

APPROVED MEETING MINUTES
CITIZENS' ADVISORY COMMISSION ON FEDERAL AREAS
FEBRUARY 24 & 25, 2012
CAPITOL BUILDING
JUNEAU, ALASKA

FRIDAY, FEBRUARY 24, 2012

CALL TO ORDER

Chairman Keller called to meeting to order at 1:06 p.m.

ROLL CALL

Roll was called with the following members present: Rod Arno, Mark Fish, Representative Wes Keller, Charlie Lean, Warren Olson, and Susan Smith; Mike Meekin joined at 1:36p; Senator Menard joined the meeting at 1:37p.

Commission staff in attendance: Executive Director, Stan Leaphart, Assistant, Karrie Improte.

Others in attendance: Kent Sullivan; Ed Fogels, Deputy Director DNR; Steven Perrins, Senator Menards Staff; Kathy Ann Davis, Ernest Prax, Representative Keller's Staff, Scott Ogan; Randy Larson and three members of the public.

AGENDA

Delay Report of the Chairman and Executive Director until tomorrow, emphasize the need leave enough time for Commissioners Comments at the end of the day tomorrow and we will add Mr. Ed Fogels from DNR before Communications. Motion to accept the agenda with changes, Commission Arno; second Commissioner Fish; approved at 1:07pm.

MINUTES

Motion to approve the minutes as written, Commissioner Arno, second (inaudible), no objections. Minutes from October 2011 meeting approved at 1:08pm.

PRESENTATION

Mr. Ed Fogels, Deputy Director of the Department of Natural Resources

A little bit of a quick summary of a few of the tasks that the Department is involved with. I see that tomorrow, on your agenda, that you will be discussing the Alaska Long Range Transportation Plan, I will not be able to stay through tomorrow but I will be here all day today. I just wanted you to know that we have mobilized a DNR team to analyze this project and DOT people will be looking into that and DNR will be making comments on that. Other items of note are the Delta River Special Management Area, as you all are aware the Governor protested that Plan and we haven't heard anything on that yet. BLM will likely make some changes based on our protest but we don't know what those are; BLM Eastern Alaska Resource Management Plan we did do internal comments to that Plan, we haven't looked at this one yet but we will be scrutinizing that one. We didn't get to see the Draft Plan before it went public and we weren't very happy with that. Of course we objected to any wild and scenic rivers and wilderness reviews and the standard stuff that was in our internal comments. I have no idea how much of that has been addressed in the Draft that just came out. The other big plan we're involved in is the NPR-A Plan. We have just submitted our internal comments on that, they're due today. The comments we are planning on submitting parallel what I just said, we don't like the wilderness reviews the wild and scenic river review, etc, etc.

Also, we do have this permitting initiative that the Governor is pushing the State agencies to focus on. That all State agencies permitting processes are working more efficiently, and as part of that initiative we're looking at our involvement and our relationship with Federal agencies trying to help them improve their

permitting process and just in general working hard to strengthen and reframe our relationship with the federal agencies and in places it is working well and others it's not. As an example, the Governor just sent a letter to Secretary Salazar about the Izembek Road EIS where basically felt like we were ignored and not given an opportunity to participate as a full cooperating agency in that process. Items like that effect more than just resource development projects but our interaction with the feds on plans and fight back on that overreach and forge better relationship.

I have one more thing to mention here, a quick question for your Executive Director, "How long have you been working in this position?"

Leaphart – Cumulatively, 17 years on the first go around and 3 years the second go around.

Mr. Fogels – I would like to take this opportunity, it's a great honor to present your Executive Director with a Certificate of Appreciate, for 25 years of service to the State of Alaska, congratulations.

Arno – The Record of Decision on the Nabesna EIS, did the State protest or look at that and go, 'That's the way it is?' Is there anything in the hopper anywhere?

Mr. Fogels – I will have to get back to you on that.

Leaphart – For a Park Service document like that there is no formal protest but the Regional Office said that we could express our views about the final plan. The ROD was signed back in December and just today the State received a response letter. I assume we will get a similar response to our comments.

Arno – If the State doesn't like what the ROD says is there any legal action that they can take?

Mr. Fogels – Obviously there isn't a formal protest like with the BLM; I'll have to look into that.

COMMUNICATIONS

1:33 p.m. From the Executive Director –

Leaphart reviewed the following items in the packet:

Letter dated November 4, 2011 to Senator Lisa Murkowski regarding comments on **SB 730, the Southeast Alaska Native Land Entitlement Finalization and Jobs Protection Act**. "...This is moving very slowly. Changes have been discussed and agreed to but there has been no mark-up on the Bill, nothing has been officially changed. I am waiting on McKie Campbell for further discussion. I had asked the USFS to come to our meeting but they declined to discuss the regions position."

Correspondence to Mr. Richard Voss, Refuge Manager, Arctic National Wildlife Refuge, November 15, 2011, to provide comments on the **Arctic National Wildlife Refuge Draft Comprehensive Conservation Plan and Draft Environmental Impact Statement**. The comprehensive letter discussed that wilderness and wild and scenic river reviews are a violation of ANILCA, the Plans flawed explanation of why the "No-More Clause" doesn't apply, repeating earlier comments on regarding cabin management, the Service's elimination of the 1002 area from further consideration or examination for oil and gas development, the Service's overly restrictive management of fish and game may negatively impact the State's ability to manage the resource and expressed appreciation for the Service's attention to the public process. "The Plan was different in that it didn't constitute a 'comprehensive plan', it didn't cover the ANILCA "No-More Clause". The Plan emphasized the Service's 'hand's off' approach to management heavily weighting (the protection of) wilderness. They received 100,000 comments; national interest (in this plan) is intense. Gates of the Arctic received 400 comments in scoping."

On October 31, 2011, a letter to Miriam Valentine, Park Planner, Denali National Park and Preserve offering comments on the **Denali Park Road Draft Vehicle Management Plan and Environmental Impact Statement** with objections to several of possible actions. "...objected to the Teklanika Campground closure (by phasing out recreational vehicles over time), limiting the number of permits to this very popular campground. The road is very restricted, you can't drive any further." Impacts arising from the current system are of sufficient magnitude as to warrant extensive changes to the existing road management strategy and concern that the current allocation on inholding access permits may be re-allocated to benefit the transportation system.

An appeal correspondence from Forrest Cole, Forest Supervisor, Tongass National Forest regarding the Commissions Appeal to the Forests decision to remove and not replace the **bathhouse at the White Sulphur Springs** "The original proposal was back in 2012, we commented in support but between the draft and the ROD, (they) decided to remove the bathhouse and not replace it because it was not in keeping with wilderness values. We filed an appeal along with 5 other appellants including the City and Borough of Sitka, and the City of Pelican. It became clear that the bathhouse gets more use than the cabin. The Forest said they could attempt to justify the rebuild for health and safety reasons and modify the decision. They continued work to stabilize the bathhouse and allow for use until more information is gathered on the historic use. We were impressed with the Forest Service's willingness to consider the additional information.

A letter dated February 1, 2012 addressed to Mr. Richard Voss, Refuge Manager for the Arctic National Wildlife Refuge regarding the Alaska specific application for **commercial guided Education, Recreation (non-hunting), Sport Fishing and Air Operations within the Arctic National Wildlife Refuge**. "Last year the Fish and Wildlife Service decided to do away with an Alaska specific application for applying for a Special Use Permit to conduct commercial activities on Wildlife Refuges in Alaska. That was developed after they took over assigning hunting guide use areas. They were using it for other activities like Air Taxi operators, Transporters, wilderness, backpacking and river guides and it asked for a lot of information than wasn't necessary. I did a lot of research on application forms and the Waste Paper Reduction Act, we had discussion with DC and the ANILCA Office and will made some recommendations so that they recognized some Alaska specific stipulations. What came out of it was a form that came out with a very detailed letter of instruction. Well, the Arctic Refuge came out with its own instruction sheet and I was provided a copy of it by a commercial guide who was a little concerned about the questions that they were asking about his employees. I went through it in comparison with the OMB approved sheet and I found several instances where they were asking for more information than had been approved or different information. As a part of this whole improvement process and agency has to justify. It says very clearly that they can ask for less information but they can't ask for more or different information and we found at least three instances where they asked for information like names and addresses of employee even if they didn't work on the Refuge. We thought that stepped over the line. I wrote the Refuge Manager, we have asked them to withdraw their instruction sheet and use the approved one. We haven't had a response yet."

In a letter to Sue Masica, Regional Director for the National Park Service, dated February 15, 2012, providing review comments on the annual review and revision of **Park Compendiums** for 2012. In November, I had a chance to meet with some of the Regional Office staff and chief Rangers of all the Park units. It's an annual meeting that the State and the Park Service has agreed have every year to meet and talk about upcoming revision. A Compendium is a list of rules and regulations that apply to a particular Park. There were a couple of changes. This came out of a meeting in Eagle with this group that has formed called the Eagle-Yukon Subsistence Working Group sort of driven by the Jim Wilde incident. They are a group of people who are concern about the management of the Preserve, long time residents of Eagle. Just to give you an example, there was a regulation that says you can't carry a weapon into a federally owned building. Well, taken literally, if we go out and use one of the 6 or 7 public use cabins on the Preserve, if we go out hunting

we have to leave our gun outside or we are technically in violation. They talked to the Superintendent and there was a clarification that a public use cabin is not considered a federal building for the purpose of this rule. I'm glad to see the response from the Park Service. To wrap this up, our standard request to the agency to take some of these Compendium generated closures and use restriction to move it into a more formal rule making process. That is something we ask for every year.

