PRESENT:

EUGENE PELTOLA JR.
Regional Director for Alaska Region
Bureau of Indian Affairs

ELIZABETH APPEL
Director
Division of Indian Affairs
Regulatory Affairs and Collaborative Action
1849 C Street NW
Room 6529, Mail Stop 6513
Washington DC 20240

MATT KELLY
Attorney - Advisor
Division of Indian Affairs
Environment and Lands
1849 C Street NW
Room 6529, Mail Stop 6513
Washington DC 20240

TYLER FISH
Attorney - Advisor
Office of the Assistant Secretary
Division of Indian Affairs

REGINA GILBERT
Regulatory Policy Specialist
Department of the Interior
Assistant Secretary - Indian Affairs
Office of Regulatory Affairs and Collaborative Action
1001 Indian School Road NW, Suite 312
Albuquerque, NM 87104
UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY

GOVERNMENT TO GOVERNMENT

TRIBAL CONSULTATION SESSION (1)

Ketchikan Public Library
1110 Copper Ridge Lane
Ketchikan, Alaska 99901
August 3, 2018
10:30 a.m
MR. PELTOLA: Good morning. For all those who don’t know me, my name is Gene Peltola Junior. I’m the Regional Director for the Bureau of Indian Affairs, Alaska Region. Just a little bit about me. I was born and raised in Bethel, Alaska. My mother was Pamela Sea from Sitka. My father was Gene Peltola Senior from the middle Kuskokwim. And on my mother’s side, my grandmother was (indiscernible) Wilson (indiscernible) island and Ben Sea from Excursion Inlet on my Dad’s side my grandmother Katherine Hoffman was from Ipper Kuskokwim and my grandfather on my dad’s side was a Finnish miner who came over to Alaska (indiscernible). So I was born and raised in Alaska. I just came off almost a 34 year career with Fish and (indiscernible). Thank you all for coming.

MS. GILBERT: My name is Regina Gilbert. I work out of Albuquerque, New Mexico. (Indiscernible) Arizona, so I thank you for inviting us up here and I’m enjoying this time.

MR. FISH: Thank you. So, with that we have a couple of consultations for today. The first one that we wanted to address with you is organization as required under the Alaska IRA. So we have slated two
hours.

(Prayer offered)

MR. FISH: Thank you for providing that prayer.

So, our primary purpose with these initial meetings is to discuss with you organization as a tribe as required under the Alaska IRA. I think what we’ll do is kind of give you an underscoring of our demonstration what our intention is for this meeting and then open it up for discussion for the various council that are here. I think a lot of you are familiar with the Alaska IRA is an organization under those provisions that are separate and distinct from the (indiscernible) process. There’s been a lot of feedback that we received from -- at the department, as well as internal discussions that the process is kind of long and protracted and that there’s no formal guidelines on how to pursue it. So we’re here to discuss with you how the department can proceed in a manner that has the best (indiscernible) for Alaska Natives and the department in mind, and that we can achieve the principal decisions that the department can stand on firm ground so that we’re not leaving decisions up to the courts.

So, what we would like to do, I think before we get started, some initial clarification is that we’re
not here to discuss prior decisions or determinations (indiscernible) by the department. This is solely forward looking to future applicants, possibly pending applicants that are currently under consideration as well. I think that we -- and I hope you all will see that your tribal leader letter we sent out (indiscernible).

So, with that, I was going to turn it over to – Matt do you want to say a few words.

MR. KELLY: This -- the point of the consultation is to hear from you on the issues of (indiscernible) laid out more clearly in the letters that we sent out, and in particular those questions that are outlined there. Input you can provide to us on that would be of great value in determining how to move forward, what is the best way to do it, and what issues the department should be considering during (indiscernible).

MS. APPEL: And I think I’ll just add from a regulations perceptive for setting the federal recognition process. We have the Part 83 regulations that set out various standards, criteria and process that you have to follow to get federal recognition (indiscernible) process. But we don’t have anything similar, any regulations or any guidance for this
provision applicable to Alaska groups that would like to be federally recognized and under IRA provision.

MR. FISH: So, if anybody has any initial comments or questions, and we want this to be a discussion and not necessarily a lecture, so if you want to pose to questions for any of us on the panel, you can certainly. We would ask that you come to podium here, because we have a stenographer that’s memorializing all of our conversations here today for a record. So --

MS. APPEL: And if you wouldn’t mind stating your name and affiliation so that we can capture that for the record.

UNIDENTIFIED VOICE: Can I just ask, if you’re going to address the speakers, if you could speak a little bit louder. It’s a little bit -- it kind of echos in here and so if you don’t mind, just -- if you could speak just a little bit louder, since we don’t have microphones.

MS. BURNS: Good morning. (Native language).

Delores Churchill, (Native language), Holly Churchill, (Native language). My Haida name is (Native language). In English I am called Gloria Burns. I am the treasurer of Ketchikan Indian Community who’s the tribe for the Ketchikan area. We
1 stand on the land of the Sanyaa Kwaan and the Taant’a
2 Kwaan people, the traditional Tlingit people of area.
3 We’re so appreciative to the people of Saxman who are
4 our neighbors for offering the prayer for
5 participating, and we’re so thankful that you’re
6 aware of our traditions and who is land ownership so
7 that you know the proper people to ask and to make
8 sure that it’s done in a right way.
9 On behalf of the President of Ketchikan Indian
10 Community and our Tribal Council, we would like to
11 welcome you to our area and to say thank you for
12 bringing us here. We don’t oftentimes have people
13 here in Ketchikan. And so I think as a result, we
14 have a few less tribes here, just because it never
15 occurs to people that there will be something in
16 Ketchikan where we might be able to speak.
17 I’d just like to offer a few comments, and I
18 don’t really have any questions. I’d just like to
19 say this for the record.
20 The July 2nd, 2018 letter announcing the
21 consultation and setting forth the questions for
22 consideration is not clear in its description of the
23 purpose or intention of these consultations on
24 Section 16 of the Indian Reorganization Act. The
25 first part of the July 2nd, 2018 letter seems to
indicate that these consultations are designed solely
to address how the department might fairly respond to
unorganized groups seeking to organize and to be
recognized in the section of 16 tribes. The letter
states, in an effort to provide more clarity and
transparency to those groups seeking to organization
under the Alaska IRA, I am pleased to announce a
listening session and series of consultations to
help in Alaska in the upcoming months to discuss how
the department might better implement the statutes in
the acknowledgment provisions.

