commercial harvest. So the
30 context here is the source of salmon for home use, not the
31 overall harvest levels.

32
33 The first part of the quote, which might
34 just be a mistake, "that subsistence harvest of residents
35 of the Kenai Peninsula must be assumed to have been
36 artificially low at the time of this study," I asked
37 Charles to do a search of artificially low in this
38 technical paper as well as two others that I thought this
39 quote might have come from and we didn't find it. And I
40 think what might be, is that, that is not intended to be a
41 quotation but basically a conclusion from the individual
42 who prepared this submission about what regulatory
43 restrictions might imply. But we did not conclude in
44 Technical Paper 61 or in Technical Paper 106 that overall
45 levels of harvest estimates for the Kenai Peninsula were
46 misleading.

47
48 Also, I did note in that submission in the
49 same paragraph the statement, "one only need to compare the
50 subsistence use studies conducted for Seldovia and

1 Ninilchik, before those communities were designated as
2 rural for purposes of Title VIII of ANILCA with ones
3 conducted more recently after they were allowed to harvest
4 fish and game for subsistence uses to see the impact
5 regulatory restrictions can have on subsistence users
6 ability to harvest fish and game," again this is citing our
7 studies. I'm a little puzzled and I'd actually appreciate
8 some clarification on the Seldovia portion of that.
9 There's no evidence that regulatory changes related to the
10 rural/non-rural classification for Seldovia have any impact
11 on their harvest levels. We did discover increased harvest
12 levels in Seldovia in the 1990s compared to earlier in the
13 '80s and in our reports to MMS we offered several
14 suggestions, solid suggestions, I think, for why that
15 happened. It was not related to rural and non-rural
16 classification. For Ninilchik, again, in Technical Paper
17 253, we did, indeed, document a notable increase in
18 harvest, however we also looked at how the classification
19 of rural and non-rural for Ninilchik might have been
20 related to that increase and we rejected it as a cause.
21 There was no evidence that the increasing moose harvest in
22 Ninilchik was at all related to harvest on Federal lands,
23 the increases in halibut use there probably related to
24 increased charter -- use of charter boats and businesses
25 there that people can take advantage of, and certainly the
26 personal use dipnet fishery established since the area has
27 been -- or largely established since the area has been
28 classified as non-subsistence contributes to some increases
29 in harvest levels, still significantly lower than Nanwalek
30 and Port Graham despite these increasing opportunities.

31
32 And that's pretty much it. So just to
33 conclude our testimony, we conclude that the administrative
34 record before the Board and the subsequent Staff analysis,
35 including the most recent analysis, support the claims or
36 at least some of the claims of the request for
37 reconsideration that the May 2000 decision to classify the
38 entire Kenai Peninsula as rural was not supported by the
39 process, use of the process and not supported by the
40 available evidence.

41
42 We would urge the Board to adopt Option 2,
43 rescind the action from May 2000 and reconsider the entire
44 Kenai Peninsula, once you have established a new
45 methodology and have access to the full results of the 2000
46 census.

47
48 Thank you very much, Mr. Chairman.

49
50 CHAIRMAN DEMIENTIEFF: Thank you. Before

1 we begin public testimony, I'd just want to note that the
2 Board has spent significant time on this issue. We've had
3 past hearings in the past, we exhaustively went through all
4 the Staff analysis and met as recent as yesterday afternoon
5 and even this morning to get late written public testimony
6 read and analyzed and discussed. So the Board has done
7 diligence as far as working this issue, and I don't know
8 how many Board meetings it's been on the agenda. So I feel
9 very strongly that we're prepared, once we complete public
10 testimony here today, that the Board has prepared itself to
11 make a decision. So we have done diligence.

12

13 Toward that end, as we move into public
14 testimony, I'm going to call on Safari, Cooper Landing Fish
15 and Game Advisory Committee and NARF, and I'm going to
16 allow them five minutes for testimony. Once we are
17 completed with those three then NARF, in this case is
18 representing the Kenaitzes, then when we get to public
19 testimony, I'm going to limit public testimony to three
20 minutes, three minutes each. So with that, I'll call on
21 Ann Seidman.

22

23 MS. SEIDMAN: Yes, thank you, Mr. Chairman.
24 Good afternoon. My name is Anne Seidman and I represent
25 Safari Club International, two of its Alaska chapters and
26 the Kenai Peninsula Outdoors Council who have joined
27 together to file a request for reconsideration of the
28 Federal Subsistence Board's rural determination for the
29 Kenai Peninsula. I wish to thank the Board for permitting
30 me to participate today by telephone. I'm honored to be
31 able to take part in this historic determination.

32

33 Our position is very simple, the Kenai
34 Peninsula is not a rural area. According to Federal
35 regulation, the rural designation process must start with
36 aggregation. The Board ignored this requirement in making
37 its determination in May of 2000. In its recent analysis,
38 the majority of the InterAgency Staff Committee properly
39 aggregated the Kenai Peninsula areas of Kenai, Homer and
40 Seward before considering population and community
41 characteristics. The minority Staff Committee and the
42 Native American Rights Fund have recently suggested that
43 where aggregation is appropriate it is not to be done
44 first. Presumably, the minority Staff Committee and the
45 Fund offer these interpretations of the rural determination
46 regulations simply because the direction to aggregate
47 appears in the regulation after the words, population and
48 community characteristics. Their reasoning is flawed.
49 Aggregation can serve no purpose if it is to be performed
50 only after population is assessed and community

1 characteristics are examined.

2

3

4 The most important rules of statutory
5 interpretation require that each provision of a law be
6 interpreted in a way that gives it purpose and that makes
7 sense in the context of the entire statutes. Aggregation
8 clearly must take place first. Upon aggregating these
9 areas, Federal regulation requires that the Board must use
10 the most recent population figures available to assess
11 these areas. The Board did not comply with this
12 requirement. They considered outdated population figures
13 and refused to wait for the results of the most recent
14 census. Because figures from Census 2000 are now
15 available, the Staff Committee could incorporate this more
16 accurate population data into their recent analysis. These
17 statistics reveal more than simple population totals.
18 First of all, the new figures indicate that now both the
19 Kenai area and the Homer area have aggregated population
20 totals that, in accordance with Federal regulation, place
21 these areas in the category of presumed non-rural
22 communities.

22

23

24 Moreover, the growth of these areas shows
25 an important trend. Since 1990, the Kenai area has grown
26 by 46.8 percent, the Homer area by 23.9 percent and the
27 Seward area by 10.3 percent. This data indicates that each
28 of these aggregated communities continues to move farther
29 in the direction of a non-rural as opposed to a rural
30 classification. Faced with these sorts of numbers, the
31 Federal Subsistence Board was obligated to analyze the
32 community characteristics of the aggregated Seward area to
33 determine whether there was convincing evidence of a rural
34 community. For Kenai and Homer, the Board was permitted to
35 consider whether there was evidence sufficiently
36 significant to overcome the non-rural presumption. The
37 Board did not follow these requirements. They considered
38 data about individual communities and afforded
39 inappropriate weight to anecdotal testimony about the
40 experiences of individuals.

40

41

42 In the recent analysis, the majority of the
43 Staff Committee appropriately aggregated and considered the
44 studies of the community characteristics of these
45 aggregated areas. They concluded that not only were the
46 areas primarily non-rural back in 1990 but that "since that
47 time circumstances such as population growth and economic
48 development have significantly accentuated the non-rural
49 aspects of these areas."

49

50

 In May 2000 the majority of the Board

1 members ignored required criteria and the weight of the
2 evidence. Mr. Caplan, for example, voted for a rural
3 determination although his explanation supported the non-
4 rural designation. He acknowledged the aggregation of the
5 Kenai communities as appropriate. He also distinguished
6 the Kenai from the communities of Saxman, Sitka and Kodiak,
7 recognizing that unlike the Native populations of these
8 redesignated rural communities, the Kenaitzes do not form a
9 distinct enclave within the Kenai Peninsula. The only
10 factual basis that Mr. Caplan cited in support of his rural
11 vote was the ISER report, a report that Mr. Caplan himself
12 acknowledged to be in violation of the rural designation
13 methodology established by Federal regulation.

14

15 Chairman Demientieff concurred stating that
16 his vote was based upon most of the same reasoning as that
17 offered by Mr. Caplan.

18

19 Mr. Cesar and Mr. Cherry offered nothing in
20 the way of factual support for their vote. They indicated
21 that their votes were primarily motivated by their concern
22 for the impatience of the Kenaitze people.

23

24 The Board members who voted for the rural
25 designation did not base their votes on factual evidence or
26 on the criteria and methodology established by Federal law.
27 Had they relied upon the correct data and procedure, they
28 would have had no choice but to find the Kenai non-rural.
29 Consequently, as we have stated in our formal RFR, we now
30 ask the Board to return the Kenai to its proper non-rural
31 status.

32

33 Thank you.

34

35 CHAIRMAN DEMIENTIEFF: Thank you, Ms.
36 Seidman. Bill Stockwell, from Cooper Landing Fish and Game
37 Advisory Committee.

38

39 MR. STOCKWELL: Mr. Chairman, Board
40 members, Staff, members of the public. My name's Bill
41 Stockwell and I'm Chairman of the Cooper Landing Advisory
42 Committee.

43

44 Thank you for accepting our request for
45 reconsideration of the Kenai rural determination. I would
46 like to state clearly that our argument is not with the
47 makers of this rural determination proposal or their
48 supports, the Staff, the agencies, the Regional Council or
49 the members of this Board. In our opinion, all parties to
50 this proceeding have acted honorably and in their best

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1 interest. Our disagreement is strictly with the May 2000
2 decision.

3

4 This decision was made with the best of
5 meaning and intent, but was made with incomplete and out of
6 date data, poorly-defined methodology, biased research and
7 thus lacked merit and created poor public policy. We ask
8 you now to change that decision.

9

10 You have our written comments and testimony
11 at the May 2000 meeting, our request for reconsideration
12 and our written comments on the June 2001 Staff analysis.
13 Consistently we have asked that this out of cycle decision
14 be postponed until the required statewide rural
15 determination is made after the 2000 Census. This review
16 will compare the entire state of Alaska including Cooper
17 Landing and the Kenai Peninsula. This is the only fair and
18 proper procedure.

19

20 The Cooper Landing Advisory Committee has
21 nothing new that we can add to our argument or to the
22 record, you have all the information we can supply. We ask
23 that you carefully consider our past written and oral
24 comments. We agree with the majority Staff position. We
25 ask that you rescind the Kenai rural determination until
26 you have new methodology and can conduct this Kenai
27 Peninsula rural determination along with the required
28 statewide determination.

29

30 Thank you very much for considering our
31 request and I'm available for any questions that anybody
32 has. Thank you.

33

34 CHAIRMAN DEMIENTIEFF: Yes, sir. If we did
35 take Option 3, you realize, of course, then the Kenai would
36 remain rural until we considered it.

37

38 MR. STOCKWELL: I guess I missed that,
39 well, you'd be postponing -- if it remained rural but you
40 would be postponing any decisions on the uses of fish and
41 wildlife on the Kenai until such time as a final decision
42 was made. I believe that's the way it's stated in the
43 Staff report because Ms. Fox stated clearly that the Staff
44 was no longer considering Option 3, then we support Option
45 2 as the proper procedure at this time and we ask you to
46 take up Option 2 and make that your decision.

47

48 CHAIRMAN DEMIENTIEFF: Peggy, is there
49 anything in the Staff Committee report that I missed that
50 says that we would also defer consideration of regulations

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1 because my understanding is that.....

2

3 MR. BOYD: No, it's in the Staff
4 Committee.....

5

6 MR. STOCKWELL: Excuse me, maybe I misread
7 the Staff report, which is quite possible. Any
8 implementation of decisions relating to the May 2000 rural
9 determination areas upon completion of the refined
10 methodology, which I assumed meant delays on any further
11 implementation of deferred proposals that are being -- that
12 are out there of which there is customary and traditional
13 use proposals for, both, wildlife and fish and a couple of
14 others, too, and my assumption was that those were -- that
15 that whole thing would be deferred. If I'm wrong, then I
16 won't -- then I'll take back our support of Option 3 and we
17 will support Option 2.

18

19 CHAIRMAN DEMIENTIEFF: Peggy.

20

21 MS. FOX: I just did a quick scan here, I
22 don't see that in here that the action on the proposals
23 would be deferred. But, in point of fact, it just isn't
24 addressed at all so it would be a subsequent decision that
25 the Board would need to make.

26

27 CHAIRMAN DEMIENTIEFF: Oh, okay. Gary.

28

29 MR. EDWARDS: Mr. Chairman, in looking at
30 Option 3, I think it does clearly say that any
31 implementation of decisions relating to the May 2000 rural
32 definition will not be delayed until such time. So the
33 Option 3 specifically says that, is the way I read it.

34

35 CHAIRMAN DEMIENTIEFF: Yes.

36

37 MR. STOCKWELL: Also in the paragraph on
38 the top of the other page, it says, the review of the
39 statewide determination will begin -- the determination
40 will involve the rural Councils and so on and so.....

41

42 MR. EDWARDS: It's in the heading itself of
43 the option.

44

45 MR. STOCKWELL: Any how, at this time we'll
46 withdraw our support of Option 3 and accept Option 2.

47

48 MS. FOX: I'm sorry, it does say that.

49

50 CHAIRMAN DEMIENTIEFF: Okay, thank you very

1 much. Carol Daniel, attorney for the Kenaitze Tribe, if
2 there's no further questions?

3

4 MR. STOCKWELL: Thank you very much.

5

6 CHAIRMAN DEMIENTIEFF: Thank you.

7

8 MS. DANIEL: Thank you, Mr. Chairman, Board
9 members. My name is Carol Daniel and I'm here to testify
10 on behalf of the Kenaitze Indian Tribe. And in my
11 testimony I wish to strongly urge the Board to adopt Option
12 1, which affirms the Board's May 2000 decision to classify
13 all communities on the Kenai Peninsula as rural for
14 purposes of Title VIII of ANILCA and for the reasons
15 outlined in the minority Staff report or recommendation.

16

17 We've submitted extensive testimony and
18 written comments on this issue over the last couple of
19 years and I would refer the Board back to those comments
20 and not belabor the point here. I would point out that in
21 our most recent comments, we failed to attach as an
22 exhibit, a two page letter from Dr. Jack Cruse of ISER
23 dated August 17, 2000, which specifically responded to the
24 two requests for reconsideration and I have asked that that
25 be passed to the Board members. (Attached)

26

27 We also would like to urge the Board to not
28 defer this decision. The Board has, twice, considered that
29 as an option and refused to defer consideration of the
30 Kenaitze's request to change the classification from non-
31 rural to rural, and I would just say that after the many
32 years of public hearing and participation on the part of
33 the Kenaitze and the Board, itself, that the parties
34 deserve an answer, they deserve a final decision and I
35 think it would be unfair to prolong this process. If the
36 new data and new methodology prove that things need to be
37 changed it can be changed along with all the other
38 communities in the state at the time that the Federal
39 Subsistence Board makes that evaluation.

