MEMBERS PRESENT:

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

Bertrand Adams - Southeast RAC
Rosemary Ahtuangruak - North Slope RAC
Ralph Lohse - Southcentral RAC
Richard Wilson - Bristol Bay RAC

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

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

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

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

So that's all I have, Board members.

CHAIRMAN TOWARAK: Anything from other Board members.

(No comments)

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

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

MR. WILSON: Mr. Chair, information
sharing still, can -- is it possible, Mr. Chair?

CHAIRMAN TOWARAK: Sure.

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

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

Thank you.

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

Any other -- Mr. Adams.

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

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

MR. ADAMS: I know.

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

MR. ADAMS: Okay. So I just might as
well stay here because my airplane leave about that time.
That's okay. My reservation is booked for tomorrow and
the way the planes are filling up I might have to be on
standby anyhow. So -- but that's okay.

Mr. Chairman, thank you.

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

Anything else further.

(No comments)

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

(No comments)

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

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

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

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

CHAIRMAN TOWARAK: Sure.

MR. PROBASCO: Mr. Sam Thomas.

MR. THOMAS: Good morning, Mr. Chairman,
members of the Board. I was wondering if I could go ahead and just run through all my items with my testimony versus having to fill out a piece of paper for each of the items since I do have the floor and it kind of runs into the rural/non-rural issue.

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

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

And just a few comments on the customary and traditional stuff that I observed yesterday. I'm going to use the Forest Service as a good example. On Prince of Wales Island, the four tribes on Prince of Wales, communicate, coordinate and collaborate very well
with the Forest Service and when we want to do a totem
from -- obtain a totem log from the National Forest, we
put in a proposal, identify it to one of the rangers on
Prince of Wales, they put it up the food chain and they
have this list. And if other tribes in Southeast Alaska
want to acquire one of those totems for their use they
get ahold of the Forest Service and go through the same
thing, but the Forest Service doesn't grant it until they
come back to the tribe on Prince of Wales Island and say
do you mind gifting that totem to another tribe within
Southeast Alaska that needs it. And so this process in
customary is true to the effect of -- I forget the
gentleman's name from Kodiak that alluded to that
yesterday in that deliberation. But that's a good way to
go about customary and traditional uses.

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

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

Thank you.

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

(No comments)

CHAIRMAN TOWARAK: Thank you for your
testimony.

Pete.

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

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

MR. LOHSE: No, objection to anything
from Southcentral.

MR. ADAMS: Could I confer with my coordinator?

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

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

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

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

CHAIRMAN TOWARAK: Okay. Go ahead.

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

Thank you.

MS. AHTUANGARUAK: North Slope is also fine.

CHAIRMAN TOWARAK: Okay. From the State.

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

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

(Laughter)

CHAIRMAN TOWARAK: Any other comments from anyone.

(No comments)
CHAIRMAN TOWARAK: Thank you. Then the
floor is open now for action.

MS. PENDLETON: I'd like to -- Mr. Chairman, like to make a motion to -- that we move to
adopt the consensus proposal with the recommendations as they're shown on Pages 5 and 6 of our Board book.

MR. HASKETT: I'll second that.

CHAIRMAN TOWARAK: You heard the motion and the second, any discussion.

Pete.

MR. PROBASCO: Just to keep the record clear, and that would also include Proposals 12-22B, 12-49, and 12-69 which were added right to the meeting.

Mr. Chair.

CHAIRMAN TOWARAK: Any further discussion.

MS. PENDLETON: Call for the question.

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

MR. PROBASCO: Thank you, Mr. Chair.

Final action on the consensus agenda.

Mr. Virden.

MR. VIRDEN: Yes.

MR. PROBASCO: Mr. Haskett.

MR. HASKETT: Yes.

MR. PROBASCO: Mr. Towarak.

CHAIRMAN TOWARAK: Yes.

MR. PROBASCO: Ms. Cooper.

MS. COOPER: Yes.

MR. PROBASCO: Ms. Pendleton.
MS. PENDLETON: Yes.

MR. PROBASCO: And, Mr. Cribley.

MR. CRIBLEY: Yes.

MR. PROBASCO: Motion carries, Mr. Chair.

And that completes our consensus agenda on all proposals.

CHAIRMAN TOWARAK: Thank you very much.

And I concur with the State's comments about reaching a happy medium amongst everyone, I appreciate that.

We will now move to the rural/non-rural determination.

Pete.

MR. PROBASCO: Yes, Mr. Chair. And if you look at our agenda we need to reverse A and B so we'll be taking up B first which is procedures for decennial rural/non-rural determinations. And before we get into that I think we should take public testimony, I do have one person signed up. If that's okay with you, Mr. Chair?

CHAIRMAN TOWARAK: Sure.

MR. PROBASCO: Okay. Mr. Lee Wallace, please. And if anybody else wants to comment on the rural issue, please go fill out a white card.

Thank you.

MR. WALLACE: Thank you. Lee Wallace, Organized Village of Saxman president. Thank you, Chair. Thank you, Board. Thank you RAC Chair. And the State as you're also at this table. One thing I do really appreciate with the review that started back in 2009 was the presence of the RAC Chairs, being able to participate in the whole process. And like was mentioned yesterday with the time frame of meeting in January, you know, the State is pretty much under this big, high pressure and there's, you know, low temperatures in your villages. And Saxman's really no different, you know, when I left Monday morning it was clear skies all the way up. So and keeping in touch with our tribal office there's pipes freezing and they bring village of -- like Katlaw, there was a fire and these low temperatures running a fire hose there was -- you know, the ground just turned to ice
which made it even more hazardous for the fire department
to, you know, abate the fire. And that's really nothing
compared to villages, you know, that are 40 below. And
I do appreciate all the people that came in to testify
for this January meeting.

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

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

Some time ago when I was at FSB meeting
I invited a meeting in Saxman and that was granted and
there was some that came and I thank Mr. Haskett for his
visit. And when he had to visit to our little humble
village of Saxman of 400 and some people we took a quick
1 tour around the village, just show him just, you know, what is a village. And all that was revealed in the testimony prior and it was revealed in the RFR that we submitted. And what I believe happened was that the process of the decennial review periods. I remember the first review period that we undertook was -- it was shortly after I moved to Saxman and there was attempt that first time to make us non-rural. There was great testimony that they had in Ketchikan, Saxman came out in force to testify. And after that meeting in Ketchikan the decision was to keep us rural. Then the next decennial period came forward and what happened there was individuals or agencies or Staff or whoever decided well, let's add all this criteria to look at what makes a community rural. And I fully support some of the RFR findings that -- and Sealaska's testimony. You know, some of those criteria should be thrown out, I think there should have been just kind of markers, but I think really in common sense if you just kind of visit a village, Saxman's no different than any other village in Saxman [sic], the only difference is that we're close to Ketchikan. But when you really look at Saxman itself, you know, it's easy to determine that we're a rural village. I went to the State of Alaska site and you could see in there when they were looking at the different communities the updates on it was from the 2010 census, we're at 411 individuals, well under the threshold. And that should be one of the common sense things you look at, is just like at a threshold. And then also stating in that same thing the State is saying Saxman is predominantly a Tlingit village and they're leading a subsistence lifestyle. And that's a quote. So those are some of the common sense things that this Board and Staff should undertake when they look at decennial review period and they look at rural status. And then you really look at the trust responsibility and the law and the law is to assist and enhance our ability to lead our way of life, not to encumber it by putting all -- dreaming up all these requirements to maybe take away a village's rural status.