On that issue, new groups seeking to organize,
Ketchikan Indian Community has the following
comments:

KIC is a Section 16 IRA tribe and has been since
1940. Our only concern is that any procedures that
acknowledge any new groups of American Indians and
Alaska Natives as newly recognized IRA tribes should
be done in a way that does not disrupt existing
authorities and relationships for existing tribes.

We know see -- we see no reason why the existing
federal acknowledgment process in 25 CFR Part 83
cannot continue to be applied to any new groups
petitioning for tribal recognition in Alaska in the
same way that Part 83 is applied for any new groups
Thank you so much. (Native language).

MS. APPEL: Thank you for those comments. And if we fail to say thank you for -- we all really appreciate being able to come to your homeland and speak with you here. It is -- it is rare that we get out to this area. So we appreciate the opportunity.

MR. COOK: Good morning. My name is Clinton Cook. I’m the tribal president of the Great Tribal Association. I’d like to welcome you to Southeast. I’d like to welcome the tribal leaders who made it from around Southeast. I appreciate your guys’ attendance. It’s huge to have tribes come speak on their behalf of their people.

Mr. Fish went over it briefly. I didn’t really hear you very well when you were talking, but can you confirm that the IRA consultation you are doing only concerns Alaska Native groups that are not currently federally recognized? The Craig tribe, KIC, Saxman, Central Council, we’re all under the IRA. I am asking for you express and unequivocal confirmation that this consultation does not concern our authority as federally recognized Indian tribes. This has been stated in the Juneau and Fairbanks sessions, but I want to hear it firsthand from you.
MR. FISH: Excuse me for speaking a little bit lowly. I’m a former marine so I’ve either got the high end or the very low end. So, I can speak up for you here. This consultation is solely considered of future applicants and potentially pending applicants for organization under the Alaska IRA. So, yes, I would confirm what -- what you were told in Juneau, it stands true at this time as well.

MR. COOK: Okay. The next question I have is, tribal leaders expect government to government relationships with Indian affairs leadership, not lawyers. Where are your leaders in the In -- within the Indian affairs today?

MR. FISH: Where are our leaders with Indian Affairs sounds like?

MR. COOK: Yes.

UNIDENTIFIED VOICE: So, we regret that Principal Deputy, Assistant Secretary Tashuda wasn’t able to make it to this one. He was in Juneau yesterday and he called away for some business with the -- with the Secretary. You know, your new Assistant Secretary, Ms. Sweeney is now on board, and she had some on-boarding duties to take care. So I send, you know, their greetings and regrets that they couldn’t be here with you today, unfortunately they
were occupied.

MR. COOK: So he invited me and then did not show. Correct?

MR. FISH: He got called away. Yes, sir.

MR. COOK: Thank you.

MS. DEWITT: Good morning. My name is Nora Dewitt and my Tlingit name is (Native language). I represent the organized people of Saxman. I serve as treasurer. First of all, I’d like to thank Gloria for her graciousness this morning, and welcome to all the tribal leaders and to yourselves.

This issue, I -- I speak from my heart. Because just like in D.C., you’re having various difficulties with politics. This particular issue is going to do the same for Indian country in Alaska. I -- I don’t disagree that tribes who meet some of the descriptive features that are in the -- the IRA process should -- should not be allowed, but I do want to stress that the short notice has really left us at a disadvantage.

In Saxman we really like to consult our elders. We also, in issues that are of an extreme nature, we call in the clan leaders and we meet with them. And we hear what they have to say. And in this particular issue, Saxman was organized under the
common bond of jurisdiction, or land. We have one mile square.

What this would do is, within our community we know of one tribe. I mean, not one tribe, but one clan that at one time sought [sic] and IRA structure. In Ketchikan, we know of one tribe that also has done that. That one tribe in Ketchikan also reaches out to Saxman, because their membership is out there.

So, if the common bond language that you’re speaking isn’t going to be to the land, but to clans, then it’s going to be a big issues for the tribes. It took this long -- well, not really not this long, but it took -- no, I -- I will take that back. It took this long for the tribes to really take a look at their constitution and see what fits and what doesn’t fit and to seek amendments and changes that fall for whatever their government structure is at present.

Saxman is undergoing that right now, to go over our constitution. If we’re going to be doing this, we really need more time. We need to talk with the clans and we need to talk with the elders. And we need the time, because they -- they don’t understand sometimes the issues, and it’s going to be take -- it will take one-on-one in some instances to bring everybody up to the level of understanding, and then
to do a community leading where we can make a
decision on whether this is best for Saxman IFF one
of the clans decides to con -- to pursue tribal
status under the IRA Act.
So, I just caution you that in Saxman’s case we
have not had enough time to do due diligence to our
citizenship in responding to these questions that you
set forth. Thank you.