Rep. Keller – Now we have Ms. Kathy Davis, Deputy Attorney General from Utah. Utah has 1,000's of RS2477's and is a great resource to us. I'll turn it over to Scott Ogan to introduce Ms. Davis.

Mr. Scott Ogan – Kathy Davis is a person we met when I led a delegation to Utah in December. We had been talking to the Utah staff and we've been watching their cases. They've had more success with RS2477's than any other state, so we decided to go down and see what they were doing. We also found out that they were going to file a whole bunch a Notices of Intent to Sue. What interested me about Kathy is that she is a Federalist Attorney and monitoring State rights issues.

GUEST SPEAKER – Ms. Kathy Ann Davis

2:06 p.m. **Kathy Ann Davis, Assistant Attorney General, State of Utah**

Thank you for the opportunity to come up to Alaska, it's been beautiful and I will be coming back.

I'm the Federalist Attorney in the Public Lands Division for the State of Utah, hired in October of last year. This position was created by the legislature to deal with issues where they feel the Federal government has been encroaching on State sovereignty. The RS2477 is the critical issue for us right now because of some self imposed deadlines that we have developed because we want to cut off any arguments that might be raised in the litigation we are filing. We have filed 2 lawsuits in December of last year and we're looking at filing 19 more. My position is not necessarily to research the precedent as far as the federal law goes because the federal law says that it can make rules and regulations that are needful for the disposition and management of public lands. That is pretty wide ranging. There is a Supreme Court decision that it is without limits. Utah feels like there should some limits on that authority, and our Attorney General has taken the position that the Supreme Court isn't always right. The Supreme Court does evolve and it does reverse itself. My position is to look at policy reason why we might bring certain issue into the court and get some clarification on some of these public lands issues. In conjunction with that, my position is to rely on the text of the United States Constitution as originally written and as amended through the Bill of Rights. The meaning of the text at the time of its drafting and as a primary source document; a primary source document is defined as something that was created by a person directly involved with the drafting of the constitution or the amendment, or someone who was involved with the original implementation of the Constitution or the amendment. With that research I have read through the Federalist papers and started reading through the Constitutional convention and scanned through the minutes of the Utah Constitutional Convention which was really quite fascinating. It was 61 days of debates and they dealt with some pretty significant issues like suffrage for women and the prohibition of alcohol.

My opening slide, one of our more definable Class-D roads. In Utah we have several classes of roads, class B and D roads. Class-D roads are what we are litigating. Class-B roads are maintained by the county on a fairly regular basis. They need not be maintained but they are occasionally bladed or graded. Class-D roads can be anything from something like this road or a two track, just a couple of wheel ruts with a raised mound or weeds in between the two tracks. The Notices of Interest we files were; we filed 18,784 Notices of Interest, 2,790 B roads and 16,594 D roads.

Revised Statute (R.S.) 2477 says "The right-of-way for the construction of highways across public lands not otherwise reserved for public purposes is hereby granted." Enacted through the Mining Act of July 26, 1866 and it was supposed to literally construed. The whole purpose of the Act was to allow for access into public land and to develop the western public lands. We wanted homesteaders to go in and miners to go in. We

wanted ranchers to feed, graze and move their cattle around. The whole purpose at the time was to develop the western nation. The whole policy at that point was one of openness and access for everyone, and one of disposal by the federal government.

On October 21, 1976 the Federal Land Management and Policy Act or FLPMA was passed and it stated "Nothing in this Act, or in any amendment made by this Act, shall be construed as terminating any valid lease, permit, patent, right-of-way, or other land use right or authorization existing on the date of approval of this Act." This has been construed to mean that any RS2477 right of way that was established prior to the enactment of FLPMA is still a valid right of way. So the issue becomes was the RS2477 right of way established prior to the passage of FLPMA.

Our process for establishing R.S. 2477 Right of Way was to

Step 1: GPS Data Collection including aerial map review, historical map reviews, any kind of data we could get for actual roads on the ground. We had a staff of people who actually went out with a GPS and mapped the centerlines, drove the roads, took pictures, had the County Officials ride along to determine what roads were necessary for their transportation systems for that county.

Step 2: Data Review and we had to name the roads, fix issues with road names apply a unique County number for every distinct road; One of the main counties is Kane county, and they are taking the lead in this effort because Kane county and Garfield county were the two counties that lost significant positions of their county to the Grand Staircase Escalante Monument. So there has been a great deal of hostility over the roads in that monument. The local government has become very hostile because the federal government has restricted access. A lot of the roads in the monument have been historically used by ranchers and mining, eastering, basically recreation. The hostility was caused by the lack of access.

Step 3: Obtain Affidavits; we went out to the counties and asked the counties to find people who could provide information for these affidavits. Road team meets with witnesses and obtains two affidavits, if possible, on each right of way. For the most part we are dealing with a limited number of people because a few people we able to testify to a great number of roads because this is a system of roads that intersect and criss-cross their area. Some people were able to testify on 50-60 roads.

Step 4: Then we would review the whole file and our automated geographic reference center would calculate a legal description recording an interest in that road. This interesting thing about RS2477 is that the statute doesn't require that you have the right of way recognized; it's a self executing statute. If you have Made a road and the road has been used then it is a road under RS2477 but now we have it in the public record.,

Step 5: Record and Submit Documents, the road team member's travel to County Recorder to record road packets and the recorded road files are uploaded to PLPCO website and submitted to State Archives. Our website has all our recorded roads and electronic files (from the screen) <http://www.recorded2477roads.utah.gov/>. It has to be recorded in that county. If the road spans two counties, it has to be recorded in both counties.

Step 6: Seek recognition by federal agency. Some of the ways we've tried is to use FLPMA Title 5 permits; Permit should be in perpetuity and drafted so as not to impact any R.S. 2477 rights; we've had one Nonbinding determinations and Recordable Disclaimers of Interest

Finally **Step 7:** Litigate as Necessary to get recognition from BLM under the Quiet Title Act. The action brought by the State has to be brought within twelve years of the State receiving notice of Federal Claims to the lands. This becomes an issue for Utah because there was some activity in 2000 that could be construed as notice that the Federal government was taking action. That is why we are pushing to get our claims file by May of this year.

This is our Notice of Intent to Sue. You have to give the federal government notice that you intend to sue them under the Quiet Title action.

The Quiet Title Act "The United States may be named as a party defendant in a civil action under this section to adjudicate a disputed title to real property in which the United States claims an interest, other than a

security interest or water rights.”

- (i) Any civil action brought by a State under this section with respect to lands, other than tide or submerged lands, on which the United States or its lessee or right-of-way or easement grantee has made substantial improvements or substantial investments or on which the United States has conducted substantial activities pursuant to a management plan such as range improvement, timber harvest, tree planting, mineral activities, farming, wildlife habitat improvement, or other similar activities, shall be barred unless the action is commenced within twelve years after the date the State received notice of the Federal claims to the lands.

Our Notice of Intent to File Suit to Quiet Title to Certain Rights of Way, filed May 12, 2011

Southern Utah Wilderness Alliance v. Bureau of Land Management

September/October 1996, San Juan, Kane, and Garfield Counties began grading 16 roads on Federal land. These three counties have most of the red rock, scenic country that the Wilderness Alliance is concerned about and where they started their organization. SUWA claimed Counties did not have the right to pave the roads; Counties claimed ownership of the roads under R.S. 2477. SUWA sued BLM on claimed violation of statutory duties, that they were not adequately defending our conservation of the land; then sued the Counties for unlawful construction of the roads. The counties claimed that the activities took place within valid R.S. 2477 ROWs. BLM did an informal adjudication that said the counties did not have valid Rights of Way (15 of 16 roads); Kane Co. exceeded ROW on Skutumpah Road. We are still in litigation on the Skutumpah Road. This road has been in used for over 100 years. The District Court affirmed BLM determinations so it went up to the Tenth Circuit Court and was remanded. The Tenth Circuit said BLM does not have authority to make binding determination on the validity of R.S. 2477 ROWs. It had to go to the Trial Court for *de novo* trial. Because the ROW is a servient estate and the federal government is the landowner, the holder of an R.S. 2477 ROW must consult with federal agency before undertaking improvements. The State can make maintenance improvements to ROW limited to those “reasonable and necessary” and determined by established usage as of repeal of statute. You can’t improve hiking trail into 8 lane highway. It can’t expand the use. The counties bear burden of proof to establish ROW to be established by a preponderance of the evidence. That 2477 Rights of Way could be established by counties by two methods:

- Public Use Standard – Acceptance of ROW established through continuous public use for 10 years based on Utah statutory law; or
- Mechanical Construction Standard may be taken into consideration but not necessary element.

The other litigation that we have pending is

1. Kane County v. U.S. decided just last year involving Quiet Title Action with the State of Utah as an intervener. A Summary Judgment Ruling where we got title to 5 Roads, including the Skutumpah Road; Ten years public use not only method to establish R.S. 2477 ROW; Post-trial briefing/Closing argument (10 remaining Roads; 9 day trial); and
2. San Juan County v. U.S., was a judicial court decision that was decided last year, the Salt Creek Road Case. The Judge found that single entity use not sufficient to establish “public” use; that motorized use for scenic travel did not meet 10 year requirement prior to reservation of Canyonlands Park; and use must be established by “clear and convincing evidence” which is stricter than a preponderance of the evidence. So there are two different decisions on what the standard is. The Judge determined that we did not meet the criteria. In this case we had to show 10 years prior to 1964 instead of the FLPMA date because Canyonlands National Park was reserved in 1964. This is in its early stages of appeal. Its precedential value is minimal but it’s still out there. Intervention by SUWA not allowed.