Now with the draft consultation protocol, I do thank the individuals that took the time to start the process, to bring up the draft, and it is a draft. One of the things I'd like to see with consultation is whenever an issue is brought up that would affect a community, a village, a tribe, those tribes should be in direct consultation. You know, I attended the July workshop here in Anchorage, right here in this same room here, I came here -- I went to that workshop expecting it
was just going to be a meeting, but it had to be a
workshop and that's when we discussed the first mention
of a stay. And since that July workshop I would question
what transpired between July and now, what meetings
occurred and again with meetings happening that would
affect a village like Saxman, I would request that
protocol would call for information sharing at that time,
shortly after a meeting.

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

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

Back to visits to Saxman. I do invite
again any Board member that hasn't been to Saxman, it's
just a little bit south of Ketchikan, we're a unique
community, we have our own municipal government, we have
our Federally recognized tribe, the Organized Village of
Saxman, and I invite you to a celebration in March, March
29th. If you happen to be in the Ketchikan area I would
invite you there to Saxman to a celebration of opening --
grand opening of our new Saxman senior housing project.
It's a -- the project was partnership of many different
entities and governments and it was a $5 million project
and so we're going to be very proud of that new facility,
it's going to assist our elders in a much better housing
situation than they are right now. Right now the --
senior housing looks like a barracks. This would be
looking more enhancing and more -- anyway it'll be a
better place for our seniors. So if you happen to be in
the area, I truly invite you down to Saxman and I'll be
glad to show you around to our village and you can get a
better sense of it.

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

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

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

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

(Laughter)

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

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

MR. WALLACE: Thank you, Geoff.

CHAIRMAN TOWARAK: Any further comments.

Mr. Adams.

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

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

MR. ADAMS: Okay.

CHAIRMAN TOWARAK: .....for the RACs to
participates.

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

(Laughter)

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

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

(Laughter)

CHAIRMAN TOWARAK: Go ahead, Mr. Wallace.

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

Thank you.

CHAIRMAN TOWARAK: Thank you, Mr. Wallace. And I might point out that I think when we do the first part of our agenda the procedures for decennial rural and non-rural determination, some of the discussions I think will explain what we have gone through since July.
Any further comments from -- or
questions.

(No comments)

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

MR. WALLACE: Thank you.

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

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

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

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

Another point that I made is that the
subsistence preference in ANILCA is not working, that the
rural versus non-rural is not adequate. There are a lot
of native people who live in the urban areas. A lot of
us have to go to the urban areas for work, there's the
high cost of living in the villages and the high cost of
energy, but we still, you know, enjoy subsistence as much
as the people in the rural areas. And just because we
have to go into the communities for our jobs, that
shouldn't mean that we don't have that subsistence
priority.

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

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

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

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

Another point that I wanted to emphasize
too is in support of what Lee said. You know, they've
been working through this process and I really think that there does need to be more information sharing. In the last couple days I've been asking for information about the rural and non-rural decision and in addition to that Bob Loescher who is the Subsistence Chair for A&B/A&S Grand Camp, we've been meeting with the Forest Service and we've been asking for information and we weren't able to get that information. It just seems to me like with all the tribal consultation discussions that are going on that there needs to be better information sharing. The Native people need to have a more equal playing field, they need to have information so that when they're sitting at this table they can come prepared and they will know how to deal with the situation better when decisions are being made about their traditional culture.

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

Thank you.

CHAIRMAN TOWARAK: Thank you, Ms. Sykes.

Albert Kookesh is a personal friend of mine and he told me that Southeast Alaska quit using the term retreat.

(Laughter)

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

MS. SYKES: Thank you.

CHAIRMAN TOWARAK: And any questions of the Board.

(No comments)

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

Mr. Adams.

MR. ADAMS: Anyhow I just want to express my appreciation to Carrie for her diligent efforts now not only this particular issue, but has been helping the
tribes in Southeast Alaska become more aware of subsistence issues and becoming more and more involved. I mean, we're just beginning, but this lady here has been the backbone of that effort. And so I just wanted to thank her very much for being there.

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

CHAIRMAN TOWARAK: Thank you.

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

MS. SYKES: Over 27,000 tribal members.

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

So again thank you, Carrie, for your efforts.

CHAIRMAN TOWARAK: Thank you, Mr. Adams.

Any further questions.

(No comments)

CHAIRMAN TOWARAK: Thank you for your testimony.

MS. SYKES: Thank you.

CHAIRMAN TOWARAK: Pete.

MR. PROBASCO: Mr. Chair, that's just -- all the people I have for signing up, but you may want to check the phone line just in case someone's dialed in since last time we checked.

We have nobody on line.

UNIDENTIFIED VOICE: Just Wayne.

MR. PROBASCO: Just Wayne Owen from --

just Wayne Owen.

(Laughter)

MR. PROBASCO: No, from Forest Service, Wayne Owen.

So, Mr. Chair, that concludes public testimony.

CHAIRMAN TOWARAK: Go ahead.

MS. K'EIT: I know that OSM Staff are working on getting me in the system for public testimony and I kind of -- hadn't really gathered my thoughts yet. I don't know if you need to wait for that paperwork or if I want to just trust me on that.

(Laughter)

MS. K'EIT: Thank you.

CHAIRMAN TOWARAK: We can wait if need be, if that's what you're requesting.
MS. K'EIT: I'd like to provide public testimony.....

CHAIRMAN TOWARAK: Okay.

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

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

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

I grew up in Anchorage, you know, often in that category urban Indian, urban Alaska Native. I'm Tlingit from Southeast Alaska. On my mother's side her father was Deisheetaan from Angoon, from the End of the Trail House, Deishu Hit, and on my mother's mother's side I'm Inupiat Eskimo, her mother was from Shishmaref, Alaska, a member of the Bar family. And what I'd like to provide is that growing up in Anchorage we didn't have a lot of access to traditional foods. My mom did the best she could trying to get things from around Anchorage and Southcentral area and then on occasion family would bring things up when they came from Southeast like dried eulachons, just so tasty and delicious and smoked salmon, jarred smoked salmon and even jarred fresh salmon. And it wasn't something we could do, you know, seasonally to -- for my mom or my dad to leave a job and go to Southeast and fish with my grandpa or put up smoked fish for the weeks of -- weeks at a time that it takes during the summer. My dad did a lot of moose hunting and so that was a big staple of our diet. As a -- even being in Anchorage we weren't a wealthy family, we weren't even what people would call lower middle class these days. So we did the best we could. But when I was a young adult and had an opportunity to go to Ketchikan and Ms. Carrie Sykes that spoke before you, she's related to my family and her grandmother raised her and I think I was about 16 or 17 and we went to visit Grandma Vesta, Vesta Scott. And that was the first time I'd ever had fish egg soup. And it's just so basic, so simple, so delicious, so
nourishing, just a basic boiled fish with potatoes if you have them, seaweed is essential, essential ingredient to that and fish eggs. And my brother knowing that I didn't really get to eat a lot of Native foods he wasn't quite sure if I would like it and I can tell you it was like manna from heaven, you know, going back to the Old Testament and, you know, the people got this stuff, what is it, manna, what is it. And it was just fabulous, delicious. And Carrie being raised by her grandmother she didn't talk about this in her testimony today, but her grandmother taught her all those ways of living among our traditional resources, of collecting and harvesting our food resources, the power in that, the healing in it, the knowledge that our family, grandparents, great-grandparents, generations back have experienced and learned. And just like on my father's side, you know, people learned to farm and you learn to watch the weather and you learned the signs of the seasons changing, our people had to do that too.