MR. FISH: Thank you for those comments. I
don’t think that we’re precluded from adding
additional consultation dates to the schedule if
deemed necessary. So, we certainly want to get your
formulated views on -- on our approach to -- to this
particular issue. Thank you.

MS. DEWITT: Thank you.

MR. WALLACE: Kind of an awkward silence when
people aren’t lined up for the microphone. President
Lee Wallace, Organized Village of Saxman. Earlier
this morning I requested that we get started at 10:00
a.m. I like promptness. And we started about 10:30,
is what we did. In our day-to-day tribal government
we tend to a lot of different things, a lot of
different issues. And what I want to speak about is
the letter dated July 2, 2018.

It’s a Dear Tribal Letter, and it’s talking
about the IRA and some unrecognized groups wanting to be recognized. I guess my question to you folks is, what are the names of the groups that have been requesting this action? Has there been one? Two? Many? What are their names?

MR. FISH: My understanding is that there have been three requests that have been pending some time. I personally don’t know the names of the groups that are waiting.

MR. WALLACE: Okay. So about three groups, right?

MR. FISH: That’s my understanding.

MR. WALLACE: Okay. And further down the letter, in your paragraph, it says, in an effort to provide more clarity and transparency, those groups seeking organize under the Alaska IRA, I am pleased to announce a listening session and to provide more clarity and transparency. Instead, you send the letter to all us federally recognized tribes for this attention. My viewpoint, you should be having that consultation with those unrecognized groups. There’s a process that went into place with Alaska IRA, and many of our recognized, federally recognized IRAs, they went through that process back in 1936, ’37. That process worked. Although it may be archaic at
this time, just like you look at some of the tribal constitutions that haven’t been revised; they’re very archaic and need to be revised. And maybe there is a little fine tuning in the process. But I think --

first of all, I’ll back up and I want to give my congratulations to Gene in his new appointment. I’ve worked with Gene throughout many years at the federal subsistence level, gaining Saxman’s rural status and Gene was all part of that.

And so, but that, I think the Alaska region BIA needs to be working with those groups that are applying and go from there. And really, why -- why involve the recognized tribes? I don’t really see no reason for it.

And I’m going to talk more about the -- the letter, the second page, which caught our attention was -- was the different meetings throughout the state in the different regions. You -- you call for a listening session, call for a public meeting, ANC consultation and tribal consultation. Ketchikan’s listed as tribal consultation. But my question is, why all the different sessions and the names? Very different meanings to each one of them. Let’s get to the tribal consultation.

Now, I’m asking for your department’s tribal
consultation policy. Do you have one? I’d like you
to share with each tribe, if you haven’t already. I
haven’t seen it. Earlier on this year, with the new
-- new administration, and discussions with the
Department of DOT, they didn’t have a real tribal
consultation policy. You back -- you go back four
more years, you know, when Obama came into office,
one of his first executive orders was to, I want each
agency to have a tribal consultation policy. And
from that, there was a network of how to go about
things. In a true policy -- consultation policy,
this July -- these July meetings and August meetings
and actually all these meetings listed, you’d have
dialog with each and every tribe in Alaska. To pick
a date, what works for you. Here we are in August
and June, July, August, September, we’re -- we’re --
period of time when we’re -- we should be out
fishing. Right now we’re in the hunting season, if
you’re in the rural. Gathering berries, gathering
firewood, getting your fish supply for the winter.
And here we are in a so-called consultation, which
I’m really questioning, and so the question is, Mr.
Kelly and Mr. Fish and Liz, are you three really
decision makers? That’s my question to three of you.

MR. FISH: I’m not a final decision maker, what
I would say that I think that I support decisions within the department. Yes, sir.

MR. WALLACE: Okay. Kelly?

MR. KELLY: As a attorney - we don’t make decisions. We advise our clients who make the decisions.

MS. APPEL: I would say I’m an advisor.

MR. WALLACE: You are?

MS. APPEL: An advisor to the decision maker.

MR. WALLACE: My reason in asking that question, for all these years with the Saxman fighting the rural determination process, and that -- that was almost a decade of -- of meetings and consultations. And at one time I called for a consultation with the FSB board. Made my formal request. I’m going to be in Anchorage at this date and I want to meet at U.S. Fish and Wildlife Service in their conference room. I and about four other tribes showed up and we met in the conference room and I looked at the table, and I said I don’t see any decision makers. There’s no sense us talking if there isn’t a decision maker at the table. And so that’s why I’m asking that question. You know, if you guys aren’t the decision makers, maybe all us tribal leaders are -- are wasting our time and we should be doing other things.
Because the proper way was to, again, contact the tribes and say what dates would really work best for -- for all of you tribes in Alaska?

Now, Gene, with his agency, they are BIA providers. It’s usually the end of November. That would have been a good time possibly to meet with -- meet with a lot of tribal governments throughout Alaska.

Another big meeting is AFN. Well attended by many people throughout Alaska. And I look at some of these dates and some of these dates are day before, day after the AFN meeting. Possibly it could have been really part of AFN or BIA providers. That’s the time you’re going to have input. My question to you -- let’s see, this is -- how many -- what’s this, the third session here? You had Fairbanks, Juneau, Ketchikan. So, my gut feeling is you’re not really hearing the voice of the majority of 229 federally recognized tribes in this process that was outlaid here, with this July 2nd letter.

