U.S. DEPARTMENT OF THE INTERIOR/ANC CONSULTATION
ALASKA INDIAN REORGANIZATION ACT OF 1934 (IRA)

October 21, 2018
10:00 a.m.
Anchorage, Alaska

APPEARANCES:

BUREAU OF INDIAN AFFAIRS:
John Tahsuda, Principal Deputy Assistant Secretary

U.S. DPT OF THE INTERIOR:
Matthew Kelly, Assistant Solicitor

Proceedings electronically recorded, then transcribed
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Delice Calcote, Alaska Inter-Tribal Council
Abe Albert, Anchorage, Alaska
Bridget Anderson, ANCSA Regional Association
Adam Walters, Association of Village Council Presidents
Erik Kenning, Arctic Slope Regional Corporation
Daniel Cheyette, Bristol Bay Native Corporation
Jennifer Brooks, Bristol Bay Native Corporation
Ken Truitt, Central Council of Tlingit and Haida Indian Tribes of Alaska
Rhonda Pitka, Chief of the Village of Beaver
Millie Johnson, Chugach Alaska Corporation
David Phillips, Chugach Alaska Corporation
Gabriel Kompkoff, Chugach Alaska Corporation
Lindsy Swing, Chugach Alaska Corporation
Ben Cutrell, Chugach Alaska Corporation
Charlie Sink, Chugachmiut
Nathan Lojewski, Chugachmiut
Lisa DeCora, Department of Interior, Office of Solicitor
Natasha Singh, Dinyee Village Corporation
Jonathan Simon, Doyon, Limited
Sarah Obed, Doyon, Limited
ALSO PRESENT: (Continued)
PJ Simon, Doyon, Limited
Kristi Williams, Hobbs Straus
Marie Katcheak, Holy Cross, Alaska
Nora Brock, Kawerak, Inc.
Francine Johnson, Kawerak Inc.
Tony Weyiouanna, Sr., Kawerak Land Management Program
Joel Jackson, Ketchikan, Alaska
Kalani Tucker, Knik Tribe
Thomas Panamaroff, Koniag, Inc.
Lance Kramer, Kotzebue
Alexander Tallekpalek, Levelock Native Corporation
John Lincoln, NANA Regional Corporation
Matthew Newman, NARF/Levelock Village Corporation
Megan Condon, NARF/Levelock Village Corporation
Melissa Borton, Native Village of Afognak
Loretta Nelson, Native Village of Afognak
Eric Jordan, Native Village of Chenega
Maria Coleman, Native Village of Eklutna
John Hopkins, Native Village of Eyak
Raymond May, Native Village of Port Lions
Nancy Nelson, Native Village of Port Lions
LaToya Hartley, Native Village of Port Lions
Dorothy Shinn, Native Village of Tazlina
Myra Thumma, Native Village of Venetie Tribal Government
ALSO PRESENT:  (Continued)

Ernest Erick, Native Village of Venetie
  Tribal Government
William Albert, Northway, Alaska
Peter Demoski, Nulato Tribal Council
Jaeleen Kookesh, Sealaska Corporation
Ben Mallott, Senator Lisa Murkowski
Eric Reimers, Senator Lisa Murkowski
Pearl Chanar, Seth-De-Ya-Ah Village Corporation
Becca Patterson, Sonosky Law Firm
Whitney Leonard, Sonosky Law Firm
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Carl Burgett, Tanana Chiefs Region
Victor Joseph, Tanana Chiefs Region
Angela Totemoff, Tatitlek Corporation
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Nanci Robart, Tatitlek Village IRA Council
Cassandra Kroto, Tyonek, Alaska
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PROCEDINGS

(On record)

MR. TAHSUDA: Good morning. Thank you for coming. Thank you for your patience with us as we get started here.

So this morning we're having a consultation session as part of a round of both public meetings and Tribal consultations on the issue of the Alaska portion of the Indian Reorganization Act as it applies in the Tribal recognition context. And just a reminder, this afternoon we're going to have a session dealing with fee-to-trust issues coming out in the same provision as the Alaska IRA.

So this is a formal consultation. We're doing a transcript, that's why we have these young ladies here who will help us with that. We'll also be sure, then, that your comments that you make today -- and if you have any written comments, you either send them in -- we have a web- -- on -- on the DOI website, there's a place to send it in, or you can just hand it to us if you would like today. We'll make sure they're part of the record as well. And, also, if you -- when you -- when you speak, make sure to use the microphone, that way it will be easy for them to record that and make that part of the transcript as
well.

So I would like to start us off on the right foot, and so I would like to ask, if there's an elder here that would like to offer an invocation for us to start the meeting off this morning, I -- I would appreciate that.

MR. ERICK: (Speaking Yup'ik).