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

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

Thank you. I'll wait for any questions.

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

(No comments)

CHAIRMAN TOWARAK: Thank you for your comments.

MS. K'EIT: Thank you.
CHAIRMAN TOWARAK: I assume that is the end of the public testimony in regards to the Saxman or rural/non-rural determination.

(No comments)

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

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

I've toiled and turned over these last
few days, my stomach has been burning with pain with the
decisions that have progressively happened as we watched
through each of these regions address issues that are
affecting traditional food sources. The value of our
traditional and cultural beings are being disseminated
through a paper process and a decision making process
that is taking other factors and placing dollar values
and creating criteria that are affecting the decisions
and losing sight of the people who have raised our
families and kept us healthy with traditional foods and
a lifestyle that has carried us through generations and
generations to the time before us. And now there are so
many things that are causing so much change throughout
the world that we've got international efforts to come in
and to harvest our foods from our lands and waters.
We've got national efforts of people coming in and
harvesting foods from our lands and waters. There's
points at this table when I feel like we have to think
about becoming sports hunters to be able to have a hope
of having our traditional foods. And it's devastating
for me to sit here and continue to be involved in this
process wondering how is this going to filter down for
the 500 people in Nuiqsut that have a road coming into
their village and it's going to change them even further
when we've already had tremendous amounts of change to
the lands and waters around the community affecting
multiple species, affecting multiple resources and taking
foods away from our village. And this is echoing
throughout the State in many rural areas. I'm torn about
how to progress with this process, the weight of this
concern is carrying many generations of communities upon
our shoulders in this process, it's not something that
can be taken lightly and it's something that has already
changed the health of many Native people. We're watching
the changes that are coming with these health impact
assessments that are occurring on some of these
assessments, but yet the criteria to adequately assess
this were never incorporated into the data sets so
they're being assessed as well as the maintaining of this
information to help us effectively gather information to
guide this. I worked as a health aid for 14 years. When
I was working for a period of years I identified people
who had diabetes and there were up to 60 people. I took
a break for less than two years and when I came back to
work at the clinic all of a sudden they said there were
20 people who had diabetes. It wasn't that 40 had died,
It was that they were no longer maintained to be kept in
the data base to be identified to be assessed in this
process. And this is what we're going to be assessing
these health impacts assessments with the EISes that are
affecting our lands and waters. But the reality it comes
down to our traditional and cultural uses, the health of
our people. Our lands and waters have kept us healthy,
safe and in our homes and in our communities. And we
have gone through continuous efforts to change and expand
and make criteria and decisions that have fragmented and
changed our maps so that our people can no longer go out
into areas and do as their great-grandfather and their
grandfathers and their mothers and bringing the same
information into our children to continue to be who and
what we are. Some of the ways that we process our
traditional foods are being lost because we don't have
access to these foods. The way that we teach our
children, the grandparents our kids that first bites of
some of these foods that we're giving because our
communities make the efforts of making sure our elders
have the delicacies that are so important. But if our
elders are not having these foods to give our children
these first tastes how are they going to develop the
desire to consume these fish. I went through the process
of my own son, taking him to the lands where his father
was taught by his -- my son's grandfather how to harvest
his first caribou. Instead of the joy of harvesting the
caribou and sharing that within the community, we give
the whole animal away, we feasted, cook it all up and
give the whole thing away. The respect from the elders
is shared upon that new young hunter of giving a meal to
the family, of sharing food for their freezer, of giving
the joy of responsibility for the nourishment of the
community as a whole, instead he faced anger and
frustration because there were activities that changed
our lands and waters and there were words that were put
on paper that were not enforced to protect our
traditional and cultural uses.

This is a devastating process. I've sat
here through these days wondering how am I going to
respond to this process, how am I going to face the eyes
of those people that are dealing with the loss of these
efforts to identify who and what they are and to continue
to be who and what they have in our lands and waters
through the generations of time immemorial, to the days
of the future. It's a very difficult process, I am not
reassured, I am fearful of the days to come. I have not
got anything that gives me the hopes that we're doing
things in a good way. We've done some things that were
better than the last time, but were they the best way.
This book, I didn't get it in time enough to go through
and effectively assess it, I'm sitting here cringing as
I'm looking at all of the decisions that are being made
throughout this State and throughout the various RACs and
the quantity of the participation of those that are most
affected is missing. Look at how many others that are
being paid to work on these issues that are here and yet
the volunteers and the people who are living through this
decisions are not, just a small handful. This increased
time of activity and yet we've got communities that we
have to try to think about, am I going to leave my
grandchildren and my elders at home to suffer through
this 40 below weather to come down here and try to give
us a hope that we'll have a life to subsist in in the
future, it's a big deal whether or not we're even going
to consider. Do we even have the resources to come down
here, if I didn't have this ticket paid, I don't have the
$1,000 in my pocket to get here, to come and bring these
words into this process. Many of the people that were
affected by this process did not have that number to call
in. I was calling on Monday to -- and we're given this
information so that people could call in that were going
to be affected by some of the proposals that were there
and I was here to be sitting at this table trying to
communicate within this process and yet I still had to
try to divide and make contact so that the testimony
would be here. The absence of it is felt by me, the
burden of this process is weighing me down heavily. I
pray that we have the right answers that come through
this process and that we can continue to hold our heads
up and face the people who have their life and safety at
risk with the decision before us.

Thank you.

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

MS. AHTUANGARUAK: When I first moved to
Nuiqsut, it's name means someplace beautiful on the
horizon, it's a very rich, biologically diverse area.
We're a little bit inland from the ocean so we have the
life of living off the tundra and traveling upriver up to
the foothills and harvesting throughout this land. We
have the changes in our lands and waters with now oil and
gas development is within four miles of the village. We
have 12 miles of roads with the Alpine development unit
that is on the east side of the Nigluk (ph) channel of
Nuiqsut, and yet you have hundreds and thousands of miles
of roads and pipes to the east of Nuiqsut with the
Kuparuk River Unit and all of the other developments in
Prudhoe Bay you have the Foothills development, that area is up near Umiat, that efforts to bring in additional oil and gas development and also efforts to build a road to resources. There's a lot of activity that is happening completely surrounding the villages. We've got near shore oil and gas activity, we've got offshore oil and gas activity. We've had disruption of migration for our caribou, we've had near shore activity that has disrupted the migration of the Arctic cisco and it's ability to get into the Nigluk channel. We've had seismic activity that has diverted whales from our harvesting ability. All of this kinds of things comes down not just changes to our lands and water, but changes to our subsistence.

CHAIRMAN TOWARAK: Thank you. Any questions or comments.

Mr. Adams.

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

CHAIRMAN TOWARAK: Sure. The floor is yours.

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

(Laughter)

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

He mentioned that -- well, let me say first when the Board, the old Board, made the decision to join Saxman with Ketchikan Lee was up here for that Board meeting and he had no clue that this was going to happen. And so it came as a real big surprise to him. And so my first comment on this is that I believe that there was no due process, you know, as far as the Board's action on this was concerned because never had a chance to confer and meet with the people from Saxman to see if this is okay. And it brings to mind, you know, that -- and we find it in -- I think it's in the Declaration of
Independence that no law should be made without the consent of the people. And, you know, and in that being I think that Saxman and Ketchikan, you know, have been ignored in that effort and they've never had a chance, you know, prior to that to make their comments. And I remembered Lee being really taken back on that fact that this was thrown upon them, you know, at that meeting. And so it's been, you know, my motivation to help him in as much as we can and, of course, the Southeast Regional Advisory Council stands behind Saxman for regaining their rural determination.