Bald Knoll Road Non-Binding Determination is on the BLM website. The Bureau of Land Management has completed, for its land management purposes only, a preliminary non-binding determination (NBD) for the

Bald Knoll Road in Kane County. The Bald Knoll road is located in Kane County, approximately 20 miles northeast of Kanab. Total length of the road is approximately nine miles, with nearly the entire length crossing public lands administered by the BLM. Based on review of information submitted by Kane County and information in BLM records, the BLM Utah State Office has made the preliminary determination that the Bald Knoll Road is a valid R.S. 2477 right-of-way. SUWA has sued against this determination.

Litigation-Legal Issues:

Statute of Limitations under Quiet Title Act, is a wilderness designation a notice under QTA

- 10th Circuit: Wilderness designation is not sufficient notice of adverse claim as in Southwest Four Wheel Drive v. BLM, but
- 9th Circuit- Inyo County v. Interior they say that it is.

On allowing Interveners, there is a split District Court decisions) Salt Creek case will preclude further intervention; the Juab 3 roads case they did allow the Environmental defendant permitted intervention. Emery County 7 roads case that we had closing arguments in December, SUWA was denied intervention. Problems we've had with witnesses, aging witnesses we're doing Rule 27 Depositions which allows us to file to take depositions as sworn testimony and allows the federal government to cross examine. State Statute authorizes recording affidavits which is circumstantial evidence; then we have these private landowners who say, "Oh, yeah, that road has been going through here for a long time but I don't want that easement so I'm not going to testify." This has been a huge problem. Then the burden of proof issue, do we have to provide clear and convincing or a preponderance of the evidence.

Mr. Arno – Do you feel like you are building case law, are you educating these judges or are you having to go back. Is it getting any easier or is it different in every case?

Ms. Davis – Every case is different. We are trying to get it up to the Tenth Circuit because the decisions we're getting out of the Tenth Circuit are generally pretty favorable so far.

Mr. Arno - The case law that you are developing at the Tenth Circuit is better than what you are getting at the District Court?

Ms. Davis – There are several Judged that we do not want to draw at the District Court level.

Mr. Olson - Is your State Supreme court involved?

Ms. Davis - They are only getting involved if there is some State law that has to be interpreted. The State Supreme court has been deciding on a bunch of road cases and those are inconsistent. So they may get involved in the litigation standard precedent.

The other issue I've been working on where the State believes that the Federal government had encroached on the State prerogative and State powers. One of our issues is Federal ownership, 67% of the State of Utah. One of the issues in the legislature is whether the federal government breached our Enabling Act by failing to transfer title to the public lands in Utah. Utah got 4 sections in every township in support of public schools as part of being granted Statehood and Section 9 of the Act: "That five per centum of the proceeds of the sales of public lands lying within said State, which shall be sold by the United States subsequent to the admission of said State into the Union, after deducting all the expenses incident to the same, shall be paid to the said State, to be used as a permanent fund, the interest of which only shall be expended for the support of the common schools within said State."

The Utah Enabling Act was passed in 1894. The expectation in 1894 was that the Federal government was

not going to be a long term landowner. That we would get 5% for public school and that land would pass into private ownership and that the State would have a property tax creating a tax base that would also benefit the school fund.

We have these resolutions in the legislature:

HCR 001 – Letter to the Federal Government, a demand for response and an indication of intentions by 4/15/2013; and

HJR 003 – Federal Transfer of Public Lands is a resolution demanding that the federal government extinguish title to Utah's public lands and transfer title to those lands to the state of Utah.

2012 Proposed Bills:

HB 0091, 91S01 - Utah Enabling Act Legislation - Requires the State Attorney General to file an action to enforce the Utah Enabling Act if the United States does not comply with certain demands by 10/1/2012;

HB 0148 - Transfer and Taxation of Public Lands - Requires the United States to extinguish title to public lands and transfer title to those public lands to the state on or before December 31, 2014; Provides for 5/95% State/Federal split on sale of public lands to which the State receives title under legislation; 5% State share to be deposited into the permanent State School Fund; requires the Constitutional Defense Council to study or draft legislation on certain issues related to the transfer, management, and taxation of public lands;

HB 0141 – State Sovereignty and Rights of Set Off - Affirms Ninth and Tenth Amendments; Grants State right to set off costs and damages against amounts owed to Federal Government;

HB 0176 – County Land Use Plans - Outlines process for a county to recommend to the Legislature proposed congressional land use legislation concerning federal land use within the county;

HB 209 - Utah Lands Protection Act - Defines sovereign lands;

HB 0511 – Eminent Domain of Federal Land - Allows eminent domain action against Federal Government by political subdivision of State.

The final issue, there was a meeting today with the US Attorney; I haven't heard what the result was. We have certain federal officer, particularly in southern Utah, that been issuing traffic citation and hunting and fishing violations that are being cited into federal court under the Central Violations Bureau. They have to appear before a magistrate in federal court and of course the funds from those violations go into the federal system. The County Sheriff are very concerned that this is stepping on the toes of Utah sovereignty because traffic, hunting and fishing are essential state functions. The US Attorney is very concerned about this because there is a great deal of resentment in southern Utah because the courts are not conveniently located and they don't like federal officers. I met with the US Attorney a few weeks ago is also on a Domestic Terrorism Task Force. He gave me an article from the Denver Post for a convention that was held in Las Vegas for Sheriffs and Officers as being the back bone of authority in the United States and basically encouraging the County to engage in some disagreements with Federal Officers. The US Attorney is sufficiently concerned that there may be some vigilante behavior. My research clearly shows while the federal government can issue citations inside the National Park, their jurisdiction ends at the boundary of the Park.

Rep. Keller – (Reading a question from the audience) What advice would you give to our state on resolving RS2477's and is there any way to dovetail our work with Utah to work together in this fight

Ms. Davis - Get your sworn testimony as soon as possible. We are losing witnesses every day. If you have someone who was on the road in the 1960's, they are getting up there in age and there are issues of competency. If one person dies, there goes 50 or 60 roads. Get your testimony, get it on record. As far as dovetailing efforts, I'm not sure how exactly but if we get more state doing these actions then we get more attention to the issue.

The Commission takes a short 10 minute break.

Leaphart – I'd like to introduce Ms. Susan Boudreaux, Superintendent for Glacier Bay National Park and Preserve. She has agreed to talk with us tomorrow on some issues up in Glacier Bay and Randy Larsen who is the Superintendent for the Sitka Historical Park. We are going to put him on as part of our public presentation at 4p.

AGENCY REPORTS

3:08p - Scott Ogan, Manager of the Public Access Assertion and Defense Unit, DNR;

This last field season we were fortunate enough to enjoy an increment from the legislature is \$590,000 which we are outing to good use. One of the things we did with that \$590,000 is to hire a full time Attorney, Kent Sullivan. Ken is 15 year veteran of private law practice. It took quite awhile to recruit him but we're glad we did. He was on for a week before we went to Utah. It was a very productive trip and we learned a great deal.

The last time we were out at Mosquito Fork the water was very high. We arrived after a high water event. This season we're out there again.

The mission for my Department is to protecting the Alaskan lifestyle through the assertion and defense of access to Alaska's Public Lands and Waters. There's a number of Wild and Scenic Rivers in the FortyMile area which is a post statehood withdrawal, therefore, if navigable, State owned. The big question is is Mosquito Fork Navigable? Whether a river is navigable is based on Travel Trade and Commerce. "Navigable water" means water that, at the time the state achieved statehood, was used, or was susceptible of being used, in its ordinary condition as a highway for commerce over which trade and travel were or could have been conducted in the customary modes of trade and travel on water; the use or potential use does not need to have been without difficulty, extensive, or long and continuous;

Supreme Case Law: Customary Mode of Trade and Travel, Gulkana (Alaska v Ahtna) Quieted title to the Gulkana River, based upon the commercial use of a raft capable of carrying 1000 lbs.

(Graphics showing the comparison of Nation and Fortymile at Upper Reaches near the Canadian border and comparison of Nation and Fortymile at Confluences)

Local evidence found this summer: Historic Mosquito Fork Poling Boat about 18' long and 4' wide; I'm planning on getting an archeologist up there to document this evidence.

Shown photographs of boat "Navigating the "Non Navigable" water";

We are fully resourced with a new Attorney and we're focused on the task. We're finalizing reports, interviewing witnesses, coordinating weekly, approval to litigate pending.

We are also working on closing in a filing on cases.

RS 2477 Field Work Summary, out in the Forty Mile area. We had crews out there two weeks out of every month for six months. We started late in the fiscal year last year.

RST 1594 WAMCATS Research, this is the Carey Mills case. We did extensive archeological and ground surveys in the Hutchison Creek portion. Some of it is really tough country; we couldn't get in there with four-wheelers up by the confluence of Champion and Little Champion Creek and the Chicken Ridge Road Recon. There isn't much use up there except for trapping. They built the WAMCATS telegraph through there, which was a technological feat in 1905. It was a telegraph line from Saint Michaels all the way to Seattle and the lower 48 telegraph system. Billy Mitchell pioneers this route through there. We know that most of that was brought in through the winter with mule teams and dog teams, and then they maintained it with mules and hiking.