40

41 One point, I don't have time in five
42 minutes to address everything, but I would like to address
43 specifically the use of fish and wildlife on the Kenai
44 Peninsula. In terms of the use of fish and wildlife, that
45 plays heavily into the reasoning for Option 2 in finding
46 the recommendation that the Kenai Peninsula communities
47 don't meet characteristics of rural communities. And I
48 would just point out and I think it was pointed out in the
49 minority Staff recommendation that the Kenai Peninsula has
50 been the most heavily regulated area probably in the state

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1 in terms of subsistence and even personal use fisheries.
2 In the mid-1970s, the State adopted a management plan for
3 that area that it basically allocated all the fish to sport
4 and commercial fishermen. And to say that the same harvest
5 levels would be indicated in studies in areas where people
6 are not allowed to go out and hunt and fish for subsistence
7 uses, I think is born out in the studies. I would say that
8 in the quote that Dr. Fall pointed out in our comments,
9 he's correct that the quotation mark was off, we've
10 submitted that same comment in previous comments to the
11 Board and basically our point is that the harvest levels,
12 at the time those studies were made, were under-estimated
13 or artificially low because of the regulations that were in
14 place regulating the times, places that subsistence users
15 were allowed to hunt and fish. But I would point out that
16 Jim Fall asked a question about the comparison on Seldovia
17 and Ninilchik, briefly, Dr. Fall testified at the Joint
18 Boards of Fisheries and Game in November of 1992 [sic]
19 concerning the harvest levels of, both, Seldovia and
20 Ninilchik. And I would just point out that the harvest
21 level for Ninilchik, under that 1982 [sic] study which is
22 relied on in some of the previous testimony to show a low
23 harvest level, that study reflected a harvest level for
24 Ninilchik of only 76 pounds and then a subsequent study,
25 the 1993 study reflected a harvest level of 163.4 pounds.
26 And the 1993 figures was after Ninilchik was determined to
27 be rural.

28
29 CHAIRMAN DEMIENTIEFF: Ms. Daniel, your
30 time is up, if you'd quickly summarize.

31
32 MS. DANIEL: We would just urge the Board
33 to read our written submission and to adopt Option 1 in
34 accordance with the analysis and reasoning of the minority
35 Staff position or recommendation.

36
37 Thank you.

38
39 CHAIRMAN DEMIENTIEFF: Thank you. David
40 Donald.

41
42 MR. DONALD: Good afternoon, Mr. Chairman,
43 Board members. Thank you for providing this opportunity.
44 My name is David N. Donald. I live at 47425 Augusta
45 National, which is between Kenai and Soldotna, mail address
46 P.O. Box 1498, Soldotna. I represent the Kenai Peninsula
47 chapter of Safari Club International. We have 137 members
48 approximately.

49
50 I live about 200 yards from a paved road

1 and this paved road leads to all town except those across
2 Kachemak Bay. Thirty years ago we had to drive to
3 Anchorage for our Christmas shopping, now, Kenai has a K-
4 Mart, Soldotna has a Fred Meyer, both towns have many
5 stores, Homer even has a McDonalds. We won't talk about
6 the fast food places in Soldotna because we've got too many
7 of them. It's even possible for a hunter, on his way home,
8 to dial on his cell phone and have a warm pizza waiting for
9 him at home, after a hard day's hunt. The Kenai Peninsula
10 has a good road system all of which is covered by EMS in
11 the event you need them and much of the area has fire
12 protection. We have people who live in Soldotna and work
13 in Kenai, Nikiski and the Slope. People live all over and
14 they work all over because it's easy to get around on the
15 Kenai Peninsula. I see people from Ninilchik, Anchor Point
16 and Homer shopping in Soldotna every week. The Kenai
17 airport has more scheduled flights than any town of its
18 size. I can leave my house and be in Korea in 12 hours, I
19 can be in Europe in 18 hours, and I can be in Seattle in
20 eight hours. I can leave my home in the morning and be
21 having a beer on a beach in Mexico that afternoon. We have
22 an industrial complex that most areas this side would love
23 to have. We have two prisons and are talking about
24 building a third prison. During lunch, today, I read where
25 the Aspen Hotel Group is breaking ground for a 63-room
26 hotel in Soldotna, conference rooms, spa and swimming pool.
27

28 Each year we are growing more, which some
29 people say is bad. The census shows that they were all up
30 in all three areas and I won't bother to repeat that
31 because that's been discussed quite a bit. But our
32 population is up.
33

34 We, on the Kenai have a wonderful life. We
35 live in an urban setting, which is growing all the time.
36 We have an abundance of fish and wildlife. In-state and
37 out of state tourists flock to this area for vacation using
38 our great roads. I do not see how anybody can see we are a
39 rural area, all you have to do is look around. We're not a
40 rural area and we support Option No. 2.
41

42 Thank you very much.
43

44 CHAIRMAN DEMIENTIEFF: Thank you. Mary Ann
45 Mills.
46

47 MS. MILLS: My name is Mary Ann Mills and I
48 reside on the Kenai Peninsula and I am one of many Den'ina,
49 whose homeland is the Kenai Peninsula.
50

1 The Federal Subsistence Board has already
2 made a fair and just ruling with regard to the rural
3 determination and I request this Board to stay to your word
4 and to affirm the May 2000 decision by adopting Option 1.
5 The laws provide subsistence as first priority over any
6 other fishery, however, for numerous years the State of
7 Alaska has blatantly implemented regulations that are
8 inconsistent with State and Federal law. This has affected
9 thousands of people living on the Kenai Peninsula without
10 any consideration or compensation. Article VIII of ANILCA
11 was supposedly to right the wrong of ANCSA with at least
12 regards to subsistence. Congress declared in Title VIII
13 that the opportunity for subsistence uses by Alaskan
14 Natives is essential to Native physical, economic,
15 traditional and cultural existence. Title IX of ANILCA
16 includes the Federal government's trust responsibility to
17 protect the inherent valid and existing rights of Alaska's
18 indigenous people and which a subsistence preference can be
19 accomplished by using the rationale found in Morton v.
20 Mancarrey. Legal issues and Federal protection for
21 subsistence on the proposed National Interest Lands by
22 Dennis Kelso states: Under the Mancarrey reasoning, no
23 Fifth Amendment due process violation would be found.
24 Arguably subsistence preference is directed towards
25 fulfilling the Federal trust responsibility on several
26 interlocking basis. Subsistence as a vehicle for a free
27 cultural choice, subsistence priority would allow Alaskan
28 Natives living near the National Interest Lands to choose
29 the extent that elements of traditional culture will be
30 retained as competition from urban-based cultural
31 lifestyles increases. This would provide a setting in
32 which retention and act of practice of Native heritage
33 would not be penalized or reduced by outside pressures.
34 Special subsistence privileges would thus aim towards
35 maximizing Natives self-determination by assuring continued
36 availability of cultural choice. Termination of
37 subsistence practices on National Interest Lands would
38 certainly force Natives to abandon traditional ways. In
39 the absence of Federal protection, the cultural roots of
40 people to whom the Federal government owes special duty
41 will be eroded, subsistence as a tool for successful
42 transition. If the resources on the National Interest
43 lands are not reserved for those people who have
44 traditionally used the land for subsistence purposes, the
45 potential accommodation between old ways and new is
46 immediately foreclosed. The Federal government has the
47 opportunity to assure that subsistence users may evolve in
48 their own combination of cultural elements creating the
49 climate in which a self-determination.....
50

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1 CHAIRMAN DEMIENTIEFF: Could you please
2 summarize, your time is up?

3
4 MS. MILLS: Okay. As a prerequisite for
5 statehood, Alaska had to accept the disclaimer clause in
6 its Constitution, Article XII, Section XII, in which the
7 state and its people forever disclaim all rights and
8 titles. Subsistence is more than an urban/rural issue.....

9
10 CHAIRMAN DEMIENTIEFF: Maybe you could
11 state your position, your time is up.

12
13 MS. MILLS: Okay. I would just like to
14 state that I hope that you adopt and stand by your word for
15 Option 1 and I'd like to go on record that I have never
16 relinquished any of my rights and I stand firm and I'd like
17 to go on record that basic sacred fundamental human rights
18 are not negotiable.

19
20 Thank you.

21
22 CHAIRMAN DEMIENTIEFF: Thank you. Judging
23 from the pile of requests that we have, nobody is
24 apparently having a problem finding them but I should have
25 announced, that the forms are available at the front desk.
26 If there are those of you that may have time problems, got
27 to catch a flight or something, please try to let us know
28 and we'll try to accommodate you to the best of our
29 ability. Mary Lou Bottorff.

30
31 MS. JULIUSSEN: My name is Bonnie
32 Juliussen, Mary Lou had to leave for another appointment.
33 She asked me to read this for her.

34
35 CHAIRMAN DEMIENTIEFF: Yes.

36
37 MS. JULIUSSEN: My name is Mary Lou
38 Botterff of the Kenaitze Indian Tribe. I am an elder in
39 the tribe. I have fished, hunted, gathered greens, et
40 cetera, on the Kenai Peninsula since 1972, taught my sons,
41 I also able to teach my grandchildren the same uses of the
42 water and the land and food gathering. I am asking you,
43 the Federal Board, to please consider Option 1, affirm the
44 May 2000 decision that the entire Kenai Peninsula is rural.

45
46 CHAIRMAN DEMIENTIEFF: Do you have comments
47 for yourself or is that yours, too?

48
49 MS. JULIUSSEN: Yes, I do. I am in support
50 of Option 1, to keep the rural designation on the Kenai

1 Peninsula. I am also a Kenaitze tribal member. My family
2 has been here for years and we need to keep our customs and
3 traditions for our children and our children to come.

4

5 Thank you.

6

7 CHAIRMAN DEMIENTIEFF: Thank you. Rosalie
8 Tepp.

9

10 MS. TEPP: (In Native) Good afternoon, Mr.
11 Chairman and other Board members. My name is Rosalie Tepp.
12 I am the Chairperson of the Kenaitze Indian Tribe and as
13 such, represent 1,149 Kenaitze tribal members.

14

15 The Safari Club International, the Alaska
16 Chapter of Safari Club International and the Kenai
17 Peninsula Chapter of Safari Club International talk about
18 conservation, wildlife protection of the hunter and
19 educating the public. Members of this organization hunt,
20 fish and otherwise enjoy the wildlife that populate the
21 public lands of the Kenai Peninsula. We, the Kenaitze
22 people, are asking for the same thing. We ask to preserve
23 our way of life, our subsistence lifestyle. It is
24 documented fact that there has been a constant as well as a
25 continuous use and the dependence among the Den'ina people.
26 When we subsist we leave behind enough for the following
27 year and years to come. The act of subsisting is also a
28 form of preserving foods for years to come. We don't take
29 any more needed and waste any foods of any resource. So
30 what these people are asking is nothing new, it's just --
31 excuse me -- is nothing new, it's like asking to preserve
32 our way of life. And I'll quote our former tribal
33 Chairperson, Claire Swan, drying fish, smoking fish,
34 berrypicking persisted over the years without any direct
35 relationship to size of income. Traditional and customary
36 use of the resource continue. I, myself, have never let
37 the size of my income affect my subsistence way of
38 lifestyle. Just because I pay my bills doesn't mean I quit
39 eating fish, seal oil, et cetera.

40

41 The Tribe has never wanted to exclude our
42 other users from subsistence use. The Federal Subsistence
43 Board rural designation will protect the viability of
44 species on the Kenai Peninsula by limiting the pool of
45 users of the resource. The potential excess would be for
46 residents versus non-residents, commercial,
47 sportsfishermen, hunters and commercial guides. I urge the
48 Federal Subsistence Board to uphold the rural designation
49 for the Kenai Peninsula, which is Option No. 1.

50

1 CHAIRMAN DEMIENTIEFF: Thank you.

2

3 MS. TEPP: Thank you.

4

5 CHAIRMAN DEMIENTIEFF: Mr. Paul Swetzof has
6 a time conflict. Again, those of you that find yourselves
7 running out of time just let the front table know and
8 they'll get word to us. I'm going to call on Paul Swetzof
9 at this time.

10

11 MR. SWETZOF: Thank you, Mitch. I sort of
12 snuck out of work to get here so I appreciate the
13 opportunity to speak real fast. I'm not going to bore you
14 with statistics and that. I live in Anchorage and I'm
15 speaking for myself, I'm also a Kenaitze member and I'm
16 also a member of a lot of other things, Sled Dog Racing
17 Association, other things like that.

18

19 I just want to say that I'm in support of
20 Option 1, to affirm your decision. I think that enough
21 promises have been broken over the years and I think that
22 the Kenai Peninsula, I don't know what designation you
23 would call it except for rural. Yeah, if you live in
24 Kwethluk, you could be in the Orient, too, in eight hours,
25 you know, you can take a little plane over and be in
26 Anchorage in a couple of hours and fly over to the Orient.
27 If you live in Nenana or Tanana, you know, what can you do
28 there, Mitch, you can take a boat on up the river and be at
29 the Fairbanks airport and you can be on the East Coast in
30 six or seven hours, you know, I think that that's not a
31 very good argument.

32

33 The Safari Club has an interest and their
34 interests should certainly be considered. Their interest
35 is they don't like subsistence, they don't believe in it.
36 They have their own sportfishing interests and that's fine,
37 that's their right. They're opposed to it on any account
38 and so they're here arguing against a rural preference.
39 They're arguing against a rural preference statewide.

40

41 The people in Cooper Landing, I have a lot
42 of respect for, they're not here to talk about subsistence,
43 they're here to talk about another legitimate subject,
44 which is economic legitimacy. They don't want to lose
45 tourists, they don't want to lose people, they're afraid
46 they might. They got a legitimate interest but I don't
47 think it has anything to do with the subsistence interests
48 that we have.

49

50 If you're somebody that's coming in as a

1 visitor from New York City or something, you're coming here
2 to visit, you come into Anchorage you're in an urban area,
3 right, and then you drive down the road and you get to the
4 Kenai, what's the first thing you say, you say, oh, another
5 big city? No you don't say that. Any place else in the
6 country you would say the Kenai is a rural area, I don't
7 care what part of the Kenai you go to. A lot of the people
8 on the Kenai, the statistics are a little off because as we
9 all know, a lot of the folks that claim residency on the
10 Kenai are only there eight or nine months out of the year.
11 You want to take a look at Homer, take a look at Homer in
12 the summer and take a look at Homer in the winter, there
13 aren't 4,000 people there in the wintertime, they're off in
14 other places. I don't know where they go but they're not
15 there.

16
17 The Kenai Peninsula, I think, by any
18 standard, by anyone's objective standard is a rural area.
19 Maybe one day it will be a city, maybe one day Kenai will
20 really be a city, I don't know, but right now it's not and
21 I urge you strongly to support -- I mean the other thing
22 that I wanted to mention is that, you know, you don't
23 always look at this but maybe it's something to stick in
24 the back of your heads that, you know, a community like the
25 Kenaitze have been surrounded by other people and that's
26 happened in quite a few places, including Unalaska,
27 including Bethel, including Ketchikan, a lot of places
28 statewide, but they are a community even though they're
29 spread out, they're a community within a community and
30 they've got a cultural claim which I think needs to be
31 respected and looked at.

32
33 CHAIRMAN DEMIENTIEFF: Your time is up,
34 please summarize.