So, really think of really rescheduling some other of those meetings where you’re going to have a lot of contact with tribal leaders. Because I think as you’re going to do now, you’re going to be hitting, missing of the 229 you’re not even going to
1 have a majority of them. But I think the majority of
2 them think probably are thinking the same way. It’s
3 like, some of them in the summertime even have
4 recess. They don’t even meet. Because you know
5 what? Summer’s here, it’s harvest time. Some of
6 them may have not even seen that email that came
7 through the email. Maybe that’s why some of them
8 didn’t show up. They’re busy attending to catching
9 their fish, drying their fish, freezing it, storing
10 it for the winter. So right now, again, we’re in
11 deer hunting season and also moose season -- moose
12 season’s coming up for regions. And in the interior
13 you’ve got the caribou and you’ve got the moose. So
14 I’m just kind of really upset at the timing of it.
15 Of writing a letter July 2 and let’s throw these
16 dates and this is when we want to meet with the
17 tribal groups in Alaska. Shouldn’t have been done.
18 Should have had consultation to find those dates.
19 There are -- there is a number or questions that
20 you guys want -- wanted the tribes to consider. A
21 lot of them are probably legal. Most tribes, like
22 Saxman, are very small. We don’t have a legal
23 counsel. Can afford one. And some of those are
24 really legal questions to ask. But there are some
25 that are -- are probably easy enough. The first
question, the answer to that is yeah. Sax -- Alaska IRAs are relevant today. And they’re relevant to the end of time.

Question 6, the answer to that briefly, is CFR Part 81 can guide for secretarial elections and together with the secretary 1930 instructions. Gene’s staff in Alaska, they could probably process those three groups that are wanting to be federally recognized.

And the answer to number 9, there’s really no need. There’s -- again, I said there was a process that happened in ‘36, ‘37. It may take a little work, but hey, roll up your sleeves, Gene, and work. So, I said, you know, again, I’d rather be doing some fishing or hunting right now. And that’s why probably some of our council members on the council are not here, because it’s that time of year. But I thought it was important enough for me to come to tell you that this was a whole backward process of not involving us in scheduling dates. (Native language).

MR. FISH: Mr. President, if I may? I just wanted to say we don’t intend any disrespect to your schedules here. We wanted to get a conversation started and so we pursued an ambitious schedule for
that. As I mentioned earlier we certain that (indiscernible), and to the extent that we can accommodate your schedule I think we would like to do that. I regret that Mr. Tahsuda wasn’t able to make it here for this one today. He had every intention of being here today to hear your comments and discuss this with you, so I regret that -- I’m filling in for him at this point in time, but you can consider me the point of contact for him back in D.C. I’ll share my contact information with you. If you’d like to send him a message, I can take your sentiments back with me. Thank you for your comments, sir.

MS. PATA: (Indiscernible). My English name is Jacqueline Pata. My Tlingit name is (Native language). I am from the Raven Sockeye House from Haines, Alaska. And I’d like to thank the host here today for allowing us to come and visit in your communities and to be able to be present today. Although I am the Second Vice President for Tlingit and Haida Tribes of Central Council, I am today speaking on behalf of my other job, which is the Executive Director of National Congress of American Indians. And I would like to provide a few comments.

NCAI has had a history of working through trying
to resolve some of the challenges of the federal recognition process. In fact, we spent years and years. We developed a federal recognition task force to be able to work very closely with the administration to improve some of the challenges that we had of prolonged decision making, lack of transparency in the process, inordinate amount of cost to do the archeological and other, you know, data to support those federal recognitions applications that were going forward. And in, you know, in the recent last five -- decade -- five years ago, we -- we’ve been able to improve that process to a place where at least people knew what the time lines were and what that -- and what the frames -- where they were in the process and how it progresses for moving forward.

We are very concerned about proposed legislation that congress is considering around a political process that could actually circumvent or the -- the thought process, the administrative process. We are very concerned because we recognize that one of the challenges in the federal recognition process and one of the reasons for so many prolonged delays was the -- was the political interference of local governments, other interested parties, that would
create tensions around a process that should have been put in place, recognizing the tribes based upon their historical ties and connections and -- and their body of government or their body of continued structure as a -- serving as a tribal government.

So, I wanted to be able to bring that up, because as we look at this particular proposal for consultation today, we recognize that it is important -- first of all, the three tribes in question, or that are -- have had a long -- prolonged process within the administration, and that has been noted, that all tribes should be treated fairly in a process and the process should be well founded. And I think that that’s important. And I recognize that that’s one of the reasons for you putting forward this consultation today.

The other thing that’s important, though, is recognizing that there has been many decisions around existing tribes and many -- and because of our convoluted history with the federal government you see in many cases tribes in other parts of the country where there has been difficulty with identification of not groups or subgroups that sometimes are fractionated, created by some other tumults, and we want to be able to make sure that in
a process that -- that we recognize, just as it does
in Part 83, that there is recognition or a review to
make sure -- to ensure that these are not factions of
other tribes that are seeking recognition for other --
- for reasons beyond that -- more contemporary
reasons, let’s put it that way -- for more
contemporary reasons. And so we feel like -- so we
recognize that it’s important to notify and consult
with the -- those affected tribes -- potentially
affected tribes. However, as we stated earlier, I
think by Lee Wallace very adequately, that the tribes
in this matter should be the ones that should be
having the primary conversations with, to resolve the
issues around recognition.

It’s unfortunate that some tribes have to seek
political recognition and as we were all celebrated
the -- the recent recognition of the six tribes in
Virginia, long overdue, but they had to seek
political recognition because the process didn’t --
was -- the process was not able to resolve their
challenges after many, many years. And so we
recognize that there will always be some of those
that, for whatever reasons, may have to take
alternative routes to get to the end result. We
still feel that the fact process is solid and a good
approach for addressing some of the concerns. And so it -- and so I won’t speak to what process would be best for Alaska. I think Alaska tribes need to make that decision. But I do feel that a transparent process with time certainty is important for -- for everyone.