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

This go along also, Mr. Chairman, with the deference issue. The handbook also says on that -- it says that the Board should give deference to Councils, however there's a little disclaimer in there, it says that not necessarily. We do feel that we had a real strong case here mainly because when you look at Saxman on its own it does have all of the characteristics of being a real community. Population-wise, you know, it fits into -- oh. And so, you know, the criteria that I think that Lee was referring to should be thrown out was that Saxman was connected through Ketchikan with roads. The residents did shopping there in the stores and that the kids, high school kids went to school in Saxman. And I think that was probably one of the -- some of the reasons why they combined Saxman with Ketchikan. But if you took the two communities apart and I also -- already mentioned, you know, that Saxman, you know, population-wise and characteristic-wise do have a rural preference. If you look at some of the surveys that were done in Ketchikan, you'll find that they too, even though they
might be above the population threshold, do have the
criteria of being, you know, subsistence users.
They follow all of the -- as far as I have determined,
the criteria of being, you know, a rural community.
So, giving deference to the
Council I thought was kind of a slap in the face because
a lot of work went into putting the document together.
We have an individual by the name of Dan Motiff (ph) who
devoted his free time, you know, into developing, you
know, a document on why Saxman should be a rural
community. So I really, you know, think, you know, that
even though there's rumors that there might be a stay,
which means that, you know, Saxman will retain its rural
determination for another five years or so and then the
process will be started all over again, I really do
believe, Mr. Chairman, that the Board should give them
their rural determination.
When I first made my comments, you know,
at the beginning of this meeting I read some paragraphs
out of a book that I'm hoping to have published real
soon. And it had to do with the issue of true law. And
I wanted to review that with you again. True law is the
order of the creator. It's the creator's order of
things. Okay. And included in that is that true law is
reason in agreement with nature. And you trans that a
little bit further to our everyday living, it translates
to wisdom. And then when you take that a little bit
further and apply it to government it translates to
justice. And I think that's what Saxman is -- Lee has
made reference to that, that they are looking for
justice. And I really believe, you know, that the Board
really should give them their recognition as a rural
community.
One of the things, I think it was Carrie
that said that, many of our young people are not learning
from the elders how to participate in subsistence issues
and I think that's a real big problem, but I do know in
looking at some of the surveys from Ketchikan that the
elders there were actually doing that. And I really do
believe, you know, that we do have a lot to do in regards
to passing down our history and culture and traditions to
the young people. And I'm happy to see the people from
the young people from Sitka here again today. What
you are sitting in right now is a very important issue in
regards to our subsistence issues and whether a community
can have the ability to participate in subsistence
programs and so forth because of their rural activities.
And so I think I've talked myself out, Mr. Chairman, so I appreciate, you know, having the opportunity to share these things with you. Gunalcheesh.

CHAIRMAN TOWARAK: Thank you, Mr. Adams. We're going to do a little reversal here. We have three people on the phone and they're all from Southeast that would like to make statements.

(Phone disconnects)

MR. PROBASCO: We should take -- we might want to take a break so we could redial them.

CHAIRMAN TOWARAK: Okay. Let's take a couple of minutes. I think I hung up on them.

(Laughter)

(Off record)

(On record)

CHAIRMAN TOWARAK: We are ready at this point, we are going to call our meeting back into session.

Okay. We would like to open the line with Clarence Jackson.

MR. JACKSON: Hi, I'm Clarence Jackson, Sr. I know the people from Saxman all my life. And I would like to see that community continue as a rural designated community. No matter how close to they are to an urban center, they're still a Native people and they're still a subsistence people. And I would urge that somehow that their status as a rural community continue.

That's all I have to say.

CHAIRMAN TOWARAK: Thank you very much, Mr. Jackson. This is Tim Towarak, I'm the Chair of the Federal Subsistence Board. And I appreciate your comments.

MR. JACKSON: Okay. I'd like to talk to
you, Tim, we'll see you later.

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

(Off record comments - connecting Saxman)

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

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

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

I just really want to say that the Secretaries of Agriculture and Interior should take immediate administrative and regulatory measures to reverse the Federal Subsistence Board's decision to
classify Saxman as non-rural, there lies the feeling and intent of Title VIII of ANILCA and protecting our way of life. And it's our desire for Saxman to remain rural.

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

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

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

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

Do we have Janice Jackson and Sara and Mark.....?

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

(Off record comments - teleconference operator)

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

(Off record comments - teleconference operator)

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

(Off record comments - teleconference operator)
CHAIRMAN TOWARAK: I'm not hearing anyone responding. Again, if you want to testify hit star and one on your phone. In the meantime we will continue. Do we have anyone else that wants to testify from the public?

(Off record comments - teleconference operator)

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

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

Thank you.

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

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

(Off record comments - teleconference operator)

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

Pete.

MR. PROBASCO: Mr. Chair. Before I turn
it over to Staff, as part of the Secretarial Review, one of the Board's goal was to have a more transparent process and one of the criticisms we had was the number of executive sessions that we had in the past as well as the public understanding what took place in executive session.

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

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

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

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

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

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

CHAIRMAN TOWARAK: Thank you. Would you introduce yourselves and proceed with our discussion.
MR. MATUSKOWITZ: Mr. Chair. I'm Theo Matuskowitz, I'm the regulation specialist for Subsistence Management.

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

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

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

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

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

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

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

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

The different options that are presented to you:

Right now there are two points of issue.

No. 1, is the issue of extending the
compliance date for the 2007 Final Rule. Now we cannot, you cannot do this administratively. It was not a typo, it was not a mistake. So the only way to extend that date is through a direct final rule which you would not be going through the full public process as normally do when we publish a proposed rule and finish it with a final rule.

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

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

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

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

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

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

Now, another option that has been brought up, and I will address it here, is starting with an
advanced notice of proposed rule, followed by proposed rule, ending with a final rule. An advanced notice of proposed rulemaking tells the public that the agency is considering an area for rulemaking and requests written comments on the appropriate scope of the rulemaking and on specific topics.

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

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

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

The Board shall periodically review rural determinations. Rural determinations shall be reviewed on a 10-year cycle commencing with the publication of the Year 2000 U.S. census.

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

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

The other option that you have is to go directly to a proposed rule. And for that it would be recommended that we open it up to the public. This also will be for Secretarial signature because we're looking
at Section 15 of our regulations, Subpart B, which is for
Secretarial signature. So those guidelines that I
addressed earlier would be presented to the public and
they could make comment and recommendations on those
guidelines. In addition to that we have the actual non-
rural determinations that were made in 2007, which also
would be presented to the public to comment and propose
changes on.

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

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

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

Are there any questions at this time?

(Laughter)

CHAIRMAN TOWARAK: Mr. Haskett, go ahead.

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

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

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

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

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

MR. MATUSKOWITZ: Through the Chair. Yes, sir.

CHAIRMAN TOWARAK: Go ahead, Pete.

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

Mr. Chair.

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

(Laughter)

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

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

MR. CRIBLEY: Right. Right.

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

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

MR. CRIBLEY: The Board?

MR. MATUSKOWITZ: The Board, yes, sir.

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

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

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

(Laughter)
MR. MATUSKOWITZ: Yes, sir.

MR. CRIBLEY: Okay, now I understand.