We managed to make 17 routes out of around 29 routes, centerline surveys. We didn't get all of them surveyed. We had two historians in Eagle; they found records they we didn't know existed.

What is next on RS 2477s? We are on the hunt for;

- Continued collaboration with Utah
- Witnesses of use before 1969. One of the things you can do for us is if you know anyone who was out and using these trails, we're actively trying to find these people. We want to get this testimony before trail. We've actually found more RST's from talking to people.
- Historical evidence
- Archeological evidence
- Cases in the State's best interest to prosecute.

The Legislature has codified about 600 RST's. There are another 1400 or so that DNR did not submit to the legislature to be codified. With additional with more testimony, we may find more.

My team, they are working on a paper, historic trails in the Forty Mile. Archeological sites we found out there they validate these cases. We are looking for cases that are in the States best interest to prosecute. It's a matter of when not if. We don't have a statute of limitation in this State. The Commissioner's asked me what we should do and I said, "When you build a house, you set the corners....then you start adding your stones. You set your foundation on good cases and these are good cases." Utah has a multi-million dollar budget to work on this; we just don't have the resources.

Mr. Lean – I know of a whole bunch of trails with both winter and summer use. It's a network of roads near the Solomon (inaudible) there is winter trail use, summer road use. They all connect to each other and none of them are acknowledged. The relics that indicate past use have been stolen and there is a need for data collection.

Mr. Ogan - I'd like to introduce our full time, dedicated Attorney for the PAAD Unit, Mr. Ken Sullivan.

3:45 p - Mr. Ken Sullivan - On so many on our ROW you can show year-round use not show continuous use. I think we are thus far a bit more lenient as far as frequency. We have a lot we can look at on what we can assert RS2477 on. I have been spending a lot of time lately because our litigation strategy as of late has been to cherry pick only the very best case example and push those forward first to set a precedent and find the best examples. One of the things I'm focusing on now is the witness use and testimony. Back then when this started they were focused on locating the trails not who the witnesses are. The problem is that is all that was available at the time, there wasn't a lot of time spent on witnesses. In order to be able to prosecute a case you have to have this testimony. When you start talking with these witnesses, one may have lots of evidence on many trails and through this testimony we get information on more trails in the area and historically use on trails not already identifies. We have to focus on witness testimony right now and certainly we're doing that. This web link where people can go to supply simple contact information and DNR can look at that and call them back to interview them more thoroughly. What we want to do is rather than wait to bring each case and

wait to do deposition is we want to apply to do pre-litigation depositions of all the most important witnesses we can identify now.

Mr. Arno – Is there a standard for the closure for RS2477? Can old RS2477 that were closed by the land manager be...?

Mr. Sullivan – My understanding that DNR has procedures, administrative regulations, on vacating a ROW vacated. To vacate, there has to be some assurance that an alternate route exists.

Mr. Arno - Can Boroughs or private landowners vacate an RS2477 or is it only DNR?

Mr. Sullivan – It is my understanding it takes the cooperation of DNR through that administrative process or alternatively they would have to seek that to be done through the court and the only way for it to be done through the court is if it wasn't recognized legally as an RS2477. I'm not aware of any other mechanism.

Mr. Fish – A term that comes to my mind, we have to go beyond the web and use a resource, a facilitator. Do you have the resources to take a facilitator to the homes, senior centers in the population center especially for care? I'm sure you could find plenty of people who would love to talk about their exploits.

Mr. Sullivan - We are looking at different ways of public outreach. We are reprioritizing how we collect witness testimony. I'm finding out, when you interview witnesses and asking witnesses to follow up on leads. It takes someone taking the time, following up on these leads.

4:00pm PUBLIC PARTICIPATION

Randy Larson, Superintendent of the Sitka National Historic Park

I've been Superintendent for about a year. I was in Juneau today and thought I would introduce myself to the group, tell you a little about Sitka National Historical Park and answer any questions. Sitka National Historic Park is the state's oldest park and it is the smallest. We only have 113 acres there. Alaska's oldest federally designated park was established as a federal park in 1890. It became a national monument in 1910 to commemorate the 1804 Battle of Sitka fought between the Tlingit's and the Russians.

I hear about some of the issues you talk about and we don't have those issues. I think the Park is a very special place. I did see in the Commissions comments about the Compendiums. SNHP was not consistent with the firearm regulation that was promulgated a few years ago. Just this week we looked into that. I thought perhaps there would have been a red flag with the Borough municipal code; just this week we've submitted some language to Anchorage. I really don't see that being a very big issue or too much impact on any of the public areas

The visitor center contains ethnographic exhibits and houses the Southeast Alaska Indian Cultural Center, where visitors can watch Native artists at work. For those that have been to the Park we have three studios with resident artists and that really enhances the visitor experience. Which operates as non-profit organization, we did not renew our contract with that concession and to date we struggle with finding a new non-profit for that venue.

This week we received a letter from the Sitka Tribe of Alaska to take over some of the programs in the Park and that would be under the Indian Self Determination Education and Assistance Act. There are only three other parks that gave a geographic cultural Tribe nexus to the park. That is significant for Sitka National Historic Park.

ADDITIONAL PUBLIC PARTICIPATION

4:17p Ms. Susan Boudreaux, Superintendent at Glacier Bay National Park

Presented 4 brief sheets

Good afternoon, I'm here to meet and greet. I'm new; my first year at the Park has been spent getting to know staff who are very passionate about their work. Now for 2012 my objective is outreach and getting and meeting people. I have 5 projects I would like to talk to you about. The first is that we have a ferry system in Gustavus and that's a big deal. It's a population of 350 people; the ferry started last year with service once a month. Last winter we started once a week, last summer it's two times a week; this summer it will be four times a week. It's exciting but brings some problems. With additional visitor we struggle with parking and traffic. The town is slowly realizing that this is going to have a significant impact on the town. It's very interesting. When the ferry comes, they stay about two hours and there is really no where to eat in Gustavus. The locals can get on the ferry and eat. It's a great way to meet the locals.

What you have in front of you are four briefing statements which I will review with you.

1. The Falls Creek Hydroelectric Project is the opportunity for the Park to connect to the town. In order to provide power to GLBA, the park has three diesel generators operating alternately. These generators provide power for all facilities in the Bartlett Cove (park front country) area. The park currently transfers, stores and delivers approximately 70,000 gallons of diesel annually for power generation. The inter-tie could save approximately 68,000 gallons of diesel fuel annually (depending on capacity of hydro system). The power generation facility in the park would need to be maintained for a backup of the park's power system and the park would continue to own and operate the electric distribution system itself.
2. The Harvest of Glaucous-Winged Gull Eggs by Huna Tlingit. This has been going on for about 18 years now. A Final Legislative Environmental Impact Statement (LEIS) identified a preferred alternative which would authorize traditional harvest by HIA tribal members through a cooperative management program. The LEIS defined harvest strategies and monitoring actions and concluded that collection could occur, if authorized, without impairing the biological sustainability of the glaucous-winged gull population in the park and without negatively affecting park purposes and values. A Record of Decision was signed on September 3, 2009. The Huna Tlingit Traditional Gull Egg Use Act of 2011 co-sponsored by Senator Lisa Murkowski and Senator Mark Begich, was introduced on May 25, 2011. It was referred to the Committee on Energy and Natural Resources Subcommittee on National Parks. It was referred to the House Subcommittee on National Parks, Forests and Public Lands on September 29, 2011. The interested parties have been Most Hoonah Tlingit, through their tribal government, support this proposal. Most conservation organizations, including the National Parks Conservation Association support the proposal. However, Mr. Jack Hession, representing the Sierra Club Alaska Chapter opposes it. Overall we have had a lot of support at the community level and within the State.

Leaphart – We commented on the EIS in support of the project. We heard from the residents of Hoonah on the issue of subsistence in the Bay has come up. It has been on everybody's mind for a long time.

Ms. Boudreaux – The next project is we are proposed to construct is a Huna Tlingit house in Bartlett Cove on the beach. That has also been 16-18 years in the making. As of today we have completed the public scoping letter. In response to input from the Hoonah Indian Association, the 1997 Comprehensive Design Plan included the development of a tribal house in Bartlett Cove. The general purpose of the proposed facility was to provide opportunities for park visitors to learn about Tlingit culture and to provide a venue for Huna Tlingit gatherings, workshops, ceremonies and other cultural activities. The Huna Tribal House will be built of predominantly traditional materials. Some of the desired design

elements include: massive Sitka spruce upright posts, beams and rafters, hand-adzed cedar plank flooring and walls, and a cedar shake roof with a smoke vent. The money for the project has come from the Park service but the logs and the materials and the logs for the totem poles wood has come from Sealsaka. It's been a really nice cooperative effort.

3. The big challenge the Glacier Bay Lodge. The concession contract for the Glacier Bay Lodge, the principal lodging and tour vessel concession at Glacier Bay National Park and Preserve will expire December 31, 2013. Due to poor financial returns under the current concession contract, there is concern that there may be little or no interest in a new concession contract for these services. Initial analysis suggested the operation may not be financially viable. The park is moving forward with the initial prospectus development in order to better assess the financial viability as well as the necessary and appropriate mix of services. I'm happier with the onset of the ferry. It helped us look at things a little differently. If we don't get anybody for this project, we need to think about what we are going to do. Two things we don't want to lose are 1. The day boat. The day boat is critical for businesses and 2. That the charter vessels and private vessels who come into the Bay have access to fuel at Bartlett Cove. I have already talked to Sue Masica and the Park will take those over but what to do with the Lodge is a whole other story. .3
4. We are thinking about alternatives and there are a lot of unknowns. When the Park built that lodge there was nothing in Gustavus. There are a lot of businesses coming in.