35
36 MR. SWETZOF: So in summary, I just want to
37 say in my unprepared remarks is that I urge you to keep the
38 promise and continue in support of Option 1 and I thank you
39 a whole lot for you guys considering our comments.

40
41 Thank you.

42
43 CHAIRMAN DEMIENTIEFF: Thank you. James
44 Showalter.

45
46 MR. SHOWALTER: Good afternoon. My name is
47 James Showalter. Throughout all these testimonies, been
48 running down through numbers of the Kenai Peninsula and the
49 census numbers and aggregation of the communities.

50

1 As to aggregation, I feel that's not right,
2 isn't right and shouldn't be done. Just because a person
3 works in one place and has to drive from 10 to 30 miles
4 away to get to work. Anyway, with the numbers of the
5 cities listed and there's a number of people and families
6 that can say that the Kenai Peninsula is not rural, with
7 these small numbers versus Anchorage, Juneau, Fairbanks and
8 a few other cities, now, there are two groups that want
9 this change from rural back to non-rural, this is a special
10 interest group for sportsfishing and sports hunting. We
11 are not sports hunting or sportsfishermen, we are
12 subsistence fishermen and hunters. And they do this for
13 these big dollars. They advertise the Kenai River, the
14 Kenai Peninsula as rural, and then they get all these
15 people in. And as was indicated earlier, these summer
16 months the whole Kenai Peninsula, the Peninsula almost
17 sinks with people, come fall, they're gone again.

18

19 Anyway, so subsistence, in both State and
20 Federal law, Alaska, the citizens support protecting
21 subsistence under both Federal and State law. So that's
22 about all I have right now.

23

24 I urge you to support Option No. 1 by your
25 previous voting and I thank you.

26

27 CHAIRMAN DEMIENTIEFF: Thank you. Rita
28 Smagge.

29

30 MS. SMAGGE: Good afternoon. Excuse me,
31 I'm nervous. Good afternoon, Mr. Chairman and Board
32 members. My name is Rita Smagge. I'm a Kenaitze tribal
33 member and also the Executive Director for the Kenaitze
34 Indian Tribe.

35

36 On May 4th, 2000 when the Federal
37 Subsistence Board decided in favor of the rural designation
38 for the entire Kenai Peninsula, the tribal members that
39 were present were speechless, we weren't sure that we had
40 heard correctly. When it finally sunk in that we had
41 "won," we were elated and thanked God for his blessing. We
42 also knew that this was not the end of our battle, but only
43 the beginning. Unfortunately the Safari Club International
44 and the Cooper Landing Fish and Game Advisory Committee
45 filed requests for reconsideration and subsequently the
46 Federal Subsistence Board determined there was enough merit
47 to the requests to set the hearing for reconsideration
48 after the 2000 census, and that's why we're here, again,
49 today.

50

1 In my opinion, the request for
2 reconsideration offered no new evidence and should have
3 been denied by the Federal Subsistence Board. Although, I
4 cannot address all of the claims cited, I would like to
5 address the following, Claim 4. The non-rural designation
6 of the Kenai Peninsula did not deprive Native subsistence
7 hunters of their opportunity to practice and to teach their
8 subsistence hunting traditions. My response: I strongly
9 disagree. The Tribe has not been able to maintain its
10 subsistence lifestyle because of the restrictions that have
11 been placed on subsistence starting in 1941 when 1,730,000
12 acres were removed to establish the Kenai National Moose
13 Range and hunting ceased to be a way of life, and in 1956
14 when the subsistence nets were barred in the Kenai River.
15 The educational fishery should not be considered
16 subsistence, it is what it is, educational.

17
18 Claim 6, the ISER report and consequently
19 the Federal Subsistence Board relied upon 10 year old data
20 despite the availability of more current population
21 statistics. The Federal Subsistence Board was more than
22 conciliatory when they agreed to reconsider and set the
23 hearing for after the 2000 census information was released.
24 I have seen some of the 2000 population figures of the
25 Kenai Peninsula Borough and it appears that the 10 year
26 population growth, overall is very minimal and not dramatic
27 as stated. However, there appears to be a significant
28 growth in the Native population in the tribe's service
29 delivery area. Aggregation of communities should not be
30 allowed because it does not accurately reflect the
31 rural/non-rural characteristics of the individual
32 community. Each community has its own boundaries, local
33 governing bodies, councils, schools, libraries and culture,
34 that makes it unique and distinct.

35
36 Although communities may appear to have all
37 the "modern hi-tech conveniences," if you take a closer
38 look.....

39
40 CHAIRMAN DEMIENTIEFF: Would you please
41 summarize, your time is up.

42
43 MS. SMAGGE: Yes. I would just urge the
44 Federal Subsistence Board to uphold the rural designation
45 for the Kenai Peninsula.

46
47 CHAIRMAN DEMIENTIEFF: Thank you very much.

48
49 MS. SMAGGE: Thank you.

50

1 CHAIRMAN DEMIENTIEFF: Justine Polzin.

2

3 MS. POLZIN: Good afternoon, Mr. Chairman
4 and Board members. My name is Justine Polzin and I'm here
5 representing the Soldotna Chamber of Commerce.

6

7 The Greater Soldotna Chamber of Commerce
8 represents 650 businesses and individuals. Approximately 50,000
people

16 under a rural subsistence designation. The reality is that
17 90 percent of us have a school bus that can pick up and
18 deliver our children to school. We're within an hour's
19 drive from a major city, which includes Kenai, Soldotna,
20 Homer and Seward. Less than three hours drive from
21 Anchorage. We can have a pizza delivered to our door. We
22 have access to a variety of shopping in our community and
23 easy access to health and government services. This area
24 is not rural and should not be classified as having a
25 subsistence preference.

26

27 A rural subsistence designation for the
28 Kenai Peninsula will have a major impact on the economic
29 base of the area. Businesses in the area from Homer to
30 Seward and through the central Peninsula, including
31 Soldotna, Kenai and other communities are dependent on
32 access to the resources by locals, in-state residents and
33 out of state visitors. A majority sector of our economy
34 has grown around sport and commercial fishing. Businesses
35 from lodging, fishing guides, commercial fishermen, fish
36 processors, restaurants, retailers, gas and service
37 stations will all be directly impacted. This effect will
38 flow downstream to impact the construction, government and
39 support areas of the economy. Clearly by designating the
40 Kenai Peninsula as a rural subsistence priority area, you
41 will, in deed, create more people reliant on subsistence by
42 necessity because their current livelihood will be
43 diminished.

44

45 The land on the Kenai Peninsula has provided a long
46 and sustainable resource for all to use. Many businesses
47 on the Kenai currently make their living off of the land.
48 A hotel, lodge or B&B puts up guests that have come to
49 share in the bounty and the beauty of the land. Fishing
50 and hunting guides make a living from the land by providing

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1 their clients with equipment and the knowledge to enjoy the
2 sustainable resources of the area. A commercial fishing
3 family harvests the bounties of the water to provide an
4 income for their family. Each of these areas generates
5 income that circulates through the local economy to provide
6 jobs and a quality of life for all residents of the Kenai
7 Peninsula. The sustainable use of our resources has been
8 and is available to all residents of the Kenai Peninsula as
9 well as visitors to our area. We would like to see this
10 continue through the continuance of good management
11 practices with a priority being given to sustainable uses
12 that benefit our people, businesses and communities.

13

14 Today I ask that you do not designate the
15 Kenai Peninsula as rural for the purposes of establishing a
16 rural subsistence priority. As you have heard, subsistence
17 for the Kenai is more than a matter of people being able to
18 gather and live off of the land as individuals, it is a
19 matter of access to the resources by all that will allow
20 our people and communities to continue to survive in the
21 future. Once again, we ask that you do not designate the
22 Kenai Peninsula as rural for the purpose of establishing a
23 subsistence priority of our resources.

24

25 Thank you for your careful consideration of
26 this very important matter that affects all of us.

27

28 CHAIRMAN DEMIENTIEFF: Thank you. Amanda
29 Sonju.

30

31 MS. SONJU: Thank you for listening to my
32 testimony. I am in favor for Option 1.

33

34 I am all for subsistence. I get upset when
35 all I hear is sportsfishing. And we run an educational
36 net, that is not subsistence. I am a tribal advocate for
37 the Kenaitze Indian Tribe and I am a part of running that
38 educational net and working with youth. It is sad to see
39 that we have to live our subsistence life under an
40 educational net. To be able to see the joy in our youths
41 eyes as they pull the fish out of the net, they get to be a
42 part of a process of making smoked salmon and they get to
43 take it home with them.

44

45 I live out on Funny River Road, which is 17
46 miles in, it's a one-way road right out of Soldotna. About
47 10 miles out of that road there is no fire protection. We
48 have to rely on our own resources as a community out there.
49 I have no electricity, no running water, no phone and I am
50 only 16 and a half miles out of Soldotna. I do live a

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1 rural life and I'm for Option 1.

2

3

4 The Den'ina Athabascans out on the Kenai
5 have been there for a thousand years, we have never
6 depleted the fish, the moose, our ducks, we have never
7 depleted it. As stated before, through other testimonies,
8 we kept our resources, enough so we'll have food for the
9 future. So for a thousand years we have practiced our
10 subsistence life, why change it when we our grandkids, my
11 grandkids -- I don't have any kids, but my grandkids, if we
12 fail today, my kids will not be able to see my way of life
13 and I am in a transition between going into the future and
14 living in the past. I've been taught to live a traditional
15 life.

15

16 So please consider Option 1, thank you.

17

18 CHAIRMAN DEMIENTIEFF: Would you go ahead
19 and state your name for the record.

20

21 MS. SONJU: Amanda Sonju, S-O-N-J-U.

22

23 CHAIRMAN DEMIENTIEFF: Thank you.

24

25 MS. SONJU: Thank you.

26

27 CHAIRMAN DEMIENTIEFF: Brett Huber.

28

29 MR. HUBER: Thank you, Mr. Chairman,
30 members of the Board. My name's Brett Huber, I'm the
31 Executive Director of the Kenai River Sportfishing
32 Association.

33

34 Kenai River Sportfishing Association, Inc.,
35 is a non-profit membership organization whose mission is
36 preserving habitat, providing education and promoting
37 responsible sportfishing on the Kenai. Kenai River
38 Sportfishing Association appreciates this opportunity to
39 provide comments to the Federal Subsistence Board members
40 on the designation of the entire Kenai Peninsula as rural.
41 Our association has been on record and remains strongly
42 opposed to a Peninsula-wide rural designation. It is our
43 position that the detrimental impacts that would be created
44 by such a determination would far outweigh any perceived
45 benefits by those advocating for the sweeping
46 reclassification.

47

48 Since our inception KRSA has invested over
49 two million dollars toward habitat restoration, fisheries
50 conservation and public aquatic education for the Kenai

1 River. We've done so because we're aware of the difficulty
2 in achieving the delicate balance required to conserve a
3 healthy resource and we're trying to help. That difficulty
4 is compounded when the resource is fully allocated and is
5 accessed and relied upon by a diverse set of users as is
6 the case on the Kenai. While it may not be perfect, we
7 feel such a balance exists. It's our fear that
8 implementing a rural determination for the entire Peninsula
9 would not only destruct that balance, it has the potential
10 to crush the scale altogether.

11

12 The rural determination would immediately
13 put over 50,000 Peninsula residents in the category of
14 subsistence users and entitle them to priority use. In the
15 case of the Kenai River, even if subsistence use areas are
16 confined to waters in and adjacent to Federal lands,
17 basically from the Killey River up, the number of sockeye
18 salmon, for example, to satisfy this new demand could well
19 exceed a biologically sound harvest level. In worst case,
20 sustainability of the runs could be jeopardized and in any
21 case other users would almost certainly lose a substantial
22 amount of the opportunity they currently rely on. For the
23 less numerous salmon species, king and coho, these same
24 problems would be further amplified.

25

26 It's our position that while no user group
27 is entirely happy with their piece of the pie, current
28 needs are being met. Cook Inlet commercial fisheries
29 continue to be prosecuted, sport anglers wanting to put
30 sockeye on the dinner table enjoy good access and
31 reasonable limits, personal use fishermen enjoy the
32 opportunity to fill their freezers with the dipnet fishery
33 and the Kenaitzes have the opportunity to continue their
34 cultural and traditional use, no doubt, an important
35 component of their heritage through their current
36 educational permit, an educational permit recently expanded
37 by agreement with the Department of Fish and Game. All of
38 these uses currently exist and needs are being met. They
39 exist within a management regime that is admittedly
40 imperfect but has the benefit of substantial scrutiny and
41 the knowledge gained over time.

42

43 We believe that much of what the managers
44 have learned and employed would be lost, or at a minimum,
45 rendered ineffective if the sweeping change proposed were
46 allowed to stand and be implemented.

47

48 It's our position that the State's
49 Constitutional mandate to manage for sustained yield
50 affords better protection to our fishery resources than

1 would the ANILCA benchmark of healthy populations. We
2 believe the future of our fisheries will be better served
3 under the current structure than there would be under an
4 implemented Peninsula-wide rural designation and all of the
5 change that would accompany it.

6

7 While I have not spoken specifically to the
8 economic impacts that would result from a Peninsula-wide
9 rural determination, I believe it's clear that such a
10 dramatic change in an area that's so economically tied to
11 its fisheries would be felt in all sectors. With a
12 subsistence priority tied so closely to economic condition,
13 it seems counterproductive.....

14

15 CHAIRMAN DEMIENTIEFF: Your time is up,
16 would you please summarize?

17

18 MR. HUBER: I guess I should have read even
19 faster, Mr. Chairman. We don't believe we're rural. We
20 believe we've had all the benefits of a non-rural economy
21 and a non-rural opportunity. We believe that implementing
22 this decision would be counter productive and we urge the
23 Board careful consideration and adoption of Decision 2.

24

25 Thank you.

26

27 CHAIRMAN DEMIENTIEFF: Thank you. Connie
28 Wirz.

29

30 MS. WIRZ: Good afternoon. My name is
31 Connie Wirz and I reside at 5908 Teaberry Avenue. Today
32 you will define who we are as a people, and more
33 importantly, who you are as a people.

34

35 I'm going to summarize a writing from Chief
36 Dan George of the Koselesh (ph) Indians, and then add a few
37 comments.

38

39 For I have known you when your forests were
40 mine, when they gave me my meat and my clothing. I have
41 known you in your streams and rivers, where your fish
42 flashed and danced in the sun, where the waters had come,
43 come and eat of my abundance. I have known you in the
44 freedom of your winds and my spirit like the wind once
45 roamed for your good lands. But a long hundred years since
46 the White man came, I have seen my freedom disappear like
47 the salmon going mysteriously out to sea. The White man's
48 strange customs, which I did not understand press down upon
49 me until I can no longer breath. I fought to protect my
50 land and my home and I was called a savage. When I neither

1 understood nor welcomed your way of life I was called lazy.
2 When I tried to rule my people I was stripped of my
3 authority. My nation was ignored in your textbooks. I was
4 ridiculed in your plays and in your motion pictures. And
5 when I drank firewater I got drunk, very, very drunk and I
6 forgot. Oh, God, like the thunderbird of old, I shall rise
7 again out of the sea and I shall grab the instruments of
8 the White man's success, his education, his skills, with
9 his new tools I shall build my race into the proudest
10 segment out of our society. Before I follow the great
11 chiefs who have gone before us, I shall see these things
12 come to pass.