MR. MATUSKOWITZ: We have not had an instance where they have looked at comments that were sent on our past direct final rules, however, they do review our work and as a matter of fact when the May 2007 Final Rule was published they temporarily pulled it and changed it from an insignificant rule to a significant rule and that was their call. So even though, yeah, we do not normally have their input they are looking.

MR. CRIBLEY: Okay, thank you very much.

MR. MATUSKOWITZ: Yes, sir.

CHAIRMAN TOWARAK: Mr. Haskett, you had a question.

MR. HASKETT: Just a comment. Again, I mean this is for the Board, to make sure we understand how we make our decisions and make sure they're legally defensible, but it's also to be presented for a lot of people here and on the phone to make sure -- I mean there were lots of concerns about how long things take, you know, and just the bureaucracy and I totally understand those concerns but we also want to make sure whatever decision this Board makes is something we can legally defend, that it's something that will not be overturned, that there will not be other forces that come in and take a look and say you didn't do it right so it's kind of a long discussion that I think is very important for everyone to hear on whatever decision we end up making here, how we get through that process.

CHAIRMAN TOWARAK: Go ahead.

MR. GOLTZ: I think I heard my name called.

(Laughter)

MR. GOLTZ: I'm a little bit concerned, Theo, that we're getting the horse way out ahead of the cart on this. The legal justification for the rural -- rule -- rural -- R-U-R-A-L.

MR. HASKETT: You didn't spell it right, R-U-R-A-L.
(Laughter)

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

MR. PROBASCO: Mr. Chair.

CHAIRMAN TOWARAK: Go ahead.

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

CHAIRMAN TOWARAK: Yes we could, and please proceed.

DR. JENKINS: Thank you, Mr. Chair.

David Jenkins with OSM.

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

Now, under title -- ANILCA, matching governance with subsistence uses requires determining the rural status of communities and areas. Now, this Board, since its inception in 1990 has been involved in determining rural status of communities and areas.

Now, in 2009 the Secretary of Interior instituted a review of the Subsistence Program and in 2010 the Secretary suggested that this Board needs to review its process and method of rural determination. Now, at the same time the Board is also obligated to start the 2010 rural review based on the 2010 census and the data for that is now becoming available. So the Board has two charges, as Theo pointed out. One is to begin the 2010 rural determination review. And the other is to review its own processes of making those
Now, to the second end the Board has already received two briefings in response to the Secretarial request. The first in January of 2011 and the second in April of 2011. The January briefing focused on four questions for the Board to consider concerning proposed rules. The April briefing detailed some of the history of rural determinations with a focus on process considerations and it discussed some of the key issues of the 2000 census, including methods and presumptive population thresholds and suggested changes to regulatory language.

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

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

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

I think I'll stop there, Pete.

Thank you, Mr. Chair.

CHAIRMAN TOWARAK: Are there questions.

(No comments)
CHAIRMAN TOWARAK: Any questions of Dr. Jenkins.

(Pause)

CHAIRMAN TOWARAK: Go ahead.

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

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

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

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

Thank you.

CHAIRMAN TOWARAK: Go ahead, Mr. Haskett, first.
MR. HASKETT: Well, actually it's a question, I don't think we want to spend too much time talking about what we're going to do on the 2007 decision yet because we haven't actually done that yet so I think it's good we're concentrating on the first two and recognizing that's going to be another part of it when we get to that.

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

CHAIRMAN TOWARAK: Go ahead.

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

(Laughter)

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

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

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

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

Theo is very optimistic, I think, when he says one year for a change. We do these changes in one year, it's very tight, but something of this nature which is so fundamental to the Program I would suggest is going to take at least two and probably will end up on the Secretary's desk.
If the Board decides that it wants to change the entire process then it makes sense to delay action on Saxman because they won't be whipsawed and there's a renewed opportunity for consensus.

But there are really only two decisions.

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

CHAIRMAN TOWARAK: Go ahead, Pete.

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

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

Mr. Chair.

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

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

Mr. Chair.

CHAIRMAN TOWARAK: Go ahead, Mr. Haskett.

MR. HASKETT: So, again, I'm always trying to simplify things so that we can move forward efficiently and make sure we get to everything we need to get to.
So I think we've had an excellent presentation of just what we're facing in terms of process. I think Pete did an excellent job of making it clear that we're looking at a couple of different things. We want to make sure that we treat the Saxman request in a way that, you know, is fair and we move forward but also that we have these other charges, that we have these other communities that we need to cover as well. And I like your word, whipsaw you used, we don't want to go ahead and do something that is under one process and suddenly you have a new process and you have to relook at it again so I think -- I mean I'm going to suggest we move on from the discussion here because I think we have a pretty good understanding of what we're facing and let's kind of move toward that point where we can, you know, make some determinations in what direction we want to go.

CHAIRMAN TOWARAK: Mr. Virden.

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

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

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

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

MR. VIRDEN: Thank you.

CHAIRMAN TOWARAK: Go ahead, Mr. Adams.

MR. ADAMS: Thank you, Mr. Chairman. I want to thank Dr. Jenkins for using the, you know, the principle of -- using the laws of nature and applying it
to this particular issue. Hopefully that book will inspire, you know, other issues that come up where that process can be used as well.

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

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

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

Thank you.

CHAIRMAN TOWARAK: Thank you. Any other discussions.

(No comments)

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

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

The State of Alaska has no recommendation on the issue that is before you. And the reason for that, as the Chairman pointed out, the State Constitution doesn't delineate between rural and non-rural users. I'll simply make the comments I've been repeating throughout the process these last few days, that we put that admonishment out to standardize the application of the process that you have before you. That you maintain
a consistent application. But the question before you is
simply for Saxman, if you move into Subpart B at a later
date that would be a different question and of course the
State would probably be recommendations for what should
be considered rural or non-rural in general, but you have
information available to you that the State does
delineate not -- with our Constitution, not for fish and
game resources, for rural schools, for rural roads
funding, for census, these are all things that you take
into your criteria and they're readily available.

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

CHAIRMAN TOWARAK: Thank you for those
comments.

Further discussion.

Mr. Lohse.

MR. LOHSE: Mr. Chair. It's kind of
interesting listening to all this and then thinking of it
from a people standpoint. I see two issues before you,
too, and like Jennifer said one issue is the issue of
Saxman and the people involved in Saxman and the request
that they've brought before you and the information that
they've brought before you and from that standpoint,
whether you go into -- I'll use the global process or
whatever you want to use, the process that revises the
whole system or sets criteria up for the whole system, I
think it really behooves you to address the Saxman issue
as people at this point in time and decide whether or not
you are going to -- and I won't say make a final
decision, but whether or not you are going to give them
a stay until you have the time to do all of the rest of
this otherwise Saxman is going to be sitting there -- you
know, they've put this effort in, they've brought
everything before you and Saxman's going to be sitting
there on the edge wondering what's going to happen. And,
I, personally, thought the way you had it lined up on
your agenda was a good way. I really thought you should
address Saxman because they're the petitioners, they're
the bottom up that came to you and they came with a
request and they came and you acted on them as if they
were people. I really think that the -- the policy and
the big picture needs to be addressed, the review needs to be addressed, but the people of Saxman need to be addressed, too.

CHAIRMAN TOWARAK: Thank you for those comments.

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

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

Pete.

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

MR. GOLTZ: Correct.

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

Mr. Chair.

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

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

CHAIRMAN TOWARAK: Okay. We will discuss the global issue.

Mr. Adams.

MR. ADAMS: I'd like to have, you know,
Keith explain that, taking up the global issue first, please, if you don't mind.