In addition to that, I want to also -- and NCAI has resolutions that I will provide to you later in our support for some of these provisions that I’m talking about today. The other thing that I wanted to mention, as I did the other day, was I wanted to mention that my concern around question number 4, and the way that it was stated and framed. And really, the reason I want to bring that up is because I have great concern in just the sharing of a common bond of occupation that have the ability to exercise sovereign governmental powers. And I really believe that it is the framing that makes we concerned as we have these dialogs, and to recognize that tribes are sovereign and have inherent sovereignty, and that the federal government’s responsibility is to recognize that authority for the tribes to exercise that sovereign governmental powers. And so, I want to be able to make sure that as we move forward in dialogs of consultations and in dialogs with this
administration, that we continue to recognize those sovereign authorities of tribes to be able to make their -- over their governmental powers that isn’t bestowed to them by the federal government by acts of congress, but that they -- that they have that inherent sovereignty. So, I wanted to be able to place that -- put that also in the record for these conversations.

So, once again, thank you for coming to Alaska. I think it’s important to have these conversations with the tribes that are -- would be affected. And, you know, not much is known about the tribes, why the delays are in the tribes that are seeking recognition. It’s difficult for us tribal leaders in Alaska, for us to speak of things that we don’t know of, nor do we know the consequences of one decision or not, the Alaska IRA process or -- or being able to look at the other federal acknowledgment of process of Part 83. And so, as you can tell, it creates challenges in responding to the questions as you have laid them out. Thank you very much. (Native language).

MR. MICKLIN: (Native language). My Tlingit name is (Native language). My English name is Will Micklin. I’m Third Vice President of the Central
Council of Tlingit-Haida Tribes of Alaska. I am a citizen of the Taant’a Kwaan, the Tongass tribe. This is the aboriginal territory of the Tongass tribe. My -- our head Sadi (ph), Butch Jackson, was our head Sadi (ph). And my family is here, buried on Pennock Island and in these places. Mother’s mothers from time beyond memory lived here. They -- Ketchikan was a humpy creek owned by Gaanax adi. A person of the Gaanax adi clan floated a shore house. We lived at -- on our winter island. Our winter camp was in -- was Annette Island, which is now Metlakatla, Takani (ph) tribes. The name of my auntie, she’s the -- a woman of our winter village and my grand -- one of my grandmother came was (Native language) and that’s the Shining Sands, the sands that shine with a golden light in the sunlight, and it’s by Point Chaka (ph).

So, we have a deep history and culture in this area. We were the -- we were the Taant’a Kwaan, is our name, closely tied with the Sanyaa Kwaan. The Sanyaa Kwaan in Saxman. Today, Taant’a Kwaan, between Saxman and Ketchikan, and I’m a (Native language). And child of the white man, a grandchild of there, and the Gaanax adi Raven. And I say this because there are -- it’s important to understand the
construct of identity. We are self-identified, as Taant’a Kwaan and Sanyaa Kwaan. We are close -- closest relations are, by intermarriage are the Haida. The Haida of Howkan Island. And Chief Skulka lives here in Ketchikan. So, we are self-identified. We existed from here in this area, whether from -- at Cat Island, where we were for a time, or Long Island or Fort Chester on Annette Island. We are -- or at Fort Tongass, when that was a -- a military facility. So, we’ve been here and we are known by ourselves and identified by ourselves. We identify and recognize and affirm our brothers and sisters who are -- whether they be our opposites on the Raven side from us who are Wolf, or today known as Eagle. Whether they are within our Kwaan, Taant’a Kwaan or other Kwaans from other houses. I’m Katsit (ph). He’s the man who married the bear. There are other houses on the Wolf side and there are houses on the Raven side. We also identify those in other Kwaans like Sanyaa Kwaan or in other tribes like Haida. And we have representatives of all of them here today. We are not in conflict with the identification that we’ve adapted by virtue of Western law. The KIC, Ketchikan Indian Community, is an IRA. Saxman is an IRA. We recognize and accept them for what they are. They
are traditional, indigenous peoples, governed by
themselves, from time beyond memory, adapted to the
legal construct available to us in order to further
the interest of our people.

Central Council is a regional tribe. We were
not created by the IRA. We were self-identified. We
actually emerged from the Alaska Native Brotherhood
and Alaska Native Sisterhood, organized by our clan
leaders in 1912, and organized under the Act of 1935.
In 1935, in order to organize as Central Council, in
order to litigate with the United States over our
trespass suit for violation of our interest in
Southeast Alaska for uncompensated takings of our
aboriginal title, against our aboriginal title, which
was affirmed in the court of claims decision between
1958 and 1965.

We organized ourselves by that, in collaboration
with the United States and have continued in that
fashion. We believe it’s important that those
constructs be respected as a reflection of
aboriginal, indigenous, inherent sovereign authority
that is uninterrupted from our ancestors to today.
And that those current constructs come with it, an
obligation of the United States to continue the
agreements and the constructs that were entered into
as we move forward through time, and that new
administrations not look back to prior and try to
reform, re-trade, renegotiate, reinterpret those past
agreements, which were based on the shoulders of our
elders and their ancestors that came before us, and
involved significant consideration.

So, for the topic today, the -- the IRA and its
Section 16, I’ll remind us all that the tribal
sovereignty is affirmed under the Indian
Reorganization Act of 1934 and its 1936 amendment,
extending those same agreements to Alaska tribes.