13

14 On May 4th, we, as a people, felt listened
15 to. We felt empowered and honored. It's the first time in
16 my life that I had felt that as an indigenous person. Now,
17 we feel betrayed, we feel the burning betrayal that the
18 people before us have felt. How can you ask us to prove
19 that we're distinct when the very things that make us
20 distinct have been regulated and we can no longer do so.
21 You've put us in a Catch-22. We work hard to try and
22 become successful people, but that doesn't mean we want to
23 lose who we are and who are parents were. I just pray that
24 today you will think about the fact that you're defining
25 us.

26

27 Thank you for your time. Please consider
28 Option 1 prayerfully.

29

30 (Applause)

31

32 CHAIRMAN DEMIENTIEFF: Thank you. Allan
33 Baldwin.

34

35 MR. BALDWIN: Good afternoon Mr. Chairman,
36 and the rest of the Board. I'll try to be very brief.

37

38 During a meeting with Alaska Department of
39 Fish and Game this past winter, I stated that the
40 educational fishery that the Kenaitze Indian Tribe
41 currently uses was never meant to replace subsistence, only
42 to educate our young tribal members until the day we once
43 again can openly practice subsistence. The Fish and Game
44 Staff agreed and the outcome of this meeting was a better
45 relationship between the two, an understanding that
46 subsistence cannot be replaced.

47

48 The notion that 50,000 men, women, children
49 who range from the very young to the very old will flood
50 the wilds, if you uphold your decision, is capricious, at

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1 best. And I would like you to uphold your decision and
2 consider Option 1.

3

4 I also have a letter from Bernadine
5 Atchison.

6

7 CHAIRMAN DEMIENTIEFF: Yes, it's also on
8 here and we'll start a time for the testimony, it's on your
9 card.

10

11 MR. BALDWIN: Thank you. Federal
12 Subsistence Committee, June 28th, 2001, testimony by
13 Bernadine Atchison.

14

15 Thank you for giving me the opportunity to
16 speak on behalf of my family, my mother, children and
17 myself. Subsistence has been a part of my life since I was
18 a child, as it has been for my mother, grandmother, and
19 sisters since time and memorial. It is part of our
20 genetics and it is what sustains throughout our life.
21 Subsistence is a word that covers many things. To me it is
22 existence. It is what we do to nourish our bodies, it is
23 how we work together as a family. Traditionally, when I
24 was a young child, we would go hunting, the whole family.
25 My dad would harvest the moose and we would all help
26 holding a leg or a flashlight as he would prepare it to be
27 brought home. After we got home and let it hang for a
28 couple of days we would begin processing it. My dad would
29 cut it up, us kids would pick the hair off the meat and
30 then my mom would wrap it up. This is how we would bond
31 with each other as a family. We learned responsibility in
32 that we are all important in the family unit. Each and
33 every one of us contributes to the family in providing
34 nourishment that will sustain us throughout the year. We
35 did the same with clam, salmon, ptarmigan, ducks, plant
36 life and others. The list is long, just as in the plant
37 life there are over 86 different plants that we use as
38 food, dye or for medicinal uses.

39

40 We gathered our subsistence food from the
41 Cook Inlet and the Kenai Peninsula. It does not stop
42 there. We trade with the Interior and sometimes we do not
43 get what we need here, they will provide for us with fish
44 or caribou. We would do the same for them. That is what
45 subsistence is about, taking care of one another so we live
46 a healthy life. We have done this for the past 10,000
47 years in Alaska. It is who we are as a distinct group of
48 people. It is a human right, the right to exist.

49

50 Thank you for letting me speak today, I am

1 for protecting our human right to subsist. I urge the
2 Federal Subsistence Board to uphold the rural designation
3 for the Kenai Peninsula.

4

5 Thank you.

6

7 CHAIRMAN DEMIENTIEFF: Thank you. With
8 that, we're going to take a very brief five minute break.
9 We need to get this testimony done so we can get on with
10 our deliberations.

11

12 (Off record)

13

(On record)

14

15 CHAIRMAN DEMIENTIEFF: Okay, if we can find
16 our chairs, please, we need to get going again. Okay, Mr.
17 John Morrison.

18

19 MR. MORRISON: Good afternoon, Mr. Chairman
20 and Board members. My name is John Morrison and I reside
21 here in Anchorage.

22

23 I'm a retired biologist of 49 years
24 experience now in research management and education
25 concerning wildlife resources. The last 23 of these years
26 have been in Alaska. Some of the folks present today will
27 remember me from the years 1993 through 1996 when I served
28 as the Alaska Department of Fish and Game's liaison to the
29 Federal Subsistence program. I'm now retired from full-
30 time work but I still do consulting in my little one-man
31 business, the Alaska Outdoor Information Service. I'm a
32 member of the board of directors of the Alaska Chapter of
33 the Safari Club International in Anchorage. I'd like to
34 point out that we are not against subsistence. The Safari
35 Club International is supporting several projects here in
36 the state as well as over the whole world that are
37 benefiting people that have a subsistence need and desire.
38 We're particularly concerned that where subsistence is
39 valid, either by rural residents or need, that it be done
40 according to the law.

41

42 My past involvement with the Federal
43 Subsistence program gave me unusual experience with the
44 manner in which Federal subsistence determinations such as
45 rural designations are made. I rely on this experience now
46 to state unequivocally that the Federal Subsistence Board
47 has made a serious error in designating the entire Kenai as
48 rural. I have reviewed the evidence that the Board
49 considered and have studied the analysis issued recently by
50 the InterAgency Staff Committee. The majority of that

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1 committee properly recommended that the Board reverse its
2 rural determination. In my opinion, this recommendation is
3 the only one that is supported by the evidence and by
4 adherence to the rural determination methodology required
5 by Federal law. A rural designation is crucial for
6 determining subsistence priorities under ANILCA. No group
7 of individuals can request subsistence priority unless they
8 reside in an area that the Board has designated as rural.
9 For rural decisions to be made fairly and consistently,
10 they must be made through careful consideration of the most
11 reliable evidence and adherence to required criteria and
12 procedure.

13

14 It is important to remember that a rural
15 determination is not easy to undo. Unlike a customary and
16 traditional use determination, a rural determination cannot
17 be changed from year to year. Once an area is declared
18 rural, such a classification will remain in place for no
19 less than five years. For all these reasons the Board
20 members had a duty to all the residents of the Kenai to
21 exercise great care in making this determination. The
22 Board did not fulfill this duty, instead the Board members
23 own statements reveal that they gave less concern to
24 appropriate procedure and to recent and verifiable data
25 than they did to the impatience of the Kenaitze
26 petitioners.

27

28 For example, Mr. Caplan indicated that
29 while he knew that data from the 2000 Census and a revision
30 of the rural determination methodology could clarify the
31 Kenai's non-rural status, he was nonetheless willing to go
32 forward with a determination that could pose a long-term
33 disservice to the residents of the Kenai.

34

35 CHAIRMAN DEMIENTIEFF: John, if you could
36 summarize, please, your three minutes are up.

37

38 MR. MORRISON: We would also submit to the
39 Board, a petition signed by 729 residents of Southcentral
40 Alaska and Fairbanks area asking that the rural designation
41 be changed. (Attached) These petitioners come from all
42 kinds of backgrounds but have in common a desire that
43 subsistence regulations be made in conformance with reality
44 and legal requirements.

45

46 Thank you very much for this opportunity to
47 present this, and I do hope that the Board will adopt
48 Option 2 as described the InterAgency Staff Committee. Who
49 do I give these, too?

50

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1 CHAIRMAN DEMIENTIEFF: Let's see, she'll
2 take it right here.

3
4 MR. MORRISON: Thanks.

5
6 CHAIRMAN DEMIENTIEFF: And it's good to see
7 old friends again.

8
9 MR. MORRISON: Well, I hope I didn't sound
10 too grumpy.

11
12 CHAIRMAN DEMIENTIEFF: Marvin Peters.

13
14 MR. PETERS: I'm Marvin Peters. I'm the
15 Chairman of the Homer Fish and Game Advisory Committee but
16 speaking on my own behalf. We got notice of this meeting
17 too late to schedule a meeting to discuss it.

18
19 I'm a Cook Inlet drift gillnetter and I
20 work full-time, year-round near Homer in a fishing boat-
21 related industry store. I do a lot of business in the
22 various communities in western and northwestern Alaska. We
23 sell a lot of subsistence nets and equipment. I can sell
24 you a net for whitefish to white whale and I'd be happy to
25 do that. But those communities are distinctly different
26 from the Kenai Peninsula by any -- the rest of the country
27 would, no doubt, consider the whole Kenai Peninsula rural
28 compared to Manhattan Island we are, compared to Nunivak
29 Island, we're not. And the differences are very distinct.
30 The five communities that were listed as the communities to
31 compare to as subsistence rural communities have one major
32 difference between us and them and that is the road system.

33
34 Sure, we can all get on a plane if it's
35 scheduled right and we can be anywhere in a few hours. The
36 difference is, I don't have to have it scheduled right, I
37 can jump in my car and drive to Anchorage or even Kenai and
38 be anywhere in a few hours, and it is a big difference.
39 The other difference is that established industries are not
40 established in legitimate Alaska rural communities because
41 there is no transportation.

42
43 In the fishing industry, in particular, I
44 deal with people who would like to buy nets and they have
45 fish and they have populations that they could exploit but
46 they have no markets. The difference between a 15 cent a
47 pound chum in Kenai and a 65 cent chum in Kotzebue is 50

1 There is a tremendous subsistence lifestyle
2 in Kotzebue and I appreciate that and I support it strongly
3 and I have to say I support the Kenaitze, I understand
4 their situation but the way the law is written now there is
5 no way to meet their subsistence requirements without
6 completely changing the law as put forth in ANILCA. I
7 don't see any way you can say that the Kenai Peninsula is
8 rural for the purposes of ANILCA. It's just not.

9

10 That's all I can add to that, I guess,
11 thank you.

12

13 CHAIRMAN DEMIENTIEFF: Thank you very much.
14 Phil Cutler or Cutter, I'm not sure which it is.

15

16 MR. CUTLER: Mr. Chairman, members of the
17 Board, my name is Phil Cutler. I have been involved in
18 resource management, fisheries, in this area for more years
19 than I care to admit to. I am currently the president of
20 the Alaska Sportfishing Association.

21

22 I sat at the Regal in May of 2000 and
23 honestly was dumbfounded by the decision. As a financial
24 analyst I tried to analyze, reanalyze and reanalyze all the
25 information and I was dumbfounded at the outcome of the
26 meeting. Since then I have reanalyzed again, gathered new
27 information, read everything I could and I sympathize with
28 customary and traditional needs. I believe that we have
29 kind of a caesium here and I don't know how we're going to
30 address it but I do think that the rural designation for
31 the Kenai Peninsula, overall, is not in the best interest
32 of all the people of the Kenai Peninsula or all the people
33 of Southcentral Alaska, and I urge you to follow the
34 recommendations of Staff, the recommendations of the Alaska
35 Department of Fish and Game and vote for Option 2.

36

37 Thank you.

38

39 CHAIRMAN DEMIENTIEFF: Thank you. Evelyn
40 Huf.

41

42 MS. HUF: Good afternoon. My name is
43 Evelyn Huf and I reside in Kenai, Alaska. I am the
44 daughter of Amil Dolchok and I'm sure many of you are
45 familiar with his name and his face. I came here today and
46 so did one of my daughters, we, too, are lifelong residents
47 of Kenai. It wasn't until my father died on May 2nd of
48 this year that I realized that what he had been tirelessly
49 fighting for was my and my childrens way of life because
50 I'd never labeled it before. I cannot remember not having

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1 moose, fish, clams, berries as it was and is much a part of
2 my and my family's life.

3

4 I am one who avoids any political arena but
5 I came today to remind you of some of the thoughts my
6 father had. The local year-round resident should not have
7 to take a backseat to the sportfisheries that cater to
8 persons residing outside the state of Alaska for the
9 allocating of fish. The local Kenai resident should be
10 allowed access to the fish before June 1st to ensure
11 processing before the flies blow their eggs. With the
12 limited personal use fisheries, we are allowed to fish on a
13 small crowded portion of beach where not all who desire to
14 fish can obtain a spot and then the time given, always
15 lines up with poor fishing tides, yet, we are expected to
16 sit back, keep quiet, take what we get and watch as more
17 and more is stripped from the resident.

18

19 In my father's March 2001 testimony he
20 said, I am a Kenaitze Indian who has lived on the Kenai
21 Peninsula all of my life, long before it was divided into
22 units and subunits, long before it was a refuge and long
23 before statehood, before territorial days my parents and
24 their parents hunted the Peninsula. For generations my
25 family has hunted game and fished the waters of the
26 Peninsula as a whole, all the areas between Point
27 Possession and the Kasilof river. Our neighbors utilized
28 the land from Kasilof around Tustumena Lake to Kachemak and
29 on around to the Prince William Sound. I've testified
30 before to this committee about the importance of and the
31 uses of the fish resource. I want to once again say how
32 important it is for us to have access to the fish resource
33 starting early in the spring. And I will once again say
34 that our people never wasted or abused our right to use the
35 fish and game. Our use of the fish, game and plant life
36 was a source of our existence. The importance of the
37 resource has been central to who we are as people. We have
38 subsisted on the resource for generations.

39

40 I found in his paperwork, after he died,
41 another letter he was writing to the editor regarding
42 hooligan fishing. This is yet another example of what is
43 being taken away. There are no stellar sea lions on the
44 Kenai River to protect, yet, we are told to give up the way
45 that we have always caught the hooligan and tried to dip a
46 few. I am in agreement with my father that this is
47 ridiculous.

48

49 CHAIRMAN DEMIENTIEFF: Could you please
50 summarize, your time is up?

1 MS. HUF: I would like to say that in Kenai
2 the reason that so many people go there, the tourists, the
3 Safari, the Chambers is because of its wilderness and its
4 rural area. And I would like to ask that you affirm the
5 decision made last May to declare the Kenai Peninsula
6 rural.

7
8 CHAIRMAN DEMIENTIEFF: Thank you very much.
9 Susan Wells.

10
11 MS. WELLS: I'm Susan Wells. Susan Mars-
12 Wells. I'm here today to present a resolution from the
13 Kenai Native Association and also my own testimony if
14 that's okay.

15
16 CHAIRMAN DEMIENTIEFF: Yes.