Meeting adjourned at 5:05 p.m.

SATURDAY, FEBRUARY 25, 2012

RECONVENE - CALL TO ORDER

Chairman Keller called to meeting to order at 8:30 a.m.

ROLL CALL

Roll was called with the following members present: Rod Arno, Mark Fish, Representative Wes Keller, Mike Meekin, Senator Linda Menard, Charlie Lean, Warren Olson, Ron Somerville, Susan Smith.

Commission staff in attendance: Executive Director, Stan Leaphart, Assistant, Karrie Improte.

Others in attendance – Ruth Monahan, Steven Perrin, Jim Thomas,

REPORTS of the Executive Director

8:31a.m. Leaphart - To the Commission, I have broken out selected parts of the Consolidated Appropriations Act of 2012. What was in there had to do with the Yukon Charlie River Preserve, going back to the Jim Wilde situation, Congressman Young wanted to reign in the National Park Service so He got together with Senator Murkowski and put in some language to prevent them from using any of their finds to enforce any of their boating regulations.

A little background, the NPS has gone to Great Lake to repair some of the damage from that incident. I've met with the Park Service and some folks in Eagle. The Park Service put another Ranger in Eagle and the people in Eagle are a little more comfortable about how this are going to be managed. The working group meeting I mentioned yesterday, we got together and went through point by point and those issues were addressed in large part in the Compendiums. Most were clarification; the Park Service definitely deserves some credit.

Keller – This has raised awareness and it a credit to you and CACFA. It's fantastic, thank you Congressman

Young and Senator Murkowski for doing this.

Lean – Does this apply to other Park Units, like Kobuk Valley?

Leaphart – No this applies just to Yukon Charlie and just on this boating regs. or what we call water regs. Next item and one I hope we had some influence on the Bill is the reestablish of the ANILCA Section 1308 Local Hire Program which had been inoperative since 2008 and this brings it back. The changes allow federal agencies more flexibility to hire local Alaskans based on special knowledge and expertise. And finally, section 125 prohibits the use of any find to implement, administer or enforce the Secretarial Order 3310, the BLM Wild lands Program.

Somerville - How do we get around the conflict with ANILCA?

Leaphart - The BLM does their land management under FLPMA and FLPMA requires them to look at all the resources on the lands that they manage. In addition BLM is not prohibited from doing wilderness reviews. They aren't prohibited by ANILCA from doing that and up until now they haven't done any reviews in their management plans.

Notice to collect information on the economic impacts of the listing of the Cook Inlet Beluga Whale. I have asked for a copy of the questions they will be asking on the survey. NOAA and the National Marine Fisheries Service plans to conduct a survey to collect data for measuring the economic benefits and impacts of additional protection to the Cook Inlet Beluga Whales.

Fish – In the abstract the intent is to identify public benefits? Are they only looking at the economy of the benefits of the protection not the negative impacts on the affected communities? I question the value of the survey when it is framed in such a way that there is a designated outcome.

Leaphart - The National Park Service intends to evaluate the impacts of plowing the Denali Park Road. Currently the park road is closed beyond park headquarters after the first snowfall and is not plowed. During the winter one lane of the road is maintained so the road crews have access between Mile 4-7. Both lanes are available for use by dog teams, cross country skiers, snowshoers, and winter recreation. Spring road opening begins in mid-March, and the road is generally open to the public as far as the Savage River by early April, and to the Teklanika River Rest Area by mid to late April. The National Park Service intends to evaluate the impacts of plowing the Denali Park Road between park headquarters and the Mountain Vista Rest Area during the winter season. Plowing the road beyond park headquarters would allow private and commercial vehicles to travel further into the park.

The BLM has announced that they are looking for nominations for member of their Resource Advisory Council. They have some vacancies and they are opening the nomination process. It's an active group. One of the issues we inherited when established was the BLM Trapping Cabin Policy. Last year we made suggestion to move forward with a policy. They made a subcommittee and presented to the council a revised policy. They meet twice a year. The application is in here. If you know anybody who would be interested.

Keller – If you know of anyone who is interested, we should collaborate on a recommendation.

Leaphart – the next item is a notice about a land exchange between the Service and a conservation fund, the dates are incorrect. It's a three way exchange. The conservation fund has some property in Texas in exchange for 400 acres in the Tetlin Refuge. I'm not certain of the benefits. This is just the preliminary exchange.

The National Park Service is proposing to allow subsistence collecting of shed or discarded animal parts, horns, antlers and bones and plants, to make handicrafts for personal or family uses by qualified local rural residents in Park units where subsistence is allowed. Currently the NPS national regulations prohibit the possessing, destroying, injuring, defacing, removing, digging, or disturbing from its natural state any living or dead wildlife or fish, or parts. There was an EA developed to evaluate alternatives for subsistence user.

This next item is a Record of Decision for the Nabesna, it was signed in December. Even though they came out with the final EIS, they didn't sign the ROD. They said they would be willing to hear some comments before they adopt it. We haven't received a response yet. The bottom line on this whole decision is a bit of a reversal from the preferred alternative to upgrade the trails to allow for ORV used with no restriction on recreation ORV use in the Park. The Park Service plans to upgrade trails to allow ORV use. People use these trails in the Park to access the Preserve. Local subsistence users can hunt in the Park and the Preserve. Portions of some of these trails are not open to any ORV use except subsistence because some of the trail segments are going to be re-routed. These segments are being chose for re-route because they are on really bad ground. This has the effect of, from their perspective, making this a new trail. Park Service Regulations states that they can designate existing trails in the Park for ORV use but not new trails. Our qualified support for the preferred alternative in the Draft document was in part because they were going to upgrade the trail for ORV use could resume. Right now a lot of those trails are closed because they are in such bad shape. That was the basis of the lawsuit with the National Parks Service Conservation Association that the Park Service wasn't adequately managing that use. This ROD, the Park Service has adopted a new alternative that has eliminated any non-subsistence ORV use in the Park and by doing that it's going to make it more difficult for people in that area to hunt under the general hunting regulations because you are going to have walk miles through the Park to get to the Preserve. The NPS readily acknowledges wide spread use in that area that started way before the Park Service designation and a valid use in the Park and Preserve. Our letter indicated our disappointment that they changed the alternative. I don't know what recourse the State might have. I'm not sure what is next. The NPS has secured some funding to upgrade these trails. It is going to be expensive and lengthily process.

Somerville – That is going to make some of the Preserve inaccessible. Is the State, have they said anything on this issue

Leaphart - Yes, the ANILCA program and DNR weighed in. From DNR's perspective, there are a lot of these trails that are RS2477. There have been questions raised about what the State will do in response to them relocated a State ROW. This has come as a big surprise to everyone because they combined two alternatives to come up with a sixth alternative. We have a call into the AG's office to see if there have been any discussions within DNR about what we can do if anything can be done.

Mr. Arno – The State has been negligent on this from the beginning. AOC has intervened in this suit, the State decides not to. What has come out of this now is that we have closures that have nothing to do with hunting and fishing. This is the first time they have really restricted the subsistence user in the Preserve. I think CACFA should write something formal to the Governor to the AG? I have never been through something as long and drawn out as this. Something that came from a lawsuit that has had all this public process and now the decision has been made up of parts of the different alternatives. They created something that we haven't even commented on. It's time to seriously ask the Governor and the AG, there are some many ANILCA violations on this thing. I would hope that we write a strongly worded letter.

Mr. Olson – The Park service has put out a book that explains the history of the Park action up here. I would think that we should write to eliminate this park. We've had a constant turmoil, constant chaos with this Park and they just keep changing the pockets on the table. We have practical, hands on use, historic use for 100

plus years. We've tried to live with this situation since November 1980 and it's not working.

Ms. Smith – I agree 100% with Rod. We should be outraged and do whatever we can because we can't let it go.

Rep. Keller – What our choices are here; we should wait to hear what Stan's hears back from Ann Nelson, and if we have to make a decision and then Rod had a very good suggestion and that is to formally request that DNR review the case and look for ANILCA violations. Then our options are as always, if we go so far as to recommend litigation. Let's be thinking about a motion.

Leaphart - I will have to talk to the Department of Law and see what the options might be.

AGENCY REPORTS

9:40 a.m. U.S. Forest Service – Final Programmatic EIS National Forest System Land Management Planning Rule. Ruth Monahan, Deputy Forester and Jim Thomas, Regional Planner

Introduced Jim Thomas, started power point which was not available to copy

Mr. Thomas - Set the stage for this planning rule by requiring plans. We began the process shortly after 1976 to guide LM planning, 1979, revised in 1982 version of regs are what have been guiding the USFS since that time. Have used those regs. The planning regulations themselves, at this time, are not the last word. As a result we are going to be updating our FS regulation in our handbook that will guide how we will implement the rule. The rule establishes a framework and how to implement the content and how to process it. We would provide technical guidelines. The 8 have a technical responsibility working across the country not just in their individual units. We are setting the example for everyone to follow.

(Referring to the slide) While it's the plans themselves that provide direction for the management and furthermore the project or activity decisions that follow the plan will show what decisions are made in terms of which projects and activities are approved and implementing in the area. We are talking about a planning rule that is really a small part of the entire planning process that we have in place for the Forest Service.