In 1993, acting pursuant to the authority
delegated it -- to it by congress, the Department of
Interior published a list of Alaska Native villages
that were federally recognized as Indian tribes with
inherent sovereignty, that possessed the same status
as tribes in the lower 48 states, and that function
as, I’m quoting, political entities exercising
governmental authority. The Department of Interior
emphasized that the purpose of the publication was
to, and I’m quoting again, expressly and
unequivocally acknowledge that Alaska Native village
and regional tribes included on the list were
recognized as political entities and retained their
inherent sovereign authority. It further stated that
by the time of enactment of the IRA, the Alaska
Natives were subject to the same legal principles as
Indians in the contiguous 48 states and had the same
powers and attributes as other Indian tribes. The
purpose of the current public -- that publication,
current in ‘93, is -- was to publish an Alaska list
of entities conforming to the intent of 25 CFR
83.6(b). And I’ll come back to Part 83. And to
eliminate any doubt as to the department’s intention
by expressly and unequivocally acknowledging that the
department has determined that the villages and
regional tribes listed are distinctly Native
communities and have the same status as tribes in the
contiguous 48 states.

The BIA’s 1993 notice recognizes Alaska tribes,
I’m quoting again, status as Indian tribes with a
government to government relationship with the United
States. They have the right, subject to general
principles of federal Indian law, to exercise the
same inherent and delegated authorities available to
other tribes. The BIA notice designates --
designated Alaska’s tribes as political entities
exercising governmental authority. The BIA
recognized the same governmental power and immunity
from state law enjoyed by a tribe on a continuing
Indian reservation.

The federal -- the federally recognized Indian tribe list of 1994, enacted the following year, really in response I -- in my view, to the Sansonetti opinion of January 11th, 1993, but for -- not for purposes of our current discussion -- is legislation that mirrors the language of the BIA 1993 notice, announcing that the United States, again I’m quoting, maintains the government to government relationship with the recognized tribes and recognizes their sovereignty. The ‘94 tribe list act is a statute enacted for the benefit of Indians and must be interpreted under the Indian canons and as settled law, unambiguous, is not available to chevron deference for a reinterpretation by the administration that would prevail over the plain language of the act of the bureau’s prior expression in this area from the 1993 list.

So, I’ll note that the ‘94 act, sponsored by Senator McCain, reaffirmed the recognition of Central Council as a -- as a federally recognized tribe, equivalent again, to all tribes in Alaska and tribes in the Lower-48 that have the same powers of government, immunity and other attributes of a sovereign.
So, as to the Part 83 that I previously alluded to, that does seem to us to be available, as Vice President Pata mentioned, for questions of factions or splinter groups that would assert that they are indeed the recognized, duly recognized government of a people, that that is available for -- to resolve these issues, and a reinterpretation of the IRA Section 16 seems inappropriate, if not inapplicable to that task.

So, to me, that seemed to be the operative question in the -- among those put to -- to tribes on -- in the dear tribal leader letter. And our position is that the -- the Section 16 should be left for the purposes that -- that it -- it utilizes and that a -- there is not a need for a -- to bring it contemporary to today’s law, in that the basic principles of federal Indian law have not changed substantive to a re-look at Section 16. There have certainly been, and we can have a long list of substantive decisions that have occurred, but do not really seem to be on point to an effort -- to the -- a goal that would achieved by reexamination of Section 16. There are many articles in U.S. code that are not contemporary that may be -- may have been better utilized in a prior era, and yet the task
of redrawing the landscape for a contemporary view of
those -- of that -- of a particularized process seems
inordinately burdensome and could pose unintended
consequences that would not serve the interest,
either of our trustee nor of your trust
beneficiaries, the tribes that stand before you and
all those that stand behind us but could not be here
today to express their views.

So, I just want to emphasize that we respect
every tribe that is organized and established, and we
recognize them as peers, without any gradation of
sovereign power or authority or a question of their
-- the inherent nature of their powers of governance.
We are all federally recognized tribes and equal
under federal Indian policy and the Indian
Reorganization Act, the 1993 list by the BIA, and the
1994 tribal list act all have that same consistent
expression and our recommendation is that that be
left as it is. So, thank you.

MR. FISH: Thank you.

MS. EDWARDS: Hello. (Native language).

Catherine Edward, Tlingit, Raven, Dog salmon.

Originally from Angoon. And again, like the others,
thank you for allowing me to be here. I am Central
Council Tlingit and Haida Sixth Vice President. And
I stand today because I have some questions maybe you can help me with, and it might help -- I’m still trying to figure out. There’s three applications that we don’t know if those -- if those applications are here in this room, or if they were in Fairbanks, or where they were. And I heard you say when we came in, that it would -- it’s -- this session is for those people who are in the process of application. Not for the people who already established. So I want to look at the Dear Tribal Letter dated July 2nd.

It says, in recent years you received a number or requests from groups in the State of Alaska seeking to organize. Well, we’ve learned that that’s three, and that since the process is different from the federal acknowledgment of the American Indian tribes, and then further down it states, so the process is different. You have three applications. And unlike Part 83 process, there are presently no formal rules or regulations to guide not only decision makers on how to implement the Alaska IRA, but also applicant groups on what materials and submissions are necessary to -- or required to make those applications.

So you -- I’m trying to understand. You have
three applications on your desk somewhere and we
don’t know if they’ve turned in the right paperwork
or not? That -- that’s what I’m trying -- I’m trying
to figure out, because it sounds like it says you
don’t know what submissions are necessary. And then
in an effort to provide more clarity and transparency
to those groups, we’re having these sessions. And
then some questions offered to help us guide us in
these sessions that I’m still not clear on who came
up with these questions. But if I’m looking at them,
and I’m a person that might be applying for this, are
you asking me to tell you is the provision still
relevant for today or not? Are you asking me to tell
you how to define and interpret the common bond
definition? And then further on down, are those
applicants being asked to tell you how to process
their applications? Is -- is that what I’m
understanding from this Deal Tribal Letter?