(Indiscernible). Let's all have good words with one another and speak from the heart. We bless every one of the people here today. We bless all of the elders, all the young people, all of our friends, and the good, and the -- (indiscernible) we have, give them peace and honor them in a good way. Amen.

MR. TAHSUDA: Thank you.

All right. So we'll start off with introductions. My name, if you can see my thing here, is John Tahsuda, and I am the Principal Deputy Assistant Secretary for Indian Affairs and Department of the Interior. With me, I have Matt, who is with the Office of the Solicitor, and we also have some of our team -- I -- I can't remember --

UNIDENTIFIED SPEAKER: Amanda.

MR. TAHSUDA: -- Amanda -- I'm so sorry -- and -- and Regina out front, and they're part of the Assistant Secretary's office. They help us with these.
They are part of the regulatory affairs group. They help us with these matters, getting -- keeping the records together and producing them for -- for our public records.

So, again, let me reiterate to help with the record. When you speak -- I also didn't say this earlier -- when you speak into the microphone, if you could also tell us your name, your affiliation, whether it's a village or a tribe, what your affiliation is, that way we can also make sure that that's part of the record as well.

The -- this -- this session, and the other sessions that we've held, were noticed in a public -- were noticed in a "Tribal Leader" letter that accompanied the withdrawal of an opinion from the Solicitor's Office, and that's what leads us to this discussion about Tribal recognition and particularly for this session.

I think that -- so separate from the solicitors who really focus on legal issues, our office, of course, focuses on policy issues. And I'm from a tribe in the Lower 48. I'm from Oklahoma, a member of the Kiowa Tribe, and we certainly have a much different history than you guys have up here. And I think, from my part, it's really, very, very
important for us to hear from you and your perspectives on this. Again, there are -- there are legal issues that we're trying to work through, but there are also policy, history, and factual issues that will be very important to us as we build a record.

Everything that we do, and through the Assistant Secretary's office and through the Secretary's office on behalf of tribes, is -- is part of our trust responsibility to tribes and the Native people. And so we have been endeavoring since I came in over a year ago, and with renewed vigor, now that we have Assistant Secretary Sweeney with us, to make sure that the decisions that we issue are well-founded, in fact, and under the law. And so that is our responsibility to do that and make sure that the decisions we make are not just good decisions, but they're good defensible positions, and I feel, personally, to me, that is part of the trust responsibility, that the decisions that we make will -- you'll be able to depend on those. So through all of that, that is our goal, to be your best advocate, to be able to put all of us in the best position to represent Indian Country.

So that's part of this effort here, as I said,
to engage in a thought process on the Alaska IRA as it exists today. We have overlaid with that now several other pieces of legislation that have been enacted over time, as well as amendments to all of those. And it doesn't always make for an easy legal analysis, but as we follow the law, we want to make sure that we do that and consider all of the implications to that.

At the end of the day, we want to also be sure that we have addressed the -- the intents of the law, and part of that falls not just on legal grounds, but also, I said, on policy grounds. And so it's very important to us also to hear legal arguments, and as your experiences have been if you're not a lawyer but you certainly have been involved over time with your villages, with your tribes.

But in addition to legal views, also, as you have experienced over the years now, and as your -- your parents, grandparents, et cetera, experienced, what have been the positive, negative -- what are the implications of the Reorganization Act, what have been the implications followed after that with ANCSA, with ANILCA, some of the other laws that apply. And so I think from a policy perspective in addition to a legal perspective, it's important for us to gather those as well.
Part of -- part of implementing a law is making sure that the -- the intents of the law actually work on the ground as a factual matter, as a policy matter. So that's part of what we'd like to hear as well, so -- in addition, again, to pure legal arguments, we really appreciate your perspectives on what's important about the law.

There were some questions that went out with the "Tribal Leader" letter. They're relatively broad, and some of those may seem very obvious to you, but as part of this effort to get a, sort of, more full policy in -- in historical perspective, we don't want to miss anything, and so the questions are very -- sort of very broad, in hope that we can get a very broad perspective from you, and I think that at the end of the day that will be very, very important to us as we develop the record moving forward on this. So I appreciate that.

I want to give Matt a chance, from the Solicitor's Office, to give a couple of thoughts from his perspective as well.

MR. KELLY: Thanks, John.

Good morning, everybody. I recognize some faces from folks who were here on Wednesday. It's good to see you again.
I don't know that I have much to add to what John has just said. I would like to point out, though, again, that what we learned from listening sessions in Juneau and in Ketchikan, the consultation in Ketchikan, was that the letter that we sent out, the "Dear Tribal Leader" letter, could have been clearer in order to allay some of the concerns that we learned about at those sessions.