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

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

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

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

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

CHAIRMAN TOWARAK: Mr. Lohse.

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

MR. GOLTZ: It's up to the Board but I would assume so. If the public doesn't like the criteria and we've heard much on that then we might change it but we might use a different label.
The discussion would be how are we going to make decisions.

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

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

CHAIRMAN TOWARAK: Mr. Haskett.

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

So we have kind of two major charges here.

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

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

So I think it's very important for us to
keep this moving, but not get drug down into what is the
Board going to do because we're going to do that through
a public process and through government to government
consultation and it's not going to be something we're
going to do overnight. It's going to be something we're
going to do as well as we can and get as much input as we
possibly can so I guess I'm hoping we're not going to
spend too much more time talking about that other than
the fact, here's what we're prepared to do going forward.

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

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

CHAIRMAN TOWARAK: Go ahead, Pete.

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

MS. PENDLETON: Okay, thank you.

CHAIRMAN TOWARAK: Mr. Adams, you had a
question.

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

Who is going to establish the criteria?

CHAIRMAN TOWARAK: Pete.

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

Mr. Chair.

CHAIRMAN TOWARAK: Thank you. Mr. Goltz.

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

CHAIRMAN TOWARAK: Mr. Virden.

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

CHAIRMAN TOWARAK: Go ahead, Pete.

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

CHAIRMAN TOWARAK: Go ahead.

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

CHAIRMAN TOWARAK: Go ahead.

MR. PROBASCO: Go ahead Keith.

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

CHAIRMAN TOWARAK: Go ahead, Mr. Haskett.
MR. HASKETT: Okay, but I think it would be helpful if you would define what you mean by act now.

MR. GOLTZ: I think the Board has to decide if it is going to take a global look at the process.

MR. HASKETT: Okay.

MR. GOLTZ: If it decides that it is going to, then it has to determine whether these five areas that are of now -- made some change in determination, whether it's going to stay -- is it five -- those five areas.

CHAIRMAN TOWARAK: Mr. Haskett.

MR. HASKETT: Okay. So I mean I'm prepared, when the appropriate time is to make a motion to do just that. And I mean I'm ready to do that now maybe that will help clear up the rest of this discussion if this is a good time to do that.

CHAIRMAN TOWARAK: Go ahead, Pete.

MR. PROBASCO: And, Mr. Haskett, before you do that, if I may Mr. Chair.....

CHAIRMAN TOWARAK: Yes.

MR. PROBASCO: .....is that on the global issue, because of time and because of redundancy, we're recommending that we start with a proposed rule.

Mr. Chair.

CHAIRMAN TOWARAK: Thank you. Mr. Cribley, you had a question.

MR. CRIBLEY: Well, I think Keith earlier said we're in some ways got the cart in front of the horse and I think he was maybe talking a little bit differently than what I'm thinking right now. But we have been -- well, I've been on the Board for over a year now and going to meetings and listening to public testimony and the Saxman issue has been one that has been in front of us and we've been receiving testimony or concerns from the public about this issue and we have been listening for a long time and our understanding --
and the agenda of this meeting was to -- for the Board to have a discussion about that.

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

Just a concern. Also it's almost lunch.

(Laughter)

MR. CRIBLEY: Sorry.

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

MR. CRIBLEY: Right. Right.

CHAIRMAN TOWARAK: And Mr.....
MR. HASKETT: Haskett.

CHAIRMAN TOWARAK: .....had a comment,
and then Mr. Lohse.

MR. HASKETT: So where I am, I actually
believe it would help make to the motion specific to have
I believe we should handle the rural determination
process for the five communities, which covers this. I
think it's fine if we're going to have a short poll of
the Board that says, where are you all as far as you
think on, you know, kind of the global thing. I mean
we're kind of talking all around this and I'm feeling a
really strong need to kind of get a little more specific,
although I'm apparently making our attorney nervous when
I say that. So I don't want to spend a whole lot of time
and a lot more dialogue on this, a poll, kind of where we
are, I think is great, but we shouldn't plan on spending
-- I mean we could spend hours getting into the weeds on
this and I want to be really careful we don't do that
yet.

CHAIRMAN TOWARAK: Okay, I'm going to ask
Mr. Goltz and then Mr. Lohse.

MR. GOLTZ: Okay, I'll be direct.

We cannot go where you want to go today.

We have not had the public process, we've
only heard one side of the question.

We're talking in generalities because
that's what we can legally defend.

If we want to directly address the
testimony then we'll have to have notice and hearing on
that testimony.

And be aware that much of the testimony
has not been relevant to the legal considerations in
front of us. This is not a Native statute, it's a rural
statute. There are certain methods for determining
rural. As much as we may be affected by the emotion of
this, that's not the charge of this Board, and we simply
do not have the record in front of us to decide the
ultimate determination of Saxman.

I have tried to lay out a road map, if
you will make a decision to take a global look at your
process then it will be defensible to delay Saxman, but I believe that's the only way we can go. We cannot address Saxman's ultimate fate today. We do not have a notice out. We do not have an adequate administrative record.

MR. HASKETT: Right.

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

Mr. Lohse.

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

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

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

MR. CRIBLEY: (Shakes head negatively)

CHAIRMAN TOWARAK: No.

MS. COOPER: Mr. Chair, I did. I was going to ask for either a five minute break or we break early for lunch. If Board Member Haskett actually has a motion then I think we should proceed, if not I do have a question for legal counsel, but if we're not going to forward with the motion I think we should take a break.

CHAIRMAN TOWARAK: What's the wishes of the Board.

MR. HASKETT: Well, I can make a motion if I want to anyway, right.

(Laughter)

MR. HASKETT: I'd like to make a motion and the Board can tell me yes or no.

(Laughter)

CHAIRMAN TOWARAK: The floor is open.

MR. HASKETT: So can I get a second to make my motion.

(Laughter)

MS. PENDLETON: Second.

MR. HASKETT: Okay. Oh, sorry.

(Laughter)

MS. PENDLETON: Make a motion.

(Laughter)

MR. HASKETT: I was just looking for someone to say I could do the motion, period.

(Laughter)

MR. HASKETT: Okay. I move to delay the
compliance date of the Board's previous decision to
revise the areas or communities from rural to non-rural
status as they were published in the Federal Register on
May 7th, 2007. The compliance date will be delayed until
either the 2010 rural process is completed or five years,
whichever comes first.

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

MS. PENDLETON: Second.

CHAIRMAN TOWARAK: You heard the motion
and the question.

Further discussion.

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

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

As Mr. Lee Wallace pointed out, I had the
opportunity to go out to Saxman and visit the community
and get a sense of why there's concerns, we've had lots
of letters, calls and testimony for us to look at this
previous decision. We've spent a good part of this
morning hearing from people on why it's important. We
had the beginning of this session hearing testimony from
AFN and many others saying why we needed to do this. I
really appreciated Bert Adams comments and Council in his
part, you know, that the RAC believes that we're going in
the right direction on this, after hearing more about the
reasons for looking at this. We do have legal
requirements to follow and this stay would allow us to
stay within those requirements for Saxman and the other
communities, and they will continue as rural -- or Saxman
will continue as rural until we make a final decision.

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

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

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

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

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

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

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

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

(Laughter)

MR. GOLTZ: I suggest we have lunch.
MR. HASKETT: Okay. Well, if nothing
else people know where I'm coming from.

CHAIRMAN TOWARAK: Was there a second to
the motion.

REPORTER: Yes.

CHAIRMAN TOWARAK: No.