MR. FISH: And I think in a sense what we’re
asking is -- is what are your views on what this
process should look like. And --

MS. EDWARDS: So you’re asking us to tell you
how to process those applications on your desk, even
though we are probably already organized? So, we’re
supposed to come up with those regulations? Because
one of those questions are, should it be policy, should it be regulations, or agency guidance?

MR. FISH: So, I think that -- that the consultation isn’t premised on those three applications specifically. I think that what we’re asking is what, in the broader context of these provisions of the law, should the regulatory process look like in a way that serves the best interest of your communities and your tribal governments. Because whenever you look at it, you’re talking about potentially bringing more people into the fold of your peer groups. So I think --

MS. EDWARDS: But you said, in an effort to provide more clarity and transparency to the groups seeking to organize. The ones -- the current ones, the three.

MR. KELLY: Just to be clear, that it doesn’t say that it’s only for those three. It says for groups seeking. So there are going to be other groups that made inquiries about the process and what would be required of them. It is true that there are three pending applications, as far as I understand. That’s not to say there haven’t been other inquiries from other folks that might want to do that.

MS. EDWARDS: So, we’re -- so you want us to
answer those questions so you’ll be able to process those applications. So, if we wanted to streamline this process, now is the time to do this?

MR. FISH: Certainly. Yeah, we would not -- absolutely. That would be very helpful, because that would help us to identify issues that (a) we may have overlooked, but also (b) that might be of concern to you and to other tribes in the Alaska community, that we’re not aware of. And that’s one way of bringing it to our awareness. So it could be very helpful.

MS. EDWARDS: So in answer to your question, is there a need to create separate process for federal acknowledgment of Alaska groups, part -- outside of Part 83. So that would be the people who are applying beside -- and -- and the people who have already established IRAs in this room, that’s for us to answer, that should we create a -- we’ve already heard we don’t want the Alaska exception anymore, right?

MR. FISH: The Alaska exception?

MS. EDWARDS: Yeah. Where -- where we’re -- where we’re left out and we’ll do it this way everywhere else, but we’ll leave Alaska out and do it different in Alaska. We don’t necessarily want
things done different for Alaska anymore.

I guess I’m still struggling with trying to understand the process, if we’re -- if we’re going weight those three applications against what we’re saying here today.

MS. APPEL: I think that remains to be seen, because if we were -- I guess one option is there would be regulations developed for how this common bond provision is carried out and how tribes get recognized that way. And if we had the (indiscernible) on that, there could be a provision -- I mean, it’s up for discussion whether the applications that are currently (indiscernible) in the fall under the (indiscernible) regulations, right? Because we wouldn’t necessarily want to --

MR. FISH: It would have to be mapped out to the point that President Wallace raised earlier in discussing the policies and procedures that were in place around 1936. There is a different statutory reporting for Alaska (indiscernible). No regulations have ever been promulgated or implemented those particular provisions of the statute. So that is one significant legal difference between the IRA’s provisions and the existing Part 83 regulations. Which is not to say that Part 83 could not be
modified to accommodate that. But it doesn’t exist at this time. And so any suggestions or input into how to consider that would be most valuable.

MS. APPEL: And I think -- I think it’s a question for you all whether, you know, this is something that should be addressed in a regulation, or should it be addressed in guidance, or should the department continue processing these types of requests as it has in the past, without making it any more transparent for logging anymore information for anyone maybe looking to go through the process. So, we want your input as tribes that are already federally recognized and what you think about the course that the department should take with regard to this Alaska IRA (indiscernible). I hope that (indiscernible).

MR. NEWMAN: Good morning. My name is Matt Newman. I’m a staff attorney at Native American Rights Fund office in Anchorage. I’m here today working with the Organized Village of Saxman, IRA Council. I just have a couple of general comments, and I apologize to the tribal leaders in the room, because they are legal in nature and are therefore going to be boring.

But one thing I want to begin with, and to echo
what President Wallace mentioned earlier, is how difficult actually providing testimony on this issue is, because there is a great amount of uncertainty that -- as to number 1, who in Alaska this conversation is affected. As we’ve kind of reiterated a few times in testimony today, none of us, including the representatives from the department, can really name or identify even who the existing groups seeking recognition are, where they’re located, and what are the problems or the causes of delay in their application process. And so, I would just reiterate, as many speakers have shared today, that we have the cart before the horse. That the first thing that should be happening, prior to these consultations dragging tribal leaders away from subsistence activities, is we -- there should have been formal meetings with the actual groups themselves. They are the ones having problems. They are the ones suffering from delay. So they are the ones who should be consulted on an issue pertaining to them. Because as Mr. Fish very clearly, unequivocally told us earlier this morning, this regulatory decision, if there ever is one, or at least this consultation today, is not pertaining to the recognition of the 229 presently recognized
tribes. So, rather than starting with the 229, we should be starting with the two or three that are being harmed by delays in the process.

And that actually brings me to another point I want to raise. Earlier in the introductions, staff mentioned that -- that, you know, one of the problems here is that there is no guidance for processing these petitions. And I have to exception with that, because there is guidance. And in fact, one of the documents I have in here in front of me is instructions for organizing in Alaska under the Reorganization Act. And it’s a document signed by Harold Ices, Secretary of the Interior in 1937 as to how Alaska Natives sharing a common bond and occupation with one another may organize as a federally recognized tribe under the Alaska IRA. And this guidance has been used repeatedly throughout the 20th century and even into the 21st century to organize groups, bands, villages of Alaska Natives into IRA councils. And in fact, it was most recently used in 2001 when the Birch Creek tribe in the Yukon Flats region of Alaska received its IRA constitution.