17
18 MS. WELLS: If I could start with the
19 resolution from the Kenai Native Association, I don't want
20 to read it all. We do represent and I represent here today
21 579 shareholders. All of us are Alaska Natives. And our
22 tribes and villages are facing increasing pressures
23 concerning the preservation and perpetuation of our culture
24 and traditions. Subsistence cannot be separated from our
25 culture and traditions. We are natural stewards of our
26 ancestral lands and its resources. We have respected and
27 depended on these resources as our inherited cultural way
28 of life. And the Kenai Peninsula is a rural area by any
29 reasonable definition of the term as determined by the
30 following factors; among them are, and we'll list seven, I
31 won't go over them, I'll give this resolution to you
32 (Attached)

33
34 Our final Whereas, it is the conviction of
35 the Kenai Natives Association Board of Directors that the
36 preservation and fostering of traditional subsistence
37 lifestyles for its members and all Alaska Natives residing
38 on the Kenai Peninsula is the primary means for preserving
39 and perpetuating our vital culture and traditions and now,
40 therefore, be it resolved that the Kenai Natives
41 Association Board of Directors fully supports and endorses
42 the designation of the entire Kenai Peninsula as rural for
43 the purposes of subsistence. And be it further resolved
44 that the Kenai Natives Association Board of Directors fully
45 supports and endorses Title VIII of ANILCA, which grants
46 rural preference to the residents of the Kenai Peninsula,
47 thereby making them eligible to practice indigenous,
48 customary and traditional subsistence. It's signed by our
49 president, Richard Segura and myself as secretary.
50

1 CHAIRMAN DEMIENTIEFF: Thank you. You had
2 a personal statement you wanted to make?

3

4 MS. WELLS: Yes. As I stated before my
5 name is Susan Elise Mars-Wells. I am a lifelong Peninsula
6 resident and a subsistence fisher, hunter and gatherer. I
7 am also a commercial fisherman, teacher and Alaska Native.

8

9 I'm here today to urge the Board to uphold
10 the just, fair and legal decision of the May 4, 2000 rural
11 determination for the communities of the Kenai Peninsula.
12 I have read the request for reconsideration thoughtfully,
13 they have offered no new information to be considered, but
14 yet we must come before you once again to present our case.

15

16 I am a resource user who is forced to
17 purchase an Alaska sportfishing license before I can go to
18 the beach to get clams, catch fish or hunt moose and game
19 to feed my family. The State has eliminated my subsistence
20 fishing and substituted a personal use fishery that has
21 been limited over and over again. I am not a
22 sportfisherman or a hunter, yet I have no choice if I want
23 to get food for my household. I cross out the word, sport,
24 on this license and I put in subsistence. This is unfair
25 for me.

26

27 The State has severely restricted my access
28 and ability to hunt, fish and gather my subsistence
29 resources. I am limited to seasons, areas and the amount
30 of resource I'm allowed to eat and then I become a
31 statistic to justify the further limitations on commercial
32 and personal use fishermen so the sportfishing industry can
33 have their allocation. The Safari Clubs and the Kenai
34 Peninsula Outdoor Coalition want the allocations to "hunt,
35 fish and otherwise enjoy the wildlife and fish that
36 populate the public lands of the Kenai Peninsula in the
37 future." This is what I am asking for, too, only I want to
38 consume the wildlife, not to recreate with it. The
39 requesters are advocating for sport recreation and economic
40 viability of the commercial guiding industry. I advocate
41 for the residents of the Peninsula for the use of the
42 resource to feed their families. And it needs to be
43 stressed again that my income or the distance I live from a
44 grocery store has nothing to do with a subsistence
45 lifestyle I have known all my life.

46

47 I am submitting additional written
48 testimony but at this time I would like to share with you a
49 subsistence trophy fish. As a teacher I'm allowed to do
50 show and tell. I'm sure you've all seen a trophy fish,

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1 maybe some of you have one on your wall, this is a
2 subsistence trophy fish. I show you this to illustrate my
3 customary and traditional use of the fish I catch and
4 consume. I was taught to put up fish this way by my
5 grandmother and I've taught others to do so as well. I eat
6 this type of trophy. I will eat this trophy and I will
7 share it with our elders that came today. Not any part of
8 this fish was wasted. The part that you do not see here
9 today was cut into seagull bite sized pieces and taken far
10 below the tideline so as not to stink up the beaches. Our
11 sportfishers do not exhibit such courtesy. With.....

12

13 CHAIRMAN DEMIENTIEFF: Ms. Wells, could you
14 please summarize?

15

16 MS. WELLS: I will, sir. Without the rural
17 determination I will be denied subsistence fish and the
18 traditional time to prepare. This is just a glimpse of the
19 ways I prepare fish. The residents of the Kenai Peninsula
20 have the right to a subsistence lifestyle and the May 4,
21 2000 decision.....

22

23 CHAIRMAN DEMIENTIEFF: Your time is up.

24

25 MS. WELLS: Okay.

26

27 CHAIRMAN DEMIENTIEFF: Thank you very much.
28 Wayne Wilson.

29

30 MR. WILSON: Hi, I'm Wayne Wilson, I'm
31 reading for Mary Ann Tweedy, I think I wrote it on there.

32

33 My name is Mary Ann Tweedy, I am a Kenaitze
34 tribal member. I'm here to ask the Board to stay with the
35 rural designation of the Kenai Peninsula. When I was a
36 child I used to fish in the mouth of the Kenai River with
37 my parents. Life was simple and wonderful. Our diets
38 consisted of moose, fish and resources gathered in the
39 season. This lifestyle was taken away by regulations of
40 our natural resources. What I see here today is people
41 that have come into our homelands for various reasons, I
42 believe the majority of these people consist of two groups
43 of people. The first group came here to get away from the
44 fast paced lifestyle and return to a simpler way of life.
45 The second group of persons, whether they will admit it or
46 not are here for their personal monetary gain from our
47 natural resources, thus taking away our subsistence rights.

48

49 I believe the first group lost sight of
50 their original reason for coming here, possibly because the

1 adjustment was too much and they have managed to create
2 their own little Beverly Hills, Alaska-style and all the
3 regulations that go along with it. The second group
4 absolutely does not care about our way of life, our natural
5 resources or our quality of life. Their goal is to make a
6 fast buck any way they can. When we can no longer provide
7 the resource, they will go somewhere else and raise havoc
8 with other cultures. This has happened for centuries with
9 other people all over the world, if we care to consult our
10 history books.

11

12 The Kenai Peninsula has not changed much
13 over the past year. Population increases are minimal.
14 There is only one highway system to come in or out of the
15 Peninsula. The only public transportation system is the
16 Kenai/Soldotna area is the Central Peninsula Rural
17 Transportation System. The Kenai Peninsula Borough and
18 school district receives rural funding, as does their
19 utility companies. We are also eligible for rural, low and
20 economic development grants. In some areas there is still
21 no electric, natural gas, television or phones. We will
22 pay more for gas at pumps on the Peninsula than in
23 Anchorage. There are many medical services that we still
24 must travel to Anchorage to obtain. We also have two
25 airports on the Peninsula that are FAA certified for safety
26 and are legal for commercial airlines, airplanes that carry
27 over 30 passengers, they are at Homer and Kenai. We only
28 have one commercial airlines that flies the Peninsula that
29 carries over 30 passengers.

30

31 I'm asking the Board to maintain their
32 decision to keep the Kenai Peninsula rural.

33

34 Thank you.

35

36 CHAIRMAN DEMIENTIEFF: Thank you. Geneva
37 Marinkovski.

38

39 MS. MARINKOVSKI: Mr. Chairman, members of
40 the Board, my name is Geneva Marinkovski. I was born and
41 raised in the rural community of Selawik, Alaska. My
42 parents taught me to live subsistence way of life in the
43 Inupiat culture. As my father would say, we live in
44 subsistence cycle.

45

46 Early spring we go out to Selawik Lake to
47 hook for sheefish. The men are out hunting for caribou and
48 geese. The ice break up we prepare for spring camping. We
49 fish for white fish and pike. My mom taught me how to
50 scale, cut, hang and store catch for the winter months.

00058

1 Summertime we were out getting greens and rhubarbs. We
2 cook all the rhubarbs and store them for the winter months.
3 Falltime we prepare food and gear so that the men can go
4 out moose hunting and bear hunting while me and my mother
5 and siblings are out berry picking. My mom and dad made
6 sure that we get enough stored for our family and others
7 for the winter months.

8

9 I can go on but this is just some of the
10 examples of subsistence I learned from my parents and I
11 would like to be able to continue.

12

13 In April 1982 I moved to the Kenai
14 Peninsula area. I had to adapt to live and learn
15 subsistence lifestyle. It is very hard because of the
16 hunting and fishing restrictions and regulations we have to
17 abide by. I would like to live -- I would like to continue
18 to live subsistence lifestyle in the Kenai Peninsula. I
19 would like to pass it on -- or excuse me, pass on my
20 subsistence skills to my children so they can continue to
21 live subsistence cycles.

22

23 I, too, am urging the Board to uphold its
24 decision, Option No. 1, because I know for a fact Kenai
25 Peninsula is rural.

26

27 Thank you.

28

29 CHAIRMAN DEMIENTIEFF: Thank you. Eva
30 Lorenzo.

31

32 MS. LORENZO: Yeah, my name is Eva Lorenzo.
33 And I lived in Kenai in the village of the old townsite of
34 Kenai for 71 years of my life. I believe in my Native
35 culture and also my traditional culture. I lived at a time
36 and I grew up at a time when there was many oldtimers, some
37 of them lived to be 90, some of them 100, but to this day I
38 really believe that they strongly believed in their Native
39 culture, their tradition and also they had the faith.

40

41 There was many things the oldtimers have
42 told me that I didn't know that was going to come true.
43 One of my grandpas that was married to my aunt, grandpa, he
44 used to tell me, one of these days there's going to be some
45 big birds flying, now, you know, sometimes I get to
46 thinking about that, I think he meant these big 747s, you
47 know, and I still think about it today. But a lot of
48 people have believed that, they were superstitious, you
49 know, and they would say that and everything. But I really
50 do believe that they seen stuff, you know, that was going

1 to come ahead in our lives.

2

3 But I do want to keep this Native culture
4 and this traditional culture for my grandchildren also. I
5 would like to see them grow up and put up fish and do all
6 the stuff that I did when I grew up. We didn't have
7 everything, just like I told my granddaughter one day, I
8 said we didn't have everything what you have today, I said,
9 we didn't have refrigerators, we didn't have freezers but I
10 said, we stored our stuff the way -- the best that we had
11 to. So we stored stuff in five gallon barrels, salted our
12 moose meat down and everything was saved. There was
13 nothing out of the moose, even the head was made into head
14 cheese, and it is very delicious. So, to me, all my Indian
15 Native food is really traditional and the culture, I'll
16 always remember from all the elders from when I grew up,
17 and everything that we had we didn't waste. We were taught
18 to be not wasteful, we were taught to, you know, understand
19 more about our Native way of life.

20

21 CHAIRMAN DEMIENTIEFF: Could you please
22 summarize, your time is running out -- has run out.

23

24 MS. LORENZO: I would like you to really
25 remember our dear friend who strongly believed in the
26 Native culture and the traditional culture, our dear friend
27 Amil Dolchok. He always spoke his voice out for us. He
28 always spoke about his things that he loved to do, his
29 hunting, his fishing; we will all miss him very much
30 because I think with his and his speaking for our Native
31 rights will always be remembered through him.

32

33 And I want to thank all of you.

34

35 CHAIRMAN DEMIENTIEFF: Thank you. Jennifer
36 Showalter.

37

38 MS. SHOWALTER: Hi, my name's Jennifer
39 Showalter and I'm a Kenaitze tribal member and have lived
40 down on the Kenai Peninsula for the majority of my life.
41 I'd like to make a note that the Board has made a decision
42 in May of 2000 to keep the Kenai Peninsula rural and this
43 was a decision that was long waiting and difficult to make,
44 but I feel that it was the best decision.

45

46 After living on the Kenai Peninsula for the
47 majority of my life I had to leave to go on to continue my
48 education which is what everybody down on the Kenai
49 Peninsula must do if they choose to continue their
50 education which is part of living in a rural area. Growing

1 up we depended on food off the land, jobs were few and most
2 were seasonal. As an adult, I see many people I've grown
3 up with depending on the land as well. Many people must
4 travel outside their community in order to work, others
5 only work during the summer months. There are few jobs
6 available in the Kenai area unless you've been able to get
7 a higher education which has been difficult for a lot of
8 people to do.

9

10 I was also thinking about all the people
11 who have come here today opposing the Kenai Peninsula being
12 rural and I have found it kind of ironic that most of them
13 are sportfisher and sport hunters. I remember when I was
14 growing up there was one sportfishing guide on the river
15 and he now looks back at it and says, if I knew then what I
16 know now I would have never started doing that. There's
17 now, I believe 500 fishing guides on the river that go up
18 and down. It's something that a lot of people don't even
19 like to go to the river now and look at because they're
20 everywhere.

21

22 Again, I'd like to urge the Board to keep
23 their original decision, which was Option No. 1 and keep
24 Kenai as a rural area.

25

26 Thank you.

27

28 CHAIRMAN DEMIENTIEFF: Thank you very much.
29 Joe Daniels.

30

31 MR. DANIELS: Mr. Chairman, members of the
32 Board, my name is Joe Daniels. I represent and am an
33 executive director for the Alaska Sportfish Council. We
34 are a statewide organization with a representation of lodge
35 chartered industry, of associated businesses with the
36 sportfishery and with the recreational fishermen
37 themselves. We have a current membership of over 300
38 individuals and with affiliations we number in excess of
39 700.

40

41 As stated by you, you have volumes of data
42 and information and opinion in front of you. Based on
43 these volumes and scrutiny of the process you are bound by,
44 your Staff has presented a majority recommendation for
45 Option 2, rescinding the Kenai Peninsula rural
46 determination. ASC urges the Board to adopt Option 2 and
47 rescind the rural designation for the Kenai. For support
48 of this position, we refer to and echo the majority
49 position of Staff and the position of the State of Alaska.

50

00061

1 Thank you.

2

3 CHAIRMAN DEMIENTIEFF: Thank you. Robert
4 Fulton. Robert Fulton -- oh, okay.

5

6 MR. FULTON: Thank you, Mr. Chairman and
7 the Board. I am reading this testimony for Robert Fulton,
8 Tribal Elder Kenaitze Indian Tribe member.

9

10 I thought anything for reconsideration had
11 to have some type of new evidence to warrant the type of
12 action but after reading the complaints, I don't see any
13 reference of this. The only thing I see is their fear of
14 possible chance of losing their ability to hunt and fish as
15 before. The facts are the same, now, as before when the
16 Board ruled the Kenai Peninsula was rural. All we can do
17 now is present the same evidence over again and this is
18 only rehashing the past issues. At this time I would ask
19 that the Board uphold the decision you have rightfully
20 made.

21

22 Thank you very much, Robert L. Fulton.

23

24 CHAIRMAN DEMIENTIEFF: Thank you. Elaina
25 Spraker.

26

27 MS. SPRAKER: Good afternoon. My name is
28 Elaina Spraker and, for the record, I am a personal use
29 fisherman and hunter.

30

31 I am a former chair of the Kenai Peninsula
32 Outdoor Coalition, a broadbased group formed by many
33 residents of fishing, hunting trapping and outdoor
34 organizations. Our organization is now inactive. Most of
35 the residents, like myself, no longer attend these meetings
36 because the Federal system has consistently failed our
37 community.

38

39 The vast majority of the Peninsula
40 residents strongly opposed the decision when the seven
41 Peninsula towns were declared rural. Deeming the entire
42 Kenai as rural makes even a greater sham out of true
43 subsistence. I pose the question to the Federal
44 Subsistence Board what modern convenience that is found in
45 Anchorage are not found on the Kenai Peninsula?