REPORTER: Yes, there was.

CHAIRMAN TOWARAK: No.

MR. PROBASCO: Yes, there was. Ms.
Pendleton did the second, Mr. Chair.

I think when we get into situations like
this, going from -- from my experience on this Board as
well as my previous experience, I think it's important
that we get it right and that we go down a path that --
make sure that what the Board wants to do for these
communities that may be affected in May of 2012, that we
take a break and that we discuss it so that people
understand -- maybe Geoff can speak with Keith and then
we come back on the record and lay things out, Mr. Chair.

So I strongly recommend that we take a
break.

CHAIRMAN TOWARAK: Go ahead.

MS. COOPER: I concur with that and I'd
like to suggest one more thing, if it's possible maybe we
end up with some thoughts towards the motion and
something typed up when we reconvene.

CHAIRMAN TOWARAK: Mr. Adams.

MR. ADAMS: Just a comment here.

Geoff mentioned that -- I have to make
this known that the RAC, you know, the Southeast RAC is
standing its position to support Saxman. Okay. And the
feeling that I said earlier, that we were probably going
in the right direction, I'm not representing the RAC on
that comment, okay, it's my own personal feeling.

However, I don't see any problem with the RAC supporting
that as well.
So I just wanted to clarify that for the record.

Mr. Chairman.

CHAIRMAN TOWARAK: Thank you. Is there any objection to taking a lunch break before we act on the motion.

(No objections.

CHAIRMAN TOWARAK: We will reconvene at 1:30 then.

(Off record)

(On record)

CHAIRMAN TOWARAK: There's a motion on the floor. What's the desires of the motion maker.

(Laughter)

MR. HASKETT: So I've been convinced by our legal counsel that I got ahead of the cart a little bit.

(Laughter)

MR. HASKETT: So he actually didn't tell me my motion was bad, but he said it was just misplaced.

(Laughter)

MR. HASKETT: So what I would like to do would be to ask the Board to let me pull that motion so that we could have another motion from another member on the Board that actually sets the stage a little better than was set when I did it the first then after that, assuming it goes, the Board passes it, I intend to go ahead and give a very similar motion after that.

MS. PENDLETON: And I will second that. And I believe I have to withdraw my second as well, correct.

MR. PROBASCO: You just concur.....

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

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

MR. CRIBLEY: Mr. Chair.

CHAIRMAN TOWARAK: Yes.

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

MS. COOPER: Second.

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

(Laughter)

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

Thank you.

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

CHAIRMAN TOWARAK: You heard the motion and the second. Discussion.

MR. CRIBLEY: Yes, Mr. Chairman. As far as my discussion and rationale for this, as I had said previously since I've come on the Board the issue of rural determination and the decisions from the last rural determination review has been in front of the Board at all of our meetings and concerns about that process and the criteria that we use for making determination has been discussed and has been brought to the Board by the public. And the public has expressed concerns about the determinations that were made previously based on the criteria.
And I just feel based on that, what the public has been -- the information that they have been providing to us and that we are required to do a review every 10 years and we're scheduled to start or we are starting another rural determination review, that we should do a review of that process to make sure -- basically to open it up to the public and allow them to provide us information on how that should be done, to either validate the current process or make suggestions or recommendations on how we may make it better and more reflective of what the intent is.

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

Thank you.

CHAIRMAN TOWARAK: Any further discussion. Mr. Virden.

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

MR. CRIBLEY: Yes.

MR. VIRDEN: Thank you.

CHAIRMAN TOWARAK: Any further discussion.

(No comments)

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

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

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

Mr. Haskett.

MR. HASKETT: Yes.
MR. PROBASCO: Mr. Towarak.

CHAIRMAN TOWARAK: Yes.

MR. PROBASCO: Ms. Cooper.

MS. COOPER: Yes.

MR. PROBASCO: Ms. Pendleton.

MS. PENDLETON: Yes.

MR. PROBASCO: Mr. Cribley.

MR. CRIBLEY: Yes.

MR. PROBASCO: Mr. Virden.

MR. VIRDEN: Yes.

MR. PROBASCO: Mr. Chairman. This motion carries, 6/0.

CHAIRMAN TOWARAK: I probably should have asked this a little bit earlier but does that put a stay on the.....

MR. HASKETT: No.

CHAIRMAN TOWARAK: No, okay.

MR. HASKETT: Go to me.

(Laughter)

CHAIRMAN TOWARAK: Mr. Haskett.

MR. HASKETT: Casey here.

(Laughter)

MR. HASKETT: Just joking. So I'd like to make a motion and then based on the previous action that we just took to do a review of the rural determination process, I move to extend the compliance date of the Board's previous decision to revise the areas or communities from rural to non-rural status as they were published in the Federal Register on May 7th, 2007, the compliance date will be extended until either the completion of the 2010 rural determination process or
five years, whichever comes first. This will be accomplished through publication of a direct final rule. And if I get a second I'll go ahead and give my justification.

MS. PENDLETON: Second that.

CHAIRMAN TOWARAK: You heard the motion and the second. Discussion.

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

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

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

I mentioned earlier today, that I had an excellent visit with Mr. Lee Wallace in Saxman a number of years ago. That actually gave me to start questioning, not just Saxman, but all the rural communities that the decision had been made on previously. We had lots of letters and calls and testimony for us at this meeting to relook at our previous decision.
As I mentioned before, I appreciate Bert Adams' comments and I recognize the fact he said I wasn't really speaking for the RAC but I think they're still very important and some recognition of the direction we're going here.

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

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

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

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

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

CHAIRMAN TOWARAK: Further discussion.

MS. PENDLETON: Call question for the question.

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

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

First up is Mr. Towarak.
CHAIRMAN TOWARAK: Yes.

MR. PROBASCO: Ms. Cooper.

MS. COOPER: Yes.

MR. PROBASCO: Ms. Pendleton.

MS. PENDLETON: Yes.

MR. PROBASCO: Mr. Cribley.

MR. CRIBLEY: Yes.

MR. PROBASCO: Mr. Virden.

MR. VIRDEN: Yes.

MR. PROBASCO: Mr. Haskett.

MR. HASKETT: Yes.

MR. PROBASCO: Mr. Chairman. This motion carries, 6/0.

CHAIRMAN TOWARAK: Thank you. And I assume that takes care of that agenda topic.

MR. HASKETT: Can I point out one thing.

CHAIRMAN TOWARAK: Mr. Haskett.

MR. HASKETT: I would like to point out that our legal counsel showed up just to make sure that I got that right and he's leaving now that we're done. (Laughter)

MR. GOLTZ: I'm glad you got it on the record. (Laughter)

MR. HASKETT: So I appreciate his coming back to keep me straight. (Laughter)

MR. PROBASCO: And I want to thank Mr. Goltz, thank you, Keith.
CHAIRMAN TOWARAK: Thank you. We will continue then with our agenda. We have other business to attend to. I don't have them written down but we have a March Board meeting that we wanted to discuss.

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

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

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

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

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

MR. ADAMS: No, it's fine, we're looking
forward to it, so that's fine.

(Laughter)

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

CHAIRMAN TOWARAK: Go ahead.

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

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

Mr. Chair.

MR. ADAMS: How about the Chair.

That's okay, I know.

(Laughter)

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

(Laughter)

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

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

(Laughter)

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

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

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

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

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

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

(Laughter)

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

CHAIRMAN TOWARAK: The floor is open for
discussion.

Mr. Adams.

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

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

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

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

MS. PENDLETON: Thank you.