So I just wanted to re-emphasize that the purpose of this consultation and the questions we're asking are directed at how we implement the IRA, the Alaska IRA, going forward. It is not to revisit any decisions that have already been made. It is not to revisit the status or any questions relating to existing constitutions or the provisions they may contain. I certainly understand how that concern could have arisen, and, again, that was on us, because we didn't write the -- we weren't clear enough in the letter.

Other than that, really, this session today is about listening to you and to hearing what your concerns are and what your desires are with respect -- if any -- with respect to the questions here, and implementing the Alaska IRA going forward, particularly with groups that may want to organize.
One last point, at Ketchikan's session in particular, we heard from Tribal leaders, concern, questions. Why were we not consulting with those groups who are now -- now have petitions for recognition pending before the Department? Certainly, there is always an ongoing dialogue with any applicant for seeking a decision by the Department; however, consultation is something that the United States carries out on a government-to-government basis. To the extent you feel you have an interest or concern related to the recognition process and extending government-to-government relations to new groups, that is for you to say, and that's why we're here, to hear what input you have on that subject.

Thanks very much.

MR. TAHSUDA: Thanks, Matt.

That's a good point, just to be sure that there's no concern. I mean, again -- and also in the vein of wanting to have, sort of, the broadest net cast as possible, we have had a couple of public meetings as well so that we can try to include everybody, including those unrecognized groups that are currently applying, so they have a chance also to -- to get some points into the record.

So thank you, Matt. I will open up to the
floor now, if you have any questions or anybody wants to offer a comment.

MR. TRUITT: (Speaking Tlingit).

For the sake of the transcriber, I said I'm Tlingit, and my name is "Tuksak" -- phonetic spelling will do just fine for the record -- and my name is "Katishan" (ph). In English, my name is Ken Truitt, and I am the Chief Operating Officer for the Central Council of Tlingit and Haida Indian Tribes of Alaska.

So we're here bright and early on this Sunday morning. Just to give you a few words about Tlingit and Haida and what our interest is on this particular issue -- and we'll have more to say this afternoon -- we are not an IRA tribe, and we are also not a village council. We were formed by special act of Congress prior to the IRA being made applicable to Alaska. Congress passed our act in 1935, and so that -- I guess that -- that makes us special. We are the Tlingit and Haida, and we are special.

But we are -- we were formed specifically to pursue land claim for the historical taking of our ancestral -- or the taking of our historical and ancestral homeland, and we did that. And to a large extent what followed, discovery of oil, statehood, it was because our land claims litigation was pending at
the time of statehood and at the time that the State of Alaska was making its statehood land selections, but then the Secretary suspended all statehood land selections so our lawsuit could work its way through the court of claims. And then what followed, obviously, was ANCSA, and then the Self-Determination Act shortly after that.

But -- so this -- this morning session doesn't really impact us, but we want to stand with the applicants who have had their applications pending, really, for decades now, in support of that, and we would just take this opportunity with our comments to remind you all that the act that you're saying is in process of being implemented was passed specifically in 1936. That was a long time ago. It seems to us just a little bit suspect that in 2017 and 2018 you would start scratching your heads and saying, "Gee, this is really complicated."

And that's what -- I know we have one lawyer sitting there. I don't know your background, Mr. Tahsuda, but that's what lawyers do. They figure out complicated issues of law and policy. And, yes, Indian law is one of the most complicated areas of law that we have, but that's why people go to law school, to learn how to negotiate those things. And principal
among how these things get interpreted and how these
things get negotiated is the Canada construction that
-- that these laws are to be interpreted and to
benefit Indian people.

And so going back to 1934, I wanted to also
remind you all on the record that the purpose of the
Indian Reorganization Act was to put an end to the
allotment era, Congress specifically found in the
Reorganization Act that what was going on with the
allotment area policies was bad for Indian peoples,
and that the purpose of the 1934 act was to restore
land to Indian peoples, to their control in
conjunction with the government.

And so when you say that this is complicated
and you want to do this right, the right thing to do
is to move on these applications that have been
pending for all of these years now, because the
mistake that you're going to make, given the trust
responsibility that the government still has, is to
make a decision that disfavors Indian people. I'm
going to submit to you, that's going to continue to
not act on these applications, to continue to fail to
protect the Indian peoples who are seeking rights
under the Reorganization Act.

So that's all we have. Thank you.
MR. ERICK: My name is Ernest D. Erick. I'm from the Native Village of Venetie Tribal Government.

In 1974, the Reorganization Act gave us a lot of opportunity, and today -- back in 1934 is just like today for me, because we've been exercising the constitution laws that was given to us, the traditional laws that was given to us by my grandfather and grandmother, and all the forefather has made for us. So we had it all documented within traditional level until the day the Reorganization Act came about.

The fee simple title land that I've been living on, and with a membership of Venetie and Arctic Village, 1.8 million acres of land that's owned by the tribe, it's still there. We still -- the only thing that the State of Alaska doesn't recognize under the Provision 6, Title IV, the natural resources that need to be given back to their tribe within the State of Alaska.