46

47 For example: We can fly out of the Kenai
48 airport on the hour. We have modern highways. Using my
49 cell phone, I can have a hot pizza delivered to my house in
50 less than 30 minutes. My mail is delivered to my house. I

1 do not have to wait for a mail plane to arrive weekly,
2 weather permitting. There's an espresso stand virtually on
3 every corner where I can enjoy an Americano, shot of
4 coconut with cream at the top. Residents of the Kenai have
5 modern medical facilities, fire protection and many social
6 services available to them. My town of Soldotna, not only
7 has one high school but two. Like Anchorage, we have super
8 convenient stores, fast food restaurants and many more
9 urban characteristics than rural. Yesterday, construction
10 started for the Aspen Hotel, which will include amenities
11 such as a swimming pool, exercise room, conference room and
12 spa. If the Kenai truly was a subsistence community, more
13 residents would be hunting and fishing in the field for the
14 sustenance than in Safeway or Carrs.

15

16 Residents of the road-connected communities
17 of the Kenai Peninsula were not engaged in a subsistence
18 way of live in 1980 when ANILCA became law, even then,
19 nearly 20 years ago the fish and wildlife resources of the
20 Peninsula were already full allocated to personal use,
21 sport and commercial categories of users. If that was true
22 then, then how is it possible now that these communities
23 have somehow regressed back to a subsistence way of life
24 today. They have not. To the contrary, the Kenai
25 Peninsula is one of the fastest growing areas in Alaska.
26 Between 1980 and 1990 the population of the Kenai Peninsula
27 Borough increased from 25,282 to 40,802. The current
28 population is estimated at approximately 50,000 and
29 growing. Although many people in these communities hunt,
30 fish and enjoy eating fish and game, few, if any of them,
31 depending on these resources to sustain life. When they
32 get up most mornings, they are not forced, by necessity, to
33 go out and catch something to eat. Instead, these people
34 are employed in the oil industry, tourism industry, fishing
35 industry, construction industry, manufacturing industry,
36 retail/trade industry, service industry, local and state
37 and federal government jobs. They hunt and fish for
38 personal use, recreate and commercial uses.

39

40 CHAIRMAN DEMIENTIEFF: Your time has
41 expired, could you please summarize?

42

43 MS. SPRAKER: Congress never intended for
44 the National Wildlife Refuge to be rural. It is the only
45 Refuge established by ANILCA whose purposes do not provide
46 for an opportunity for continued subsistence uses. In
47 conclusion, to reaffirm a rural determination for the Kenai
48 Peninsula is as absurd as finding the Anchorage as a
49 subsistence dependent rural community.

50

1 Thank you.

2

3 CHAIRMAN DEMIENTIEFF: Thank you. That
4 concludes our public testimony. At this time we'll advance
5 the request for reconsideration to the Board for
6 deliberation and decision. And procedurally, I would
7 suggest to the Board that we deal with Option 3, since the
8 petitioner basically withdrew support for Option 3, afraid
9 if we don't have enough votes, that way what I would
10 recommend is that we go with Option 2 and that if that
11 motion fails, then we would be in status quo; we would have
12 affirmed support of Option 1. But since I've heard no
13 support for Option No. 3, I suggest that we just deal with
14 that first. Gary.

15

16 MR. EDWARDS: Mr. Chairman, if that's how
17 you would prefer to proceed, then I would move that the
18 Federal Subsistence Board rescind its May 2000 decision
19 that designated the entire Kenai Peninsula rural for the
20 purpose of implementing the subsistence priority provided
21 in Title VIII of ANILCA.

22

23 The effect of my motion, if adopted, will
24 to be to reinstate the rural and non-rural determinations
25 for Kenai Peninsula communities and areas that were in
26 effect prior to May of 2000.

27

28 CHAIRMAN DEMIENTIEFF: Gary, the only thing
29 was is that I was hoping that we would get rid of Option 3
30 first that way -- because we would still have Option 3 on
31 the table if this fails, and I'm saying since we've heard
32 no support for Option 3, that if we just move to reject
33 Option 3, then your motion would go up or down, we'd do
34 that in one decision.

35

36 MR. EDWARDS: What was that about?

37

38 CHAIRMAN DEMIENTIEFF: Yeah, I didn't hear
39 you with that last motion then. But the Chair would
40 entertain a motion for us to reject Option 3.

41

42 MR. EDWARDS: Mr. Chairman, I would so move
43 that the Board put aside Option 3 and move to Option 2 for
44 consideration.

45

46 CHAIRMAN DEMIENTIEFF: Okay, there's a
47 motion to, I don't know, put aside Option 3; is there a
48 second to that?

49

50 MR. CAPLAN: Second.

00064

1 CHAIRMAN DEMIENTIEFF: Okay, moved and
2 seconded; is there any discussion? Hearing none, all those
3 in favor signify by saying aye.

4
5 IN UNISON: Aye.

6
7 CHAIRMAN DEMIENTIEFF: Those opposed, same
8 sign. Motion carries. Now, Gary, your motion. I think I
9 got my hearing aid in now and I might be able to hear it
10 better.

11
12 MR. EDWARDS: Mr. Chairman, I move that the
13 Federal Subsistence Board rescind its May 2000 decision
14 that designated the entire Kenai Peninsula rural for the
15 purpose of implementing the subsistence priority provided
16 in Title VIII of ANILCA.

17
18 The effect of my motion, if adopted, will
19 to be to reinstate the rural and non-rural determinations
20 for Kenai Peninsula communities and areas that were in
21 effect prior to May of 2000.

22
23 CHAIRMAN DEMIENTIEFF: There is a motion,
24 is there a second?

25
26 MR. CAPLAN: Second.

27
28 CHAIRMAN DEMIENTIEFF: Okay. Again, the
29 effect of this would be that if it is successful, the
30 motion, that would be the action, we would rescind. If the
31 motion is not successful, then we would have kept Option 1,
32 which is affirming the action from last year.

33
34 Okay, discussion.

35
36 MR. CESAR: Mr. Chairman.

37
38 CHAIRMAN DEMIENTIEFF: Niles.

39
40 MR. CESAR: Mr. Chairman, I rise in
41 opposition to the motion. I intend to vote against the
42 motion. Based on review of the Staff analysis, claims
43 presented in the request for reconsideration does not
44 appear to meet the reconsideration threshold established in
45 revised Board policy for reconsiderations.

46
47 Specifically, the requesters failed to
48 provide information not previously considered by the Board
49 that demonstrates the existing information is correct or
50 that demonstrates that the Board's interpretation of

1 information, applicable law or regulations is in error.

2

3 Thank you.

4

5 CHAIRMAN DEMIENTIEFF: Thank you, Mr.

6 Cesar. Anybody.

7

8 MR. CAPLAN: Mr. Chairman.

9

10 CHAIRMAN DEMIENTIEFF: Jim.

11

12 MR. CAPLAN: Yes, sir, thank you, Mr.

13 Chairman. I intend to support the motion to rescind the

14 May 2000 Kenai Peninsula rural determination.

15

16 As many of you recall and has been
17 referenced, I, at that time supported the rural
18 determination for the Kenai. But based upon the June 2001
19 Staff analysis, which I found a considerable improvement
20 over the one from the year 2000 and including the 2000
21 census information that was available to us and in
22 collaboration with our office, the Chief, our National
23 Headquarters in Washington, I find as follows:

24

25 I find that the community aggregations made
26 on the Kenai Peninsula are even more valid and more
27 appropriate now than they were in 1990. In particular, the
28 Kenai area, Homer area and Seward area, as aggregated,
29 represent communities that are integrated economically,
30 socially and communally. Since 1990, the continued growth
31 and development of these communities has increased their
32 level of integration. As aggregated, the Kenai and Homer
33 areas have population levels above the regulatory benchmark
34 of 7,000 and are above the level to which the rural
35 presumption applies. The total population of the Kenai
36 Peninsula is quite high in comparison to the rural areas of
37 Alaska and greatly exceeds the 7,000 person population
38 benchmark. However, by far most of the Peninsula's
39 population resides in the three aggregated areas and for
40 this reason it is more appropriate to consider the
41 aggregated areas separately instead of the entirety of the
42 Peninsula. Accordingly, despite the low density of the
43 Kenai Peninsula as a whole, these three areas have
44 population densities on the high end of the scale with the
45 population density of Anchorage.

46

47 While some other Alaskan communities
48 designated as rural may have higher population numbers, the
49 three Kenai Peninsula areas exhibit overall non-rural
50 characteristics. Economic opportunity, employment, per

1 capita use of fish and wildlife resources, community
2 infrastructure and transportation characteristics of the
3 three areas more closely resemble that of the non-rural
4 communities identified in the Legislative history of ANILCA
5 rather than of the rural community examples.

6
7 In short, the nature of these Kenai
8 Peninsula communities, as aggregated, is predominately and
9 increasingly non-rural in light of population numbers and
10 community characteristics. Therefore, I will support the
11 motion to rescind the Board's May 4th, 2000 rural
12 determinations for the Kenai, Homer and Seward areas of the
13 Kenai Peninsula and to reinstate the non-rural
14 determination for these three areas.

15
16 Mr. Chairman, I'd also like to make a
17 remark that I did at the beginning of the May -- excuse me,
18 while I take a drink here, I've got a bit of a cold. I'd
19 like to repeat the remark that I made at the beginning of
20 our May session. Which was that, frankly, I was surprised
21 that the people of the Kenai Peninsula would bring to a
22 Federal Board something so personal and something so
23 important to them, normally in their normal lives. I
24 believe that that means that the people of the Kenai
25 Peninsula are giving up their power to work neighbor-to-
26 neighbor to resolve these issues. I would ask that, folks,
27 just before we consider our next moves in terms of going to
28 court or whatever we're going to do next with these issues,
29 that you think very, very seriously about what it is you
30 want in the future and that you work together to try and
31 achieve it. I'll pledge to you all the resources of Forest
32 Service and we have mediators, we facilitators, we have
33 skilled attorneys, we have many, many people who can help
34 you in trying to resolve these issues and achieve a future
35 that you can all embrace. Short of that, you'll be back
36 before this Board again, probably in court, and I'm not at
37 all sure that that's what we want, any of us speaking as
38 Alaskans and as Alaskans to Alaskans.

39
40 Thank you, Mr. Chairman.

41
42 MS. GOTTLIEB: Mr. Chairman.

43
44 CHAIRMAN DEMIENTIEFF: Fran, go ahead and
45 then I'll get to you, Judy.

46
47 MR. CHERRY: Thank you, Mr. Chairman. In
48 my second year serving with the Federal Subsistence Board
49 I've come to a much fuller appreciation of the unique
50 challenges facing us. This is a complex and controversial

1 mandate with strong and emotional views held by all sides.
2 In the past year I've learned much more about the
3 population dynamics of fish and wildlife resources and the
4 complexities of managing with divided jurisdictions and the
5 rich culture and historic practices of subsistence users
6 and other stakeholders.

7
8 The Kenai rural determination is certainly
9 one of the most difficult decisions we have faced. It is a
10 crucial example of sharply conflicting interpretations and
11 regulations, data and public testimony. The perspectives
12 of all sides have value and integrity, but we are obliged
13 to choose an outcome that fulfills our mandate to protect
14 resources and provide for the rural subsistence priority.

15
16 A year ago we adopted a determination that
17 the Kenai, Homer and Seward areas of the Kenai Peninsula
18 should also be rural. At that time we were largely focused
19 on shortcomings in data and an analysis based on which the
20 Board made decisions in 1990. Like other Board members I
21 was troubled by the lack of accurate and up to date
22 information on population, economics and fish and wildlife
23 use. I was moved by the intensity of testimony by the
24 Kenaitze representatives. I reached a conclusion that the
25 Board had likely erred in its interpretation of information
26 in 1990 and that a delay until the 2000 census was not
27 reasonable. Since that time, the Safari Club and Cooper
28 Landing Advisory Committee request for reconsideration have
29 raised a number of legitimate questions about the data and
30 analysis on which the Board based the May 2000 decision.
31 The Alaska Department of Fish and Game also submitted
32 comments challenging the Board's procedure and posing
33 technical questions about the accuracy and completeness of
34 the data and interpretation.

35
36 In light of the high level of public
37 concern and the importance of establishing a complete and
38 conclusive record for the Board's decision I supported the
39 reconsideration and the development of a more complete
40 Staff analysis. Despite the additional delay, I believed
41 this investment in more thorough information helps us make
42 a technically sound decision and one that will strengthen
43 public support for the Federal subsistence priority. An
44 additional benefit of the time dedicated to these requests
45 for reconsideration is that we now have accurate and up to
46 date population figures from the 2000 census. Of
47 particular importance, it appears that the information
48 available to the Board in May 2000 substantially
49 underestimated the population of the Kenai area. At that
50 time, we understood the Kenai area to have a population of

1 22,400 whereas the current figure is actually more than
2 30,000. Differences in the figures for Homer and Seward
3 are more modest but the new population data demonstrates a
4 large and growing population for most of the Kenai
5 Peninsula.

6

7 The rate of change demonstrated in the
8 preliminary census data leads me to reconsider my
9 conclusion of May 2000. I am particularly concerned about
10 what would happen if we were to take an action now that
11 would be led to reverse in two years when the census socio-
12 economic data is available for a statewide rural review
13 process. This would not be an outcome that brings
14 stability to subsistence management on the Kenai Peninsula.

15

16

17 As a result, I'm going to vote to rescind
18 the Board decision of May 2000 and to conclude that the
19 Kenai, Homer and Seward areas are non-rural. My reasoning
20 parallels that of the Staff analysis decision Option 2 and
21 the majority Staff Committee recommendation for this
22 option. The aggregation of closely tied communities into
23 three areas is appropriate and the three areas have been
24 properly placed into population-sized categories. In a
25 final step, community characteristics for the areas are
26 closely examined. In my view the economic patterns and the
27 fish and wildlife use patterns among the three areas are
28 predominately non-rural in character.

29

30 In closing, I have one additional concern
31 to raise. The Kenaitze people have invested a great deal
32 of time and energy in testifying to the Board regarding
33 their traditions of resource use. They have a perfectly
34 legitimate desire to see those traditions protected. I ask
35 the Board to join me in a letter urging the Alaska
36 Department of Fish and Game to continue and strengthen a
37 program of the educational fisheries and cultural harvest
38 opportunities to provide for the Kenaitze people. The
39 legitimate needs of the Kenaitze can be better accommodated
40 through focused efforts of this sort and the State has a
41 well-established program to provide special opportunities
42 of this sort. In my judgment, the purposes of the Federal
43 subsistence program and the stability of the resource
44 management for all users on the Kenai Peninsula are better
45 served by the programs of education and cultural harvest
46 for the Kenai Peninsula residents for whom this is
47 appropriate.

48

49

 Thank you, Mr. Chair.

50

1 CHAIRMAN DEMIENTIEFF: Thank you. Judy.

2

3 MS. GOTTLIEB: Thank you, Mr. Chairman.

4 I'd like to thank everyone who is here with us. I
5 appreciate your efforts and your interests. I'd also like
6 to recognize the Kenaitze tribal members and to acknowledge
7 the value of their history and culture, including
8 subsistence activities. To keep traditions alive for
9 future generations and ensure that rural residents have a
10 continuing subsistence opportunity takes careful
11 forethought. This is the basic intent of ANILCA, Title
12 VIII and the mission of this Board.