I want to talk a little bit more about the planning rule versus the forest plans. The rule itself describes the process, minimum content of the plan, when and how the plan are revised, when and how plans are amended, who makes the plan decisions, how is the public involved, analysis, evaluation and assessment requirements and how the decisions are subject to appeals or objections. The land management plans that are developed as a products from the rule itself, such as the plan for the Chugach or the Tongass, that talks more importantly about how the land within the unit will be managed. Have the desired conditions, standards, objectives and guidelines, the suitability of lands for other activities, priority watershed for restoration, distinctive roles and contributions and monitoring and evaluation requirements been met. As Ruth mentioned the proposed Rule that was released in February 2011 was informed by numerous public participation activities. In addition to the many years we have been working through this process trying to get to a new rule. After the regulations were passed in 1982, we began in 1989 on a critique of the planning to date and to identify what had been working and what hadn't. We came out with new planning rule in 1995 and 1999, neither of which were implemented; another version of rules were issued in 2000 and 2005 and then revised in 2008. We have struggled to get to this point where we have a new planning rule that will lead us into the next 30 years of national forest and national grassland planning. We are hopeful that this one will be the one we will be using for the next 30 years. You have had access to the final EIS that was released earlier this year. In it is identified a preferred alternative for the rule and I think you've got that, it is appendix I of the EIS. That is all that has been released at this time. We anticipate the Secretary of Agriculture will sign the Record of Decision on the rule and that the final rule will be published in the Federal Register in mid-March. We're not anticipating any significant changes

but until it is published in the Federal Register we won't know what the final rule says.

The overall objective of this preferred alternative is to create a collaborative and scientific-based planning process that will guide the management of National Forest system of lands so they are ecologically sustainable, provide opportunities and involvement in the planning process it requires tribal consultation and coordination with the State and local governments and other federal agencies. It contributes to social and economic sustainability and provides for multiple uses within the capability of the plan area. The preferred alternative includes some of the same or greater resource protections as in the 1982 regulations but will cost a lot less money and take less time. It includes species diversity provisions and addresses both ecosystem diversity and species conservation and it is designed to maintain common native species and contribute to the recovery of threatened and endangered species and serve candidate species and protect species that are of conservation concern.

I would like to begin some comparison between the 82 rule that we have used for the last 30 years and the preferred alternative which we hope will take us into the next 30 years. As Ruth pointed out it has taken us quite a bit of time to complete our land management plans throughout the agency. The National Forest Management Act requires that plans be revised at least every 15 years. Usually we talk every 10-15 years. Regulation changes and legal constraints and funding that have given us a bit of a back log. Under the 1982 rule we anticipated 88 plan revisions over the next 15 years, with the preferred alternative, we anticipate we will be able to speed up that process and get rid of the back log with 104 plan revision over the next 15 years. Considering the decline in funding, the reduced cost in planning will be a big factor in being able to move ahead. Of the 127 plan that have been developed for National Forests and Grasslands, 68 are past due for revision and many more are scheduled for revision in the coming years.

Right now it has been funding that has been the problem with addressing the back log in plan that has exceeded their 15 year life expectancy. The two forests in Alaska, the Chugach completed its plan in 2002, the Tongass completed its plan in 2008. Down south, some of these plans have been in existence for 20 years or more so there is quite a back log. We have a notional schedule for how we are chipping away at the backlog but it has been difficult to do. But as this chart points out (referring to the presentation slide) what we are really hoping for is to step it up and move ahead on the back log. The language in the 82 rule focused on traditional uses, the preferred alternative focuses on updates that all uses are considered and that social and economic sustainability is considered as well as environmental sustainability. The preferred alternative focuses on monitoring the desired conditions and objectives for multiple uses. I mentioned earlier that components of the land management plan include the desired conditions and objectives as well as standards and guidelines. This rule really emphasizes the need to monitor progress towards meeting our desired conditions; quite a difference from the 82 rule. The preferred alternative provides opportunities for public participations through the planning process. This is an improvement from the 82 rule which relied on the National Environmental Policy Act to provide guidance on public participation. One example on the Chugach National Forest in the plan that the completed in 2002 had a very collaborative process, open public meeting, a lot of information on the web. These are the types of things that we have developed in the agency of the last 30 years. As soon as we started implementing the new rule in 82, we started identifying different techniques' that were beneficial and over the years we have improved upon that. The nice thing about this rule is that it incorporates that in the regulations what we have learned over the years. In particular, the preferred alternative provides the public with opportunities to review the results of the monitoring program and includes methods to include youth and minority populations, things that were excluded in the previous version.

The preferred alternative requires plans to maintain or restore habitat and water sheds. One of the best examples of the differences between the 82 rule and the current rule that I think of is fisheries. Both of our forest plan we have monitoring objectives related to salmon. Obviously, we are interested in maintaining healthy watersheds and streams that are used by the salmon but under the previous regulations the focus was on population monitoring. As you can imagine monitoring the populations of

salmon as it related to activities on the forest lands versus commercial fishing and acidification of the oceans, really made a population monitoring process under the 82 rule very difficult. There are examples like that throughout the country trying to count species and trying to figure out whether that population change is due to a function of something that was happening on the forest or something happening elsewhere really made it difficult. Another example is migratory waterfowl. Over the years we have been able to focus more on trying to restore and maintain healthy ecosystems with the expectation that if we maintain those ecosystems, the species that depends on them will also be maintained. We refer to this as coarse filter and fine filter. For certain species we are finding out that maintaining the habitat isn't adequate then there are additional plan directions to handle that candidate species or species of concern, and that we would take additional action beyond just the habitat. I wanted to read the requirements for that; "... the species of conservation concern is a species other than those federally recognized as threatened or endangered or candidate species," so it is not one of those, "...but that is known to occur on the plan area and it is known that the best scientific information indicates significant concern about the species capability to persist over the long term." So there are concerns, using the best science, that its ability to persist over the long term, these will be identified by the Regional Forester before the plan being developed and there will be additional requirements in the plans related to those species. Even though we may not have control over the migratory water fowl populations because of impacts outside the area, we are still required to provide for and contribute to the viable populations within the area of our ability to do so; is the habitat provision providing the expected benefit and these focal species are just for the plan level.

The preferred alternative states that we must use the best available scientific information in the process. It does allow some flexibility over the previous rule in that we can use local expertise and information from our partners and information from local communities.

The preferred alternative does talk about climate change. Although we may not be able to do much about it we do what to be able to adapt to changes that are taking place that are taking place in the landscape. We have been noticing that the yellow cedar on the Tongass for example, have noticed a decline and die off. What we have noticed is that those species are dying off at lower elevations and lower latitudes and still thriving at higher latitudes. It's migrating. We have other instances like that, that as conditions change, isostatic rebound will cause changes in vegetation patterns. One of the things we are supposed to assess carbon stocks. We are looking for stressors that we can monitor.

The other thing I wanted to mention is the FACA committee. The Forest Service is establishing as advisory committee to guide the management of national forests and grasslands. The National Advisory Committee for the National Forest System National Planning Rule will advise and give recommendations to the Secretary of Agriculture and Chief of the Forest Service and will specifically provide recommendations on issues such as our directive, best practices and monitoring practices and ongoing collaborative efforts. The nomination closed at the end of February.

Ms. Monahan - The selections are being done at the Secretary level and they are looking for a diverse group. They will not be an advisory group on the implementation of the planning rule. They will be really involved upfront with the guideline documents being developed but not the implementation.

Mr. Thomas - What does this mean to Alaska? The preferred alternative has incorporated everything we have learned over the last 30 years and it will be nice to have regulations that focus on what we have been trying to do versus putting in requirements that are really out of date. We are looking forward to future revisions across the country to utilize these procedure and protections in the preferred alternative. At this time we are not in the midst of a revision on either forest which is very nice. Some of the forests down sound, their timing was such that they were starting or beginning to start and this might have caused them to change the rules. We haven't begun any of our revision yet so we have the opportunity to look at this

as a new opportunity to move ahead. The Chugach was signed in 2002, so it's been 10 years and it's about time for us to start thinking about a revision if we were going to get done within 15 years. Last year we started to identify some of the pre-work that would have been necessary to move ahead with a revision beginning next year. As we mentioned, the Chugach was identified as an early adopter of the rule and it's not moving us ahead really but give us the opportunity to use the new rule. Officially we are supposed to begin in July but we have been working hard to prepare for this. The Tongass completed their last revision with a significant revision in 2008. Which would indicate we wouldn't need to move forward until 2019 but there are provision in the National Forest Management Act and the forest supervisor can initiate the process sooner. There is always an opportunity for the forest supervisor to say that the conditions and trends have changed, and on the Tongass there have been legal decisions. So when the Tongass is ready they can follow the new rule but there are no plans to do that. We can complete the work on the Chugach so we have an example in the region and for the other 120 some odd plan and for the Tongass when that happens.

Ms. Monahan - Some of the other early adopters have a lot of issues that built up over time. Their land management planning revision are going to be quite complicated, the Chugach is fresh. The only one of the 8 that is still fresh. There aren't a lot of issues that need changing. It gives the Forest Service the opportunity to see a forest that is going through a revision focused primarily on the process differences from the 82 rule and the new rule. We can focus more on the process and less on these issues. It's taking what we've got, a good plan that we have been updating with amendments and be able to apply the new procedures without as much pain and suffering as other forest that haven't looked at their plans for 20-30 years.

Chairman Keller - Do you anticipate any issues? Are there any issues that CACFA should pay attention to?

