

INTERAGENCY STAFF COMMITTEE RECOMMENDATION
THRESHOLD ANALYSIS OF RURAL/NONRURAL REVIEW RFR07-05

Oppose rural/nonrural review request for reconsideration RFR07-05.

Justification

In the case of the Ketchikan Area, the Board weighed information presented by staff as well as extensive public comments and Regional Council recommendations, and did not find that the characteristics of the Ketchikan Area had changed significantly to warrant changing the existing nonrural status. No new relevant information was presented by the requester that was not considered by the Board.

Even though the Board uses a population threshold, it recognizes that population alone is not the sole indicator of a rural or nonrural community. Existing population levels identified in regulation provide for a presumption unless a community or area exhibits characteristics contrary to the initial presumption. This provides the Board latitude to deviate from the presumption thresholds as warranted after review of additional community characteristics. Communities and areas of all sizes were given adequate consideration, and multiple opportunities were provided for review and comment. As shown in Table 5 (page 64) of OSM (2006a), the population of Ketchikan City was 7,196 in 1980 when ANILCA was enacted, and 7,685 in 2005. The population of the Ketchikan Area excluding Saxman was 10,754 in 1980, and 12,720 in 2005. The fact that both geographical areas have shown increases since 1980 is reflective of how there is no net effect on the outcome of this decennial review based on use of either the smaller or larger geographical boundary.

There is no disputing that Title VIII of ANILCA was initially drafted for the benefit of Alaska Natives. However, there is also no disputing that Congress intentionally modified the draft bill such that the law actually passed is, by the express language of its terms, for the benefit of rural Alaskans. In such a case, the intent of Congress is not found in the legislative history, but in the plain language of the statute. The law, as passed by Congress, plainly benefits all rural Alaskans rather than only Alaska Natives.

Section 805(c) of ANILCA requires the Board to “consider the report and recommendations of the regional advisory councils concerning the taking of fish and wildlife on the public lands within their respective regions for subsistence uses.” Board actions that have only an indirect effect on the taking of fish and wildlife, such as decisions concerning who is or is not eligible under Title VIII for the subsistence priority, are not subject to deference. In accordance with this interpretation, a Council recommendation concerning the rural or nonrural nature of a community is not entitled to deference by the Board.

The final rule addressed rationale for Board decisions on rural/nonrural status of Ketchikan and Kodiak, which were consistent with the regulations.