CHAIRMAN TOWARAK: Mr. Haskett.
MR. HASKETT: I'd actually like to go to Unalakleet but scheduling it might be difficult. So if it's two days, I mean we all have horrible travel schedules and I'm thinking if there's any way we could just maybe add it on one side or the other of when we're meeting. I mean that's a long week but it might be easier just to do that and work into a weekend or something instead of trying to schedule it.

MR. PROBASCO: You're talking about May?

MR. HASKETT: Yes, the May meeting.

MS. PENDLETON: Or March.

MR. HASKETT: Or March. Yes, March would work too.

MS. PENDLETON: Since we've got two and a half day too in that week of March.

MR. HASKETT: Yeah.

MS. PENDLETON: So we could look at, if I may, Mr. Chair, suggest maybe the 19th or 20th or -- yeah, Monday and Tuesday.

CHAIRMAN TOWARAK: That would work for me better. I've got other obligations at the end of March [sic], but I could go on both sides of the week if need be.

MR. PROBASCO: So on the floor I hear a suggestion 19th and 20th and I think Ms. Pendleton is offering Juneau as the location to make things -- the morning of the 19th would be a travel day, which is a Monday.

MR. HASKETT: Or travel morning.

MS. PENDLETON: Might suggest if we needed two full days folks could travel in the morning on Monday and that would give us Monday afternoon through Wednesday noon for retreat business and then start that afternoon with the full Board meeting.

MR. HASKETT: So I think that would be great if we could start early and then we could just keep a day at the end too so we can actually maybe split it up, too, if we needed to, that'd probably be the best.
date to work.

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

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

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

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

MR. VIRDEN: Is that Gold Medal.

REPORTER: Yes.

(Various nods of affirmative)

MR. VIRDEN: Thank you.

MR. PROBASCO: We could have a team.

(Laughter)

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

CHAIRMAN TOWARAK: Are there other issues that we need to address.
MR. PROBASCO: Yes, Mr. Chair, I have two more. Ms. Yuhas and myself would just like to give a quick update on the MOU. Staff, myself, on the Federal side, Sandy Rabinowitch, Jerry Berg and Steve Kessler have been working with Jennifer on the State side. We hope to be able to, during the March portion, or actually before the March meeting, before the RACs, have drafts out of potential changes which we would share with you before we send out to the public, of some potential revisions to the MOU with the goal of having the Regional Advisory Councils review those during this winter cycle.

Jennifer, do you have anything to add?

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

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

Okay.

CHAIRMAN TOWARAK: Okay.

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

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

MR. PROBASCO: Thank you.

MS. YUHAS: Okay.

MR. PROBASCO: You are accurate.

MS. YUHAS: Okay.

MR. PROBASCO: I'm sorry. Thank you for
the correction. Catch me quicker, okay.

(Laughter)

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

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

Oh, I do have one more.

CHAIRMAN TOWARAK: The floor is yours.

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

Any recommended dates from the Board members.

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

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

MR. VIRDEN: Mr. Chair.

CHAIRMAN TOWARAK: Go ahead.

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

MR. PROBASCO: Well, I've alerted, I think if we can do this electronically and I'll try to
confirm the date next week, I'll send an email out, and
ask for a quick response.

MR. VIRDEN: Okay. Thank you.

MR. PROBASCO: Is that doable.

MR. HASKETT: Yes.

MR. PROBASCO: Are there any weeks, I see
some people are looking at calendars, any weeks to avoid
at this time?

CHAIRMAN TOWARAK: I have meetings on the
22nd of May for about three days.

MR. PROBASCO: Okay so the week of 21st
trouble, has difficulties.

MR. LORD: Mr. Chair. I'm out of the
country from May 20th to the end of the month.

CHAIRMAN TOWARAK: Okay, the last two
weeks.

MR. HASKETT: The week of the 14th
doesn't work for me.

MS. PENDLETON: Yeah, the week of the
14th, same here, doesn't work.

MR. PROBASCO: Doesn't work. So now
we're back to the week of the 7th, okay, let's look at
the week of the 7th.

(Board nods affirmatively)

MR. PROBASCO: Okay, thank you.

MR. PROBASCO: Now that's all I have.

CHAIRMAN TOWARAK: Thank you. Are there
any other business that the Board needs to address.

(No comments)

CHAIRMAN TOWARAK: If not the floor is
open for adjournment.

MR. ADAMS: Mr. Chairman.
CHAIRMAN TOWARAK: Go ahead.

MR. ADAMS: If I just might say, you know, I think this was a very productive meeting and congratulations for your wisdom and working with the issue of Saxman. I think that process is going to come out pretty well.

I also want to show my appreciation to the young people from Sitka who came to these meetings. I've had a chance to talk with them a little bit and they seem to be getting a lot of good information out of here.

So I just want to say, you know, thank you very much for this meeting -- this meeting has been very productive, and I commend you for the work you are doing here.

Thank you, Mr. Chairman. I hope everyone has a safe trip back home, wherever that might be.

CHAIRMAN TOWARAK: Thank you, Mr. Adams.

And I, too, hope that everyone has a safe journey home, especially me.

(Laughter)

MR. HASKETT: That's very selfish.

(Laughter)

MR. ADAMS: Well, good luck, Mr. Chairman. In Southeast Alaska, too, we're having big storms down there, they're expecting 24 inches of snowfall and right now there's about 75 knots of wind, you know, whipping through Juneau and it's going to spread up toward my home by tomorrow so hopefully I'll beat that and then get snowed in in Yakutat where I belong.

(Laughter)

MR. ADAMS: Thank you.

MR. CRIBLEY: Mr. Chairman. I move that we adjourn. Oh, never mind.

MR. PROBASCO: Your motion is in order. But I was asked that if the Board members would just stick around for a couple minutes the students would like
to get a picture with you, with the Board. Okay. Is that okay with the Board?

CHAIRMAN TOWARAK: We'll take time to do that. The motion is in order.

MR. CRIBLEY: Now what do I do, do I do it again?

MS. PENDLETON: Just do it.

MR. CRIBLEY: Well, maybe not -- meeting adjourned, is that what I'm supposed to do.

No.

Make -now I can make the motion to -- Mr. Chairman, may we adjourn this meeting please.

(Laughter)

MR. CRIBLEY: So we can get our pictures taken.

(Laughter)

MS. PENDLETON: I just love to second these so I'm going to second it.

CHAIRMAN TOWARAK: A motion has been moved and seconded that we adjourn, all those in favor of the motion say aye.

IN UNISON: Aye.

CHAIRMAN TOWARAK: Any opposed, say nay.

(No opposing votes)

CHAIRMAN TOWARAK: Motion passes, we are adjourned. Thank you to the Staff and everyone.

(Off record)

(END OF PROCEEDINGS)
CERTIFICATE

UNITED STATES OF AMERICA

STATE OF ALASKA

I, Salena A. Hile, Notary Public in and for the State of Alaska, do hereby certify:

THAT the foregoing pages numbered 497 through 576 contain a full, true and correct Transcript of the FEDERAL SUBSISTENCE BOARD PUBLIC MEETING, VOLUME IV taken electronically on the 19th day of January 2012, beginning at the hour of 9:00 a.m. at the Gordon Watson Conference Room, Anchorage, Alaska;

THAT the transcript is a true and correct transcript requested to be transcribed and thereafter transcribed under my direction;

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

DATED at Anchorage, Alaska, this 28th day of January 2012.

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Salena A. Hile
Notary Public, State of Alaska

My Commission Expires: 9/16/14