So, I don’t think it’s appropriate for the department to represent to the tribal leaders that this is a blank slate, that there is no anything here
by which to mark the trail. You have guidelines, old as they are, 1937, and you have precedent of recognizing 80, near 80 IRA tribes within the State of Alaska.

Now, I appreciate and can agree that perhaps if the guidelines are as old as 1937, then having a fresh look or having a conversation about updating them, may indeed be necessary. But, a conversation like that is one, I think, that needs to be approached in a much more sincere way. And what I mean by that is, starting a conversation with people who are affected.

So in addition to the three councils, or three groups that are seeking recognition, contacting the Birch Creek tribe that completed this process in 2001. The village of Eagle that received recognition in 1998. Dot Lake village in 1994. There is a -- there is knowledge and experience to be gained by those tribes that have in recent memory completed this process. That’s where to start. Not with the contacting or consulting the 229 tribes. And -- and again, I’m not anti consultation here, but you’ve -- you’ve asked tribal leaders to come to this room, and we can’t even name the people we’re talking about in this consultation. That’s not right. That’s not
how consultation should be done. It should be informed dialog between sovereigns, not a pop quiz on who are we talking about, where are they, what are we doing.

And finally, I would just like to highlight a letter from the Alaska Federation of Natives signed by President Julie Kitka that was submitted to Secretary Zinke on January 19th, 2018. And the reason I want to highlight this letter is that in it, President Kitka provides a very detailed summary of the experiences that at least two of the petitioning communities have had in their federal acknowledgment process under the Alaska IRA. And the reason I bring it up is this letter and the history that it outlines is not one that illustrates the difficulties or the damage that the Ices’ guidelines or the BIA policies have. Instead, it actually is describing the history here of what happens when tribal recognition decisions are politicized. And both of these petitioners, including the community in Seward that has been waiting 23 years to have its petition processed, they have been treated like a ping pong ball between administrations, because political appointees have not been dealing with the issue according to the guidelines, according to the
precedent that was established. So, I would
encourage, as part of your record, as part of your
conversations internally at the department, to get a
copy of this letter. I know my office would be happy
to provide it, as well as AFN.

And really, in closing, I guess I would just
emphasize again that the real issue here, or the real
stakeholders in this process, are the ones who need
to be consulted. And it’s those tribal -- or those
communities that are seeking tribal recognition who
are not in the room today. They were not in the room
in Juneau and they were not in the room in Fairbanks.
There are in Dillingham, Alaska, they are in Seward,
Alaska, and then as for a third one that’s mentioned,
I -- this was the first I heard there’s a third one,
but I can at least say that two are known to me.
They need to be included in a future consultation.
They’re the ones who need to be spoken to about this
issue. Thank you and good morning.

MR. FISH: Thank you.

MR. BAKER-SHANK: Good morning. Good afternoon
to east coasters. My name is Philip Baker-Shank.
I’m with Holland and Knight. We’re a law firm that
represents two of the tribes represented in this
room. And I appreciate the courtesy. Those tribes
are Central Council Tlingit and Haida and Ketchikan Indian Community. But I don’t want to speak in front of any tribal leaders, so if there’s nobody behind me, I will -- I will raise a question for the panel.

There is in this consultation letter and implicit question. And that is, what part of Part 83 is not sufficient. To answer your question, generally. You referenced and handed out the IRA section at issue, 51.19. But your letter refers only to common bond of occupation. If you read that statute, it of course says, common bond of occupation. -- I’ll quote it, having a common bond of occupation, comma, or association, comma, or residence within a well-defined neighborhood, community or rural district.

Now, your letter focuses only on one piece of a disjunctive in the statute. You’ve got to follow the statute. Any regs you write, any consultation you’re dealing with ought to be looking at the statutory framework, not just one piece. It’s a three-legged stool. It’s disjunctive. One, two or three of those can fit. Now this is elementary statutory construction.

MR. FISH: So question 3 doesn’t address that?

MR. BAKER-SHANK: Question 3 only addresses the
residency. So what about association? What does association mean in the context of the IRA? It’s very plain. It means political, cultural, ethnicity, language, peoplehood. So the IRA was an incredibly diverse act. Trying to do an organizational framework, which your questions are veering way off into one side. And your answers can be found in the statute and in the way this -- this -- the department, your predecessors have looked at the statute. The courts have long interpreted this statute. I’m -- I am mystified by the questions. For all the reasons that were just said, plus this one.

And so, beyond that point, I want to say that the Part 83, very controversial, changed over time by your predecessors at the department, has been working Counsel from NARF just listed several procedure -- several outcomes of that here in Alaska. We can go through a list of those that have -- Part 83 has been applied to in the Lower-48.

So, I guess the question I want to leave you with, and you care to answer now or mull it over or reject it as invalid, is what part of Part 83 does not answer all of these questions? You have a procedure for dealing with groups who say we are
Indian and we want to be recognized as that, here in this way and fashion. And Part 83, the federal acknowledgment procedures regulations, attempt to address these questions. And here again, the 1994 amendments of the congress of the United States specifically instructed the department, you may not write in special exceptions for Alaska or any particular tribe. No two classes of tribes. Groups seeking recognition in Alaska are no different than groups seeking recognition in Massachusetts. Or in California. So that would be the question I would have for you and the panel and -- and those to whom you report. Thank you for listening.

MR. FISH: Do we have anyone else who’d like to provide some comments? We could break a little bit early and then meet back at 1:00. I want to thank everyone for providing statements that you’ve provided this morning. I know this is a relatively small group, but you’ve provided some really thoughtful input that will spark a lot of discussion and consideration. So thank you. See you back at 1:00.

(Off record)