13

14 The continuation of the opportunity is
15 threatened by the increasing population of Alaska and the
16 every increasing accessibility to remote areas. This is
17 why I feel the Kenai Peninsula must be declared non-rural.
18 I, along with the other Board members, have thought about
19 this issue quite a lot. I've discussed it at length with
20 many people, both inside and outside of this program. I've
21 read and considered the most recent analysis as well as our
22 past record, documents, testimony and transcripts. The
23 decision to be made is important. It matters to real
24 people. I am very aware of this fact. This is neither an
25 easy decision, nor one without controversy. I believe it
26 has far-reaching consequences. The decision we made,
27 defining who participates in Title VIII, subsistence
28 priority, is of fundamental importance.

29

30 In regard to the Staff analysis, I concur
31 with the Staff's assessment of the merits of all the listed
32 claims, those accepted and those rejected.

33

34 I just wanted to speak briefly to those
35 points. For aggregation, the 1992 record of decision
36 states: Rural determinations would be made based on
37 aggregated population and community characteristics and
38 this is how we have done the process. The communities on
39 the Kenai Peninsula were properly aggregated into the three
40 areas, Kenai, Homer and Seward. And finally, the
41 aggregations of communities which are required are our
42 regulations, thus the three aggregated areas are an
43 appropriate basis for this analysis and this decision.

44

45 In terms of populations, the aggregated
46 population for the Kenai area, as we've heard, is over
47 30,000, this is far above the presumed non-rural threshold
48 of 7,000 in our regulations. Sixteen of the 18 communities
49 in the three aggregated areas have increased in population
50 during the past 10 years and many substantially. There's

1 nothing in the February 2000 analysis nor in the May 4th,
2 2001 RFR analysis that successfully argues for a rural
3 finding for any of the three aggregated areas. On Page 19
4 of the report, it lists the community characteristic
5 indicators, which this Board has used to distinguish
6 differences between rural and non-rural communities. One
7 indicator has a specific threshold, the per capita harvest
8 levels, which states that a harvest of less than 100 pounds
9 per year indicates non-rural status. In Appendix G, we see
10 that the Kenai area falls well below this threshold with 37
11 pounds per capita. This can also be expressed by saying
12 that the Kenai area falls in the lowest 10th percentile of
13 more than 150 communities. This same table shows that the
14 Kenai area is also low in the number of resources harvested
15 coming in at 5.1 compared to Sitka with 31. Although the
16 three aggregated areas may exhibit some mixed
17 characteristics, they were non-rural in 1990 and this Board
18 affirmed that decision in 1991.

19

20 The flawed methodology concern, this
21 document before us today says it best, the February 2000
22 analysis identified some weaknesses in the methodology used
23 in 1990 to make rural determinations. Despite these
24 weaknesses, there is no evidence to suggest that a better
25 methodology or more data would result in a rural
26 determination for the Kenai Peninsula.

27

28 ANILCA intent, I've reviewed the Senate
29 report, 96-413, Title VIII and this Board's regulations. I
30 believe we have appropriately followed Congressional
31 intent, the statute and our own regulations if we support a
32 non-rural finding. If, however, we found for a rural
33 determination, I believe we are at risk of misinterpreting
34 the intent of Congress. ANILCA, Section .801(2) says: The
35 situation in Alaska is unique, in that, in most cases no
36 practical alternative means are available to replace the
37 food supplies and other items gathered from fish and
38 wildlife which supply rural residents dependent on
39 subsistence uses. Clearly, the communities within the
40 three aggregated areas have many practical alternatives to
41 food supplies and other services not unlike Anchorage and
42 Fairbanks.

43

44 The unfortunate reality is that the
45 Kenaitze are disbursed throughout the Peninsula and do not
46 represent identifiable bounded community or geographic
47 enclaves that can be pinpointed on a map of the Peninsula.
48 And I agree with the State's comment that although the
49 information provided by the Kenaitze is relevant and
50 important, the Kenaitze represent a small minority whose

1 resource use patterns and history cannot be extrapolated to
2 the entire Peninsula.

3

4 Thank you, Mr. Chairman.

5

6 CHAIRMAN DEMIENTIEFF: Thank you. As for
7 myself, I have reviewed the OSM Staff analysis of the
8 request for reconsideration of the Board's May 2000 Kenai
9 Peninsula rural determination, written comments and
10 listened carefully to the public testimony. Based on the
11 information presented I am not persuaded that the Board's
12 May 2000 decision was incorrect. I am going to vote to
13 affirm or to vote against the motion on the floor based on
14 the rationale and justifications set forth in Option 1 of
15 the Staff analysis.

16

17 The Staff analysis of the two requests for
18 reconsideration fully supports the Board's previous
19 decision. No new evidence has been presented that was not
20 already considered by the Board in past deliberations. The
21 Staff analysis found only seven claims that needed to be
22 addressed. Those claims were grouped into four issues;
23 aggregation, population, flawed methodology and ANILCA
24 intent. In the analysis of the four issues it is plain
25 that all of these issues were thoroughly considered by the
26 Board in making the May 2000 decision to find the
27 communities on the Kenai Peninsula rural.

28

29 Further, just to the doom and gloom sayers,
30 I remind the Board that, you know, we heard it all when we
31 did the C&T determinations and found part of the Peninsula
32 rural a few years back. It's going to be the end of the
33 world and all that, and nothing changed on the Peninsula on
34 the ground. Fourteen months ago, a week shy of 14 months
35 ago, we voted to make the Peninsula rural; nothing changed
36 on the ground on the Peninsula, nothing changed. Just the
37 doom and gloom sayers running around saying it's the end of
38 the world. I just remind you that we can make these tough
39 decisions and we can stand by them, but in order to do
40 that, you know, we've got to make sure that we don't listen
41 to those people who would say it's the end of the world
42 because it just simply is not. Things would have worked
43 out. It's apparent, you know, from the discussions that
44 we're now going to back down on our decision from last
45 year. Things would have worked out, it wouldn't have
46 changed things on the Peninsula very much if at all. We
47 would have been able to manage our way through it. But
48 it's apparent we're just going to duck the job now and back
49 down on our decision and I was looking forward to just the
50 challenge of providing for everybody's needs.

1 So with that maybe we'll go to a roll call
2 vote.

3
4 MR. EDWARDS: Mr. Chairman.

5
6 CHAIRMAN DEMIENTIEFF: Gary.

7
8 MR. EDWARDS: If I may, I would like to
9 give a little bit of rationale for why I made the motion
10 that I made.

11
12 CHAIRMAN DEMIENTIEFF: Go ahead.

13
14 MR. EDWARDS: Okay. Like the other Board
15 members, I've certainly tried to wrestle with what is
16 obviously a very tough decision. I tried to carefully
17 review the Staff analysis and all their supporting material
18 and I certainly want to thank them for a yeoman's job in
19 trying to put this together. And I also appreciate the
20 public testimony, both that we heard today and in the past.
21 I think it was helpful to try to sort through both issues.
22 And I guess I particularly want to, although they're not
23 represented here, our Regional Advisory Council, who showed
24 an awful lot of patience on this and want to thank them for
25 their continued involvement.

26
27 But as I reviewed the Staff analysis, you
28 know, I found several of the claims presented by the
29 requesters for reconsideration to have merit. You know, I
30 concur with the claim that the Board deviated from its
31 normal process specified in its own regulations for making
32 rural determinations. And after the Board verified the
33 reasonableness of the aggregation of the Kenai, Homer and
34 Seward areas then the Board did not then acknowledge the
35 presumption of non-rural status based upon their population
36 being in excess of 7,000 threshold and then reviewing the
37 community characteristics to determine that they possess
38 significant rural characteristics that would overcome the
39 non-rural presumption. Given the Kenai areas large
40 population that is similar to Juneau and twice the size of
41 Ketchikan which are designated as non-rural, the non-rural
42 presumption is a very high bar for us to try to get over.

43
44 I also think that the requesters correctly
45 identified a need to compare the community characteristics
46 of the Kenai Peninsula communities and areas with those of
47 the communities listed by Congress as examples of rural and
48 non-rural communities in the Legislative history of Title
49 VIII. Such comparisons were not built into the population
50 threshold established by the Board for rural determinations

1 in 1990. Therefore, the comparisons provided in the Staff
2 analysis are a useful addition to information available to
3 the Board and provide an improved basis for a well
4 considered decision. The Congressional list examples of
5 rural and non-rural communities are perhaps the best
6 available indication of Congressional intent on the meaning
7 of rural for providing a subsistence priority. These
8 examples were used by the Board in 1990 to establish the
9 presumption population threshold used as the principal but
10 not the sole basis for determining non-rural communities in
11 areas. The Board's regulations reflects its understanding
12 that communities in areas with populations greater than
13 7,000 would rarely be determined to be rural. The non-
14 rural presumption would logically only be stronger with
15 increasing large populations. In 1990, the Board
16 determined the Kenai, Homer and Seward areas on the Kenai
17 Peninsula were non-rural based upon their population size
18 and community characteristics. At the same time the Board
19 determined that Sitka and Kodiak, both communities
20 initially presumed non-rural were rural on the basis of
21 their community characteristics. The Board reevaluated its
22 non-rural determination for the Kenai Peninsula in 1999 in
23 a response for reconsideration and on that reconsideration
24 the Board reaffirmed its early decision determining that
25 the procedures used was appropriate and the non-rural
26 designation was correct. The fact that the Board
27 reaffirmed its Kenai Peninsula determination following
28 careful consideration of the testimony arguments and with
29 its previous decision to designate Sitka and Kodiak as
30 rural communities fresh in mind demonstrates the
31 unequivocal nature of the Board's determination at that
32 time. Since the 1991 determination in the three areas on
33 the Peninsula, particularly the Kenai area has had
34 significant increases in population, continuing community
35 development and substantial economic growth and
36 diversification. This population size and urbanization
37 makes the case for non-rural determination more compelling
38 than ever.

39

40 There is no question, as other Board
41 members say, that the Kenaitze Indian Tribes have had a
42 long history of occupation and use of fish and wildlife on
43 the Kenai Peninsula, however, the use of fish and wildlife
44 by the Kenaitze, as important as it may be to them, must be
45 considered in the context of the entire communities of
46 which they are a part and in combination with other
47 community characteristics when the Board determines whether
48 those communities are rural. A community must be rural in
49 character, considered as a whole with respect to several
50 factors if it is determined to be rural.

1 I believe designated the non-rural
2 community or area as rural in order to establish
3 subsistence eligibility for a small minority of the
4 population would not be in the best long-term interest of
5 all those affected by the designation or the Federal
6 subsistence program as a whole. Engulfment by urbanization
7 has been an unfortunate development for the Kenaitze Tribe
8 in the heavily populated areas of the Kenai Peninsula and
9 in fact, for Natives in some of the areas of Alaska, Native
10 groups in non-rural areas find it difficult to continue
11 customary and traditional practices within the framework of
12 non-subsistence regulations. However, this is a
13 consequence that Congress clearly understood when it
14 mandated that only rural Alaskans would be accorded a
15 subsistence preference when it anticipated that communities
16 could change from rural to non-rural through growth and
17 development. Congress recognized that residents of non-
18 rural communities harvest renewable resources from the
19 public lands for personal or family consumptions but made
20 clear that subsistence use is done only by residents of
21 rural Alaska.

22

23 Based upon that, Mr. Chairman, I plan to
24 support the motion.

25

26 CHAIRMAN DEMIENTIEFF: Thank you. Can we
27 take a roll call vote, Tom, please?

28

29 MR. BOYD: Yes, Mr. Chair. Mr. Cesar.

30

31 MR. CESAR: No.

32

33 MR. BOYD: Ms. Gottlieb.

34

35 MS. GOTTLIEB: Yes.

36

37 MR. BOYD: Mr. Cherry.

38

39 MR. CHERRY: Yes.

40

41 MR. BOYD: Mr. Edwards.

42

43 MR. EDWARDS: Yes.

44

45 MR. BOYD: Mr. Caplan.

46

47 MR. CAPLAN: Yes.

48

49 MR. BOYD: Mr. Chair.

50

1 CHAIRMAN DEMIENTIEFF: No.

2

3 MR. BOYD: Mr. Chair, I have four votes
4 approving the motion and two votes opposing the motion.

5

6 CHAIRMAN DEMIENTIEFF: Okay, with that, it
7 concludes our business. I, too, want to add my thanks to
8 everybody who has put in all the hard work. I urge you to
9 work together down there on the Peninsula to make it a
10 better place for all of you. And I want to thank,
11 especially the Egan Convention Center Staff for getting the
12 furnace working, finally.

13

14 MR. CESAR: Mr. Chairman.

15

16 CHAIRMAN DEMIENTIEFF: Yes.

17

18 MR. CESAR: Just one point. I would like
19 the minority Staff report written into the record if at all
20 possible. (SEE PAGE 78)

21

22 CHAIRMAN DEMIENTIEFF: Yes. I, too, have a
23 written personal statement. I didn't give the whole
24 statement but I'm going to enter the whole thing into the
25 record. I could see the handwriting on the wall and I
26 didn't want to go ahead with that. So, yes, I will submit
27 mine later on here. (SEE PAGE 75)

28

29 Yeah, that being it, let's go find
30 somewhere cooler to hang out and we shall be adjourned.

31

32 STATEMENT OF MITCH DEMIENTIEFF: I have
33 reviewed the Office of Subsistence Management Staff
34 analysis of the request for reconsideration of the Board's
35 May 2000 Kenai Peninsula rural determination, the written
36 comments and listened carefully to the public testimony.
37 Based on the information presented, I am not persuaded that
38 the Board's May 2000 decision was incorrect. I am going to
39 vote to affirm the May 2000 decision based on the rationale
40 and justification set forth in Option 1 of the Staff
41 analysis.

42

43 The Staff analysis of the two requests for
44 reconsideration fully supports the Board's previous
45 decision. No new evidence has been presented that was not
46 already considered by the Board in past deliberations. The
47 Staff analysis found only seven claims that needed to be
48 addressed. Those claims were grouped into four issues,
49 aggregation, population, flawed methodology and ANILCA
50 intent. In the analysis of the four issues it is plan that

1 all of the issues were thoroughly considered by the Board
2 in making its May 2000 decision to find the communities on
3 the Kenai Peninsula rural.

4
5 Aggregation. I do not agree that the
6 communities on the Kenai Peninsula should have been
7 aggregated before the Board considered each community's
8 population. The Federal regulations require that
9 communities be reviewed by population and then aggregated.
10 This was not done on the Kenai Peninsula. In 1990 and 2000
11 no single community on the Kenai exceeded the 7,000
12 threshold population. Nevertheless, the Board accepted the
13 1990 aggregations when it rendered its decision in May
14 2000. We acknowledged that there were flaws in the
15 methodology and that the evidence for aggregation was weak
16 with respect to Kenai communities, but we nonetheless
17 accepted those aggregations. Our decision was based on an
18 evaluation of the community characteristics, in general, of
19 the three aggregated areas. The ISER report was likewise
20 based on the Federal aggregations of the Kenai communities.
21 Therefore, I am not persuaded by the arguments made by the
22 two requesters. The Board evaluated the three aggregated
23 communities and concluded that they possessed significant
24 characteristics to Kodiak and Sitka.