Mr. Thomas - It's really early in the process. One of the first steps is to do an assessment on conditions and trends. That will be the process that we will begin this year. I don't foresee anything substantial. This revision will be opening up and looking at those access and travel plans that were such hot issues. Those of you that are well versed in ANILCA know that the Chugach has the Nellie Juan Fjords Wilderness Study Area that was identified in ANILCA. In 2002 plan they identified a portion of it for wilderness not the remaining; so whether or not that becomes an issue again will be seen. The Chugach also has some recreation tourism issues, climate change, subsistence issues. There will be some interesting issues that this group may be interested in tracking.

Mr. Olson - We have a severe economic situation in the United States and it's going to get much worse. The next generation coming up, I also heard this from other agencies; these people aren't participating? We have a situation on the Chugach where you'll be driving down the road and see a lot of access point closed or gated. It would be a benefit for us and the department to strive to keep areas open, all of them. You are causing a people problem concentrating the public in certain areas.

Ruth Monahan - We are seeing a lot of changing values and changing uses. These things you bring up are hopefully going to be addressed because it's the desired condition. How are we going to manage recreation? That was what happened on the Chugach; we wanted to concentrate use in certain areas. Now is the time to say, has that worked? This is the right time for those issues to surface. Because they made those decisions at the forest plan level, this is the time to bring those up.

Arno - I don't think that you see the weighted imbalance that you have in this public process. There are two groups of people, one has intrinsic value, they don't care if anybody goes there or any kind of development and they are the ones who have all the time because they aren't ...and there are those few

people who are left, who are living there are out doing it. That is a huge built-in imbalance. So you have only 230 outdoor users and you have 13,000 non-Alaskans that put in that they don't want you there. There is nothing in here that corrects that. Another weighted imbalance that you're not looking at is the federal law and ANILCA that gives federally qualified person a priority to public resources. OK, we are going to listen to the local users, the local users like it very much if there wasn't an influx of people who don't actually live here within the conservation unit making comments. I don't see any improvement or that you have addressed it yet.

Mr. Thomas - This regulation is a national regulation that applies to all 127 forests and grassland plan. Nothing in it eliminates our responsibility to follow other law a regulations in fact it's reinforced that we have to meet other laws and regulations. So, ANILCA would apply here in Alaska but this rule will apply everywhere in the United States.

I've been involved in forest planning since before the 82 rule for about 35 years or more and we've never counted the number of responses we've got and made decisions based on that. One of the advantages of the agency is that these forest plans are being made at the local level by either the unit ranger or the district ranger or forest supervisor are making those decisions. We may get 100,000's of comments on any of our activities but we've never done a count to determine where we got most of the input from. The emphasis on this rule is the collaboration, open and transparent process, lots of opportunities for the public to be involved. Also, to encourage and receive that local input.

Leaphart – Our comments and the States comments suggested specific reference top ANILCA and these regulations don't even mention ANILCA. I think that is a serious deficiency, especially when you get on the Tongass with wilderness areas, access provisions. A plan is supposed to reflect and be consistent with all of the relevant laws and all that but given that there are very clear instruction given in ANILCA about what ought to be in a plan and allowed in your management and to not have any recognition of that very important statute is a really serious deficiency. I'm also troubled by whether there should be Wild and Scenic river suitability reviews, whether there should be wilderness reviews. Our reading of ANILCA says there shouldn't be and very clearly under the section of new plan development it directs the agency to identify lands for inclusion into the wilderness preservation system and the same language on the national wild and scenic river system. These are points that we made very clearly in our comments that the planning regs say you can't do this. These aren't final regs yet and I couldn't find anything in the EIS, is there any opportunity to make the suggestions that these make references to ANILCA and recognition of specific...is there an opportunity to do that?

Ms. Monahan – We can help carry that message and I know that has been a stumbling block for other regulations. It is up to us to determine where ANILCA fits in. It would be nice if that was recognized up front. I am willing to kind of carry that message back. In fact, I'll be in DC next week meeting with our national planning director about the planning rule and what it means for the Chugach and I'll be willing to being up to them if there is a place in the new rule or regulations, or pre-amble where this can be recognized. I am willing to follow-through on that, Mr. Chairman and report back with Stan on what I hear.

Chairman Keller – Thank you.

Leaphart – Jim, your slide, your next step will be directives and guidelines. When those are being developed, will those be available to public in draft form to the public to look at and comment on? The Forest Service seems to do a lot of things with directives and guidelines as opposed to other agencies who promulgate regulations. Is that going to be ...

Mr. Thomas - What is intended is for them to come out with drafts directives or interim directives later this spring. Those will be made public and those will go to this FACA committee; that they will review and comments before they are finalized. I'm not sure what the formal public process is but I do know that they will be made available by that time and for public review and specifically for this FACA committee.

Leaphart – The FACA committee review is great but for at least the general public to review, I think has to be made. There are so many things that are in those directives and guidelines and I know there are some Alaska specific ones that are in place for the region, so if we are going to start with a new set of planning rules we may want to start with a new set of directives that reflect ANILCA and those kinds of statutes.

Mr. Thomas - Because we are going to start seeing the next draft here in a few weeks so I will specifically look for those in the directives. Even if it doesn't show up in the final rule that we can make sure that the directive address that as well.

The Under Secretary of Agriculture for Natural Resources and Environment has signed the final planning rule for land management planning for the National Forest System. The final planning rule was published in the Federal Register on April 9, 2012. The Forest Service will begin implementing the final planning rule in 30 days. The final planning rule was developed through the most collaborative rulemaking effort in Agency history. The preamble includes the Under Secretary's decision, as well as responses to the public comments received on the proposed rule and draft environmental impact statement. Please see the Collaboration and Public Involvement webpage for how we got here and to learn about the history of forest planning; the basics on what's involved in forest planning and why it's important; and answers to frequently answered questions (FAQs) about the rulemaking process.

We greatly appreciate the input and active engagement we have received over the past two and half years. There were some 300,000 comments on the Proposed Rule. There will be many ways for you to stay engaged in the planning process during implementation of the final planning rule. The preferred alternative is grounded in science and public input, and seeks to deliver stronger protections for forests, water, and wildlife while supporting the economic vitality of our rural communities. It requires providing opportunities for public involvement and collaboration throughout all stages of the planning process, as well as opportunities for Tribal consultation and coordination with state and local governments and other federal agencies.

In Alaska, the Chugach was signed in 2003. The Tongass was revised in 2008 and is not due to start another revision until 2019. Eight national forests were selected because of their urgent need for plan revisions, the importance of the benefits they provide, and the strong collaborative networks already in place, Chugach is one of them. Why the Chugach, they volunteered, there is relatively limited access for such a large size, they manage world-class resources and they have an excellent history of having a collaborative effort. Of the Forests that are due, revisions will be complicated but the Chugach has fleshed out a lot of issues so they can focus on the process.

Overall, our hopes for the new Planning Rule will reduce time, decrease costs and increase collaboration with it's all-lands approach by putting an emphasize on strong science, collaboration, strengthened protections for land, wildlife and water, and opportunities for sustainable recreation and other multiple uses that support jobs and economic vitality as they begin the process to revise their plans.

10:50 a.m. Mr. Ron Wolfe, Sealaska Corporation Natural Resource Manager

Stewardship and Forestry are some of the things in my job that I am very happy about and proud of. Some of the things that Sealaska has been doing to care for the natural resources and what make Sealaska different is

their deep core cultural natural values. I am really proud to say that we rely on modern science and have participated in those sciences. Some of our core cultural values are found in Tlingit words. These are typical rotations (referring to the slide presentation) and to do that we need to look at past, present and future rotations. We have been conveyed 290,000 acres to date. These are the statistics we have accomplished so far. The proportion of acres, about 41%, that have been select harvested of total ownership over the percentage of clear cut or even aged harvest. If you compare, you'll see that more have been select harvest than even aged harvest. The remaining forest, 21,000 acres that we will operate until we receive our remaining entitlement. I'm happy to address any questions about our legislation but that is not why I am here today. I'm here to give you different information about stewardship.

The theme that I want to share, this doesn't look good, I know (referring to the slide presentation). I like to think of this as the beginning not the end. We use the best forest practices techniques included yarding techniques, well-drained roads to minimize soil disturbance and protect water quality. We enhance and invest to create higher quality trees and regeneration and so forth. Some of our best practices, our silvicultural management, we plant, we pre-commercial thin, we basal prune. It's important because the crews that we use are local crews, and local shareholders. This is the part I am particularly proud of, our silvicultural management since 1993 the statistics, you can see what we have planned for 2012. We're looking more at pruning. We're trying to invest into the management of the Black tail deer browse. We are current, we have no backlog on our prescriptions. What do we do, we plant specially grown seedlings, and we use local crews.

Representative Keller - Has Sealaska been looking into chips and pellets?

Mr. Wolfe - We have been looking very closely at growing that industry. The technology isn't too tricky. How you do it, how fast you do it is all pretty well known. There is plenty of supply. The problem is demand. The modern, efficient pellet mill today produces about 25,000 tons per year. When we did this study, we found the entire demand for pellets in all of Alaska was 3,000 tons per year. We decided on working on the demand. We believe there is large demand opportunity. We have converted our boiler to a pellet boiler. So far we haven't had any problem, no emissions problems. How do you create this anchor demand and that's where we are.