We've been exercising Indian Country for immemorial time. "Reverse your land to -- back to the Native village," we said, under our cases. The best interest for us, we were not part of the Lands Claim Settlement Act. We didn't take the dollar. We said we're going to get the land. Before 1934, my
grandfather, Jimmy Roberts, he walked the land, every inch of it, with a tribe. "This is the rule that we're going to put around our land." That's what they did. It was in the middle of the river, the Chandalar River and the Christian River.

Today, we have over 15 to 2,000 members on that land, still recognized the -- their way of life. They put refuge around us, and we have to deal with it to protect the wildlife, but those resources that we use is in the hands -- (indiscernible) -- laws. That's really hurt us today, but we're still a fee simple title land that's owned by the tribe. We're still exercising from loose dogs, children law for the children, law for members of our tribe in the traditional level.

We have gone a long way. We've done it with Native -- Native way of doing things. Lucky today, we have law, lawyers, that help us, and I give them a lot of credit. Our relationship, the government-to-government relationship, really stands clearly -- clearly that's been going on from the last 60, 70 years now.

Give it back to the Native people, those natural resources. It's a very important thing that we have. Those food chains out there, that serves our
people. The dollar's been there, but we could have
got into the big development if we wanted to, but we
care about other Native people that lives on the Yukon
River. We don't want to spill anything that's going
to cause problems, education, roads. This is the kind
of stuff that federal government should understand,
that there is people occ- -- occupy their -- law and
order -- whatever dollar that's coming to the land is
being served.

And I just want to make it short, but there's
other organizations here that want to speak
themselves, but we're the pure Native people that live
father north, and we stand our grounds all of these
years, and I just want to let you know that.

Thank you.

MR. TAHSUDA: Thank you, sir.

MR. JOSEPH: I'm Victor Joseph. First of all, a
Tanana Tribal member, and then Chief Chairman on the
Tanana Chiefs Region, where there is -- conformed of 42
members, and 37 of which are federally recognized
tribes.

You know, our relation to the south, Ken, he
was saying it's sort of suspicious what's going on
here, and -- you know, and I also question the
intentions. And, in fact, when I'm talking to the
people that I counsel with, the question is, "Why are they doing this?" There's already been law established. There's already been regulation established. It's already been practiced and put in place, and tribes have successfully moved through this process in Alaska. And then if this is truly about trying to figure out how you're going to help the two tribes that have petitions in, then energy should be given to that, into those tribes, using the existing standards that have worked in the past.

When I really get looking at the heart of this, I get really concerned, because over the last year I have been seeing a lot of process start taking a step backwards. When I look at the consultation process, I'm seeing us not really having the meaningful dialogue that's necessary to be discussing something so important as this, if it was truly to have meaningful negotiations. And where's that group that can be put together and used to be -- how can we satisfy and meet the petitioners to get them forward and to get them into their rightful status?

I have seen negotiations break down because of backpedaling of the federal government, and, once again, breaking their promises. And so there is a lot of concern I have here as we're trying to re-open
something that I believe that there's really no
tention to re-open, no reason to re-open, but to
start looking at it.

So getting back to the -- what's the real
intention? I think we need to get to that answer. We
also need to make sure that any tribe that's
petitioned you, any applications that you have, move
forward, and let's put the energy in the right spot,
in the right place, because I stand by them, and I
think you already have the stuff. It may be
difficult, it may be challenging, but you've already
done it. People before you have done it. And so
let's just get that part done, and let's stop trying
to fight the fight that we've already fought, and
let's just move forward.

Thank you.

MR. TAHSUDA: Okay. While other folks are
deciding what they want to say, I'll try to respond to a
couple of things, or -- or -- and not just me. Matt
can.

So I think there's -- you have good, good
questions and comments about why we're doing it now.
Let me take a step back, maybe, and say: So, first
off, we have an old law. So the IRA was passed in
1934, the Alaska amendment was in '36, and in those
days the federal government -- or the Congress often passed laws. They didn't have a lot of detail in them. They kind of had the direction to, you know, "Go take land into trust for tribes"; right? And over time and with some direction from the Supreme Court, the government has moved in the direction of having more -- a little more thought given into the laws that passes, making sure that it addresses constitutional concerns, issues, et cetera.

What that leaves us, though, we still have a lot of old laws in the book like this, and so in -- in general, in many different contexts, it's up to the departments, the federal agencies to kind of fill in, back fill, what otherwise would have been in a little more detailed law, fill in with regulations so that we don't have -- so that through regulation, we address maybe constitutional concerns, et cetera. So we've done that in the context of fee to trust and for tribes that are under the IRA.

And in this context, we -- the federal government did it -- or the Department of Interior did it with regulations for acknowledgement of tribes, but