25
26 Population. It is important to keep in
27 mind that exceeding the 7,000 population means only that an
28 area is presumed to be urban unless the community or area
29 has significant characteristics of a rural nature. Both
30 Kodiak and Sitka exceeded 7,000 in 1990 and were determined
31 to be rural. In evaluating the community characteristics
32 of the three aggregated areas on the Kenai Peninsula, I
33 find that there is a mix of rural and non-rural
34 characteristics similar to the ANILCA-suggested examples of
35 rural and with Kodiak and Sitka. In terms of the use of
36 fish and wildlife, there is very limited data available for
37 the Kenai Peninsula communities, but their relatively lower
38 harvest levels are similar to other road connected
39 communities. An additional factor that must be considered
40 with regard to the Kenai Peninsula communities is the fact
41 that the State's own studies and the materials submitted by
42 the Kenaitze and others who live on the Kenai Peninsula
43 demonstrate that on a community wide basis, subsistence
44 hunting and fishing remains a principal component of the
45 economy, culture and way of life of the communities on the
46 Kenai Peninsula. Centrally, the Kenaitze's rural
47 subsistence lifestyle has persisted despite population
48 increases and significant restrictions. It is perfectly
49 understandable that their harvest levels would be low since
50 subsistence hunting and fishing have been heavily

1 restricted since statehood and is currently not allowed at
2 all under the State subsistence law.

3

4 It has not gone unnoticed that the Kenai
5 Peninsula is considered rural for practically every other
6 Federal purpose but subsistence. In evaluating the
7 community characteristics of the Kenai Peninsula areas in
8 relation to the ANILCA-suggested examples, along with the
9 other examples suggested by requesters and ISER, I am
10 convinced that the communities on the Kenai Peninsula, as
11 aggregated, have a predominately rural nature and that the
12 determination of the whole Kenai Peninsula as rural should
13 be affirmed.

14

15 Flawed Methodology. This issue of flawed
16 methodology was raised during the Board's deliberations on
17 whether to undertake an out of cycle review of the Kenai
18 Peninsula communities. The Regional Advisory Council and
19 the Kenaitze Tribe raised serious questions about the
20 Board's original rural determinations. The Board felt that
21 creating a better methodology could be done after the 2000
22 Census figures were available and viewed it as a separate
23 issue. I still think that is a separate issue. The
24 communities on the Kenai Peninsula are entitled to an
25 evaluation using the same criteria used to evaluate the
26 rest of the state. After hearing testimony from the public
27 and Regional Council Chairman, the Board voted unanimously
28 to undertake the out of cycle review. I think that was the
29 right decision and nothing I've heard today changes my
30 mind.

31

32 ANILCA Intent. The requestors claim that
33 the Board should have compared Kenai communities with those
34 specified by Congress as rural, as well as those designated
35 non-rural communities. This ignores the fact that the
36 regulations were developed actually using the Legislative
37 history. In other words, that analysis (comparison to the
38 communities specified by Congress as rural) is built into
39 the regulations. I also believe the comparisons between
40 Kenai communities and Sitka, Saxman and Kodiak were
41 appropriate. The Board initially proposed finding those
42 communities non-rural just like the Board did with the
43 Kenai communities. The Board changed its decision with
44 respect to Sitka and Kodiak based on special factors. The
45 Kenaitze request was simply judged under that same
46 standard, the one applied elsewhere in the state in 1990.

47

48 Although the Board voted to accept the
49 requests for reconsideration because it felt some of the
50 claims might have merit, based on the Staff analysis and

1 all the evidence presented to the Board, including the
2 public testimony, I have not seen any new information that
3 would warrant a reversal of the Board's May 2000 decision.

4
5 Finally, I want to make it plain that I do
6 not support Option 3. This Board should not defer this
7 decision until new methodology can be developed. We have
8 twice rejected that option. The public has to have
9 confidence in this Board. If the public process means
10 anything, it means that the Kenaitze and the public are
11 entitled to a final decision.

12
13 I am voting in favor of adhering to our May
14 2000 decision.

15
16 STATEMENT OF NILES CESAR: The Bureau of
17 Indian Affairs (BIA) Subsistence Staff recently reviewed
18 the Office of Subsistence Management Staff analysis of the
19 Request for Reconsideration of the Kenai Peninsula Rural
20 Determination, RFR00-02. BIA strongly supports Option 1 to
21 affirm the May 2000 decision that the entire Kenai
22 Peninsula is rural. The rationale for this position has
23 not changed from that presented to the Staff Committee
24 minority report adopted by the Federal Subsistence Board
25 (Board in May 2000. The salient points were:

26
27 The Southcentral Regional Subsistence
28 Advisory Council (Council) voted in favor of a rural
29 designation on three separate occasions.

30
31 The Board delayed reconsideration of the
32 non-rural designation until the Council completed a series
33 of public meetings to ascertain public opinion throughout
34 the Kenai Peninsula. Prior to the May 2000 meeting, some
35 Board members felt that to further delay a decision was not
36 a reasonable course of action.

37
38 Many Federal agencies provide services to
39 Kenai Peninsula communities because of their rural nature.

40
41 When considered in its' entirety, the
42 population density of the Kenai Peninsula Borough is
43 relatively low.

44
45 The local use of fish and wildlife
46 resources is reduced due to State regulatory schemes and
47 the road system because of lost opportunity or competition
48 from non-local users.

49
50 The lifestyle on the Kenai Peninsula is

1 diverse, however, it can be generally characterized as
2 rural.

3

4 Population alone does not determine
5 rural/non-rural status and therefore evaluation of rural
6 characteristics of the area should precede attempts to
7 aggregate communities.

8

9 The primary mission of Federal fish and
10 wildlife management is the health of the resource and, as
11 some suggest, a Kenai Peninsula rural designation will not
12 impact the long-term viability and health of fish and
13 wildlife populations.

14

15 The Staff analysis of RFR00-02 is
16 comprehensive and, upon review of the analysis it is not
17 clear that the Safari Club International et al., and the
18 Cooper Landing Fish and Game Advisory Committee
19 (Requestors) have met the requirements for reconsideration.
20 The Requestors submitted 19 claims and of these only seven
21 were found to merit further consideration. The seven were
22 grouped for analysis into four issues; aggregation,
23 population, flawed methodology and ANILCA-intent. The
24 respective Staff analysis of each issue is summarized as
25 follows:

26

27 Aggregation. The Staff analysis found that
28 the aggregations made in 1990 (using the 1990 model with
29 updated population data) should remain the same. This was
30 the same information and recommendation before the Board in
31 May 2000 when it decided that the entire Kenai Peninsula
32 was rural. BIA interpretation of the Staff analysis
33 indicates that Requestors Claims 9, 11 and 13 do not meet
34 the threshold necessary for reconsideration.

35

36 Population. The Staff analysis concluded
37 that the regulatory process was correctly implemented
38 through the following three steps (RE: Claims 6, 11 and
39 13), reevaluated indicators of community characteristics
40 for the Kenai, Homer and Seward Areas using the most recent
41 population figures and data available, Council public
42 meetings and consideration of public testimony and Board
43 determination that the entire Kenai Peninsula is rural.

44

45 Flawed Methodology. The Staff analysis
46 does suggest that the current method used to evaluate
47 rural/non-rural status has some deficiencies, however, the
48 model and data currently used are the best available at
49 this time (Claim 12). Therefore, the Staff analysis did
50 not characterize the existing model as flawed.

1 Additionally, with respect to Claim 17, the Board
2 unanimously decided that the regulatory requirements of
3 special circumstances for an out of cycle determination
4 were met and properly addressed.

5
6 ANILCA Intent. The Staff analysis goes
7 into some detail examining Board compliance with ANILCA
8 requirements (Claim 14). The analysis does not suggest
9 that the Board is not compliant with ANILCA and BIA Staff
10 interpret this to mean that the requestors claim does not
11 meet the threshold for reconsideration.

12
13 The Board accepted the request for
14 reconsideration because it determined some of the
15 requestors claims may have merit and directed Staff to
16 conduct an analysis on the issues raised. Noticeably
17 absent from the Staff analysis is a response to the Board
18 concerning the merit of the claims pursuant to criteria
19 established in the Revised Board Policy on requests for
20 reconsideration. Based on the Staff analysis, it appears
21 the requestors did not meet this threshold. The requestors
22 failed to provide information not previously considered by
23 the Board that demonstrates the existing information is
24 incorrect or demonstrates the Board interpretation of
25 information, applicable law or regulation is in error.

26
27 Although the Board accepted the request for
28 reconsideration it is evident, based on the Staff analysis,
29 that there is no new information to warrant a reversal of
30 the May 2000 decision. The Staff analysis offers three
31 decision options for the Board to consider, however, the
32 BIA continues to support the position of some Board members
33 that deferral of a decision is not reasonable and has twice
34 on record been rejected by the Board.

35
36 The BIA recommends that the Board support
37 Option 1 to affirm the May 2000 decision. It is important
38 that the Board be viewed as a credible body and reversal of
39 this decision may result in a perception that
40 jurisdictional Federal management of fish and wildlife
41 resources lacks consistency. In addition, although the
42 Board does not defer to the Council on questions of rural
43 designation, when the preponderance of evidence is not
44 conclusive for either rural or non-rural status, the public
45 might logically assume that their participation through the
46 Council process and the Council's resultant recommendation
47 would be an important factor in decision, as mandated by
48 Federal regulations.

49
50 It is my intention to include this

1 information in the record at the June 28 Board public
2 hearing in Anchorage.

3

4 MINORITY KENAI RURAL: A minority of Staff
5 Committee members supported the Board's decision of May
6 2000. Based on Staff analysis, the request for
7 reconsideration by both parties did not meet the Board's
8 threshold established in the revised Board policy for
9 requests for reconsideration. Specifically, the requestors
10 failed to provide information not previously considered by
11 the Board that demonstrates the existing information is
12 incorrect or that demonstrates that the Board's
13 interpretation of information, applicable law or
14 regulations is in error. Although the Board has accepted
15 the request for reconsideration, it is evident, based on
16 the Staff analysis, that there is no new information to
17 warrant a reversal of the May 2000 decision.

18

19 The Staff minority supports the public
20 process as implemented by the Southcentral Regional
21 Advisory Council, which has three times recommended that
22 the Board reclassify the entire Kenai Peninsula as rural.
23 The primary purpose of the Federal Subsistence Board is to
24 afford a subsistence priority use over all other uses to
25 those people dependent on that subsistence use. The
26 testimony presented to the Board show a clear and
27 continuing subsistence need by the Kenaitze and other rural
28 users on the Kenai Peninsula. Therefore, the Board is
29 mandated by Title VIII of ANILCA to find the ; is that
30 right? as rural for purposes of subsistence and must uphold
31 its May 2000 decision that the entire Kenai Peninsula is
32 rural.

33

34 The minority position differs with the
35 Staff analysis because the analysis did not fully address
36 the issues and concerns raised by the ISER report and prior
37 concerns regarding the aggregation factors expressed by the
38 technical peer review of the February 2000 analysis
39 concerning the criteria used and the validity of the data
40 for aggregation. Since the analysis did not address these
41 issues, the minority concludes that the decision to
42 aggregate does not fully reflect all of the information
43 used by the Board to make its May 2000 decision.

44

45 In 1990 the decision to aggregate 18
46 communities into three areas within the Kenai Peninsula was
47 an important element in the Board's initial non-rural
48 determination. In 1998, research conducted by ISER and
49 Staff analysis shed doubt on the 1990 application of the
50 criteria used to aggregate these communities and suggested

1 that aggregation masked many rural characteristics.

2

3 Federal regulations require that
4 communities be reviewed by population and then aggregated.
5 This was not done on the Kenai Peninsula, where aggregation
6 was done before considering population as required in
7 Federal regulations. This is the violation of Equal
8 Protection and Due Process that the Kenaitze Tribe has
9 requested the Board to redress.

10

11 In 1990 and 2000 no single community on the
12 Kenai Peninsula exceeded the 7,000 threshold to be presumed
13 non-rural. According to Federal regulations (50 CFR100 and
14 36 CFR242) populations of 2,500 or less shall be deemed to
15 be rural, populations of 2,500 or above but not more than
16 7,000 will be determined to be rural or non-rural,
17 populations more than 7,000 shall be presumed non-rural,
18 unless such a community or area possesses significant
19 characteristics of a rural nature. Based on Federal
20 regulations and using 2000 population census, 11 of the 18
21 communities were rural. Seven of the remaining communities
22 were in the middle category with Kenai at a population of
23 6,942, Homer 3,946 and Seward 2,830.

24

25 Therefore, 11 communities could be
26 determined to be rural and seven could be determined rural
27 or non-rural by the Board. These population figures are
28 similar to the ANILCA rural examples of Barrow, Bethel,
29 Dillingham, Kotzebue and Nome whose populations range from
30 1,563 and 3,576 in 1980 to 2,004 and 3,681 in 1984. In
31 evaluating the community characteristics of the Kenai
32 Peninsula aggregated areas in relation the ANILCA-suggested
33 examples of rural communities, the aggregated areas of the
34 Kenai Peninsula have a predominately rural nature. In
35 addition the ISER report and the Ninth Circuit Court
36 Opinion in Kenaitze v. Alaska discussed the population
37 density of the Kenai Peninsula and questioned the non-rural
38 classification.

39

40 Yet as population figures alone are not the
41 sole determinants of rural or non-rural status, the Board
42 must also consider other factors and the fact that State
43 regulations have systematically restricted subsistence uses
44 and prohibits subsistence altogether on the Kenai Peninsula
45 since statehood. These State regulations must be
46 considered when relying upon ADF&G harvest data as a
47 criteria to measure subsistence uses on the Kenai
48 Peninsula. When subsistence is not recognized on the Kenai
49 Peninsula, there can be no data showing subsistence use or
50 harvest. The State categories of personal use and sports

1 use are not considered as subsistence use and therefore not
2 counted as subsistence harvest. In addition, subsistence
3 users are severely restricted by lost opportunity or
4 competition from non-local users.

5
6 Testimony provided to the Board emphasized
7 the time depth and cultural significance of the subsistence
8 harvesting traditions of the Kenaitze and other rural
9 residents on the Kenai Peninsula. In addition, ADF&G in
10 their testimony pointed out that they recognized these
11 subsistence uses through cultural and educational use
12 permits on the Kenai Peninsula. Although the lifestyle on
13 the Kenai Peninsula is diverse, it can generally be
14 characterized as rural and when considered in its entirety,
15 the population densities of the Kenai Peninsula Borough is
16 relatively low.

17
18
19
20

(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, Salena A. Hile, Notary Public in and for the state of Alaska and reporter for Computer Matrix Court Reporters, LLC, do hereby certify:

THAT the foregoing pages numbered 02 through 83 contain a full, true and correct Transcript of the FEDERAL SUBSISTENCE BOARD PUBLIC MEETING taken electronically by me on the 29th day of June 2001, beginning at the hour of 1:00 o'clock p.m. at the Egan Convention Center, Anchorage, Alaska;

THAT the transcript is a true and correct transcript requested to be transcribed and thereafter transcribed by 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 4th day of July 2001.

Salena A. Hile
Notary Public in and for Alaska
My Commission Expires:09/05/2002