11:20 a.m. PUBLIC PARTICIPATION

Gordon Wrobel, President of the Southeast Conference

The mission of Southeast Conference is to undertake and support activities that promote strong economies, healthy communities, and a quality environment in Southeast Alaska. Our commitment to its development and efficient operation of the Alaska Marine Highway System continues, but the Southeast Conference has greatly expanded both its membership base and its overall mission.

Today, the Southeast Conference is a regional, nonprofit corporation that advances the collective interests of the people, communities, and businesses in southeast Alaska. You and your commission are invited to our annual membership meeting in Craig on Prince of Wales Island in September.

We're glad to see your selection of a southeast member to your commission.

We are a completely volunteer organization, so I think you will find a strong dedication and support in the community. We have a strong native component; we are a regional organization with strong ties throughout the entire region. My main purpose today is to introduce our organization to you. We have many issues are particularly relevant to this Commission are forests, in terms of forest industries in southeast, we have seen the collapse of our industry and that ship has sailed in southeast. Coinciding with this collapse is an over decline in regional population. We expect it to continue to decline particularly related to the access to natural resources in southeast. The Roadless Rule, a key issue that effect development in this region.

Mr. Somerville – What about the intertie and has the conference taken a position on the Coastal Zone Management issue?

Mr. Wrobel - The intertie, there has been a long standing plan and hopes to be able to connect the various entities in southeast to a unified system. Southeast conference has in the past has made resolution to support the intertie. You have to develop a buyer and a producer at the same time and we don't have a solid buyer nor do we have a producer. At this point it's not developed as cost effective. There needs to be more work, more research. It doesn't say no to an intertie but it puts it on the list of what can be done if the variables change.

We haven't taken a position on Coastal Zone management because a lot of that language of proposal hasn't been formalized yet but the Southeast Conference has always had a local voice in those types of decisions.

Ron Wolfe – Sealaska Natural Resource Forester

To follow up on a point that Gordy made. When I talked about a local pellet industry, that it can only be done in association with a saw mill or another local byproduct. I don't think we could support a free-standing mill. The raw material is less than a good quality pulp chip.

Representative Keller - What I have learned is that it is a very exciting opportunity. It is in production in Tok. The equivalent is about \$1.00 per gallon oil to heat the schools there. The thing that is exciting is the Pacific Rim market is so interesting. I see it as a superb opportunity if we can collaborate

LUNCH - adjourned at 12:01, reconvened at 1:30

1:30 p.m. UNFINISHED BUSINESS

A. Alaska Federal Lands Long Range Transportation Plan

Jeff Odessan, State DOT; Helen Clough, USFWS; Marie Messing, USFS;

Federal land management agencies in Alaska, the Bureau of Land Management, National Park Service, U.S. Fish and Wildlife Service, and the Forest Service, together with the Alaska Department of Transportation and Public Facilities have come together to develop a multi-agency long range transportation plan for Federal lands in the state. This plan will facilitate the strategic identification and prioritization of transportation infrastructure and systems needed. This Plan is being developed to help Federal land managers and the DOT make better funding decisions for transportation facilities that provide access to and within public lands in Alaska. This document will not identify specific projects for implementation or suggest changes in the way Federal lands resources are managed. Rather, it will serve as a tool to collectively engage the various agencies on how they can work together to set state-wide transportation priorities and leverage funds to meet transportation needs for Alaska's Federal lands.

This multi-agency approach to long range transportation planning is the first of its kind, and will serve as a demonstration project for region-level transportation planning. It will also bring Alaska Federal lands into compliance with Federal legislation requiring all Federal land management agencies to conduct long range transportation planning, and put into place a defensible structure for sound transportation planning and decision-making.

Although often overlooked, Alaska's multimodal transportation system provides critical links to connect local residents and visitors with their Federal lands and, in many cases, provides critical links for inter-village travel and subsistence use. Understanding the connection between transportation and conservation, the Alaska Federal land management agencies have established mission, goals, and objectives for evaluating improvements to the transportation system. Together with an understanding

of existing transportation infrastructure deficiencies in the state of Alaska, this plan will enable agencies, individually and collectively, to make better decisions regarding the most critical needs.

At a time when resource and infrastructure funding is scarce, the hope is that this plan will provide leaders with a toolkit to use in working with local communities, native tribes, and other Federal land management agencies, many of whom could potentially contribute funding or in-kind services to advance priority projects.

Mr. Arno – Is this Plan to get visitors to access public lands?

Mr Odessan – Mostly focussed on visitation, we weren't thinking about Alaskans accessing public lands in Alaska. I know there is a big gap in that DNR wasn't consulted as they are the authoritative body on trails in the State. That was a big oversight.

B. Sturgeon v. Salazar;

2:20 p.m. Mr. Olson – Asking about Commission support by providing a letter for a Motion for the State of Alaska to Support Mr. Sturgeon and for the Governor of Alaska to take the Sturgeon Case directly to the US Supreme Court in order to save the burden to the resident and shorten the time period to get this issue settled. This is a sovereign issue.

Leaphart – In a press release, the Governor announced that United States Federal District Court Judge Russell Holland has issued an order recognizing the State of Alaska's interest in challenging federal authority over state-owned navigable rivers and submerged lands.

The state is now a party to a lawsuit by John Sturgeon, an Anchorage resident challenging the authority of the National Park Service to regulate activities on state-owned waters within national parks and preserves in Alaska. Citing National Park Service regulations, park rangers have prevented Sturgeon from operating his hovercraft on the Yukon and Nation Rivers within Yukon-Charley National Preserve. The Yukon and Nation Rivers are navigable, state-owned waterways, and hovercrafts are legal under state law. Under the Alaska National Interest Lands Conservation Act, Park Service regulations cannot be applied to state land or water that lies within national parks and preserves.

Mr. Arno – I'm not sure the Governor can do that?

Keller – I objected.

Lean – I'm not in support.

Olson – In the court of public opinion, they want to take action.

Somerville – I...table this till a certain date where we can get the AG's office to answer if we can even do this. I motion to table this.

Meekin – I'd like to echo what I have heard, I just don't know enough.

Arno – Second.

Keller – All in favor, all present indicate in favor. Let's take a short break (2:56 p.m.), reconvene in 10 minutes.

3:10 p.m. NEW BUSINESS

1. SB159, Susitna State Forest

Senator Menard – First, I'd like to introduce a new member of my Staff, Steven Perrins, his parents own and operate the Rainy Day Pass Lodge on the Iditarod Trail; and with the help of my Chief of Staff, Michael Rovito, and I'd like to share with you SB159, the new Proposed Susitna State Forest. It's made up of 33 separate parcels. We have been working with the Division of Forestry to create this the fourth state forest to be maintained in perpetuity not by the Borough and it will not affect the tax roll.

2. Election of Officers

3:39 p.m. Leaphart – Are there nominations for Chair?

Mr. Fish – I nominate Representative Keller.

Mr. Somerville – I move to close the nominations with no-objections.

Mr. Keller – I accept;

Mr. Leaphart – Are there any nominations for Vice Chair?

Mr. Arno – I nominate the current vice chair.

Mr. Keller – Second.

3. ESA – Draft Policy on Significant Portion of It's Range

Leaphart - The U.S. Fish and Wildlife Service and the National Marine Fisheries Service are jointly proposing a policy to provide an interpretation of the phrase "significant portion of its range" (SPR) that appears in the Endangered Species Act's definitions of "endangered species" and "threatened species."

The Endangered Species Act uses the term "significant portion of its range" in the definitions of an "endangered species" and "threatened species", specifically a species would qualify for listing throughout all of its range; or in only a significant portion of its range.

In 2001, the Ninth Circuit Court observed that the phrase "significant portion of its range" was "inherently ambiguous" and that the agencies had wide discretion to interpret it; In 2007, the Department of the Interior Solicitor issued an M-Opinion that sought to give independent meaning to the phrase "significant portion of its range" stating that a species could be listed as endangered or threatened in a significant portion of its range while at the same time not being listed throughout all of its range; In 2010, two district court decisions ruled that the Act allows only for the listing of a "species," which in turn is defined as either a "species," "subspecies," or "distinct population segment." Conversely, these courts ruled that the Act does not allow for the listing of some members, but not others, of the same species, subspecies or distinct population segment. In 2011 the M-Opinion is withdrawn. This policy is intended to replace this M-Opinion.

The draft policy contains four key elements:

1. If a species is found to be endangered or threatened within a significant portion of its range, then the species will be listed under the Act, and the Act's protections will apply to the species, throughout *all* of its range;
2. A portion of a species' range is "significant" if its contribution to the species' viability is so important that without the portion, the species would face the danger of extinction;

3. A species' "range" is the general geographical area within which the species is found at the time the listing decision at issue is made. Lost historical range, while relevant to the overall status of the species, is not part of the "significant portion of its range."
4. If the species is endangered or threatened throughout a significant portion, but not all, of its range – and if the population in that significant portion qualifies as a "distinct population segment" – then only the DPS, and not the entire species, will be listed.

The original 60-day comment period for this draft policy began on December 9, 2011. It has been extended for an additional 30-days. Comments are now being accepted until March 7, 2012.

Mr. Somerville – My concern is what it doesn't say. There are still not defining what the Significant Portion of the Range is; what percentage of the range is significant.

Mr. Fish – This essentially establishes a blank check at our expense.

Representative Keller – What should CACFA do?

Mr. Somerville – This is not just an Alaskan problem, it affects all other states. We need to insist on a clear definition

A date was not set for the next meeting
Meeting adjourned at 5:01p.

Meeting Minutes Approved May 31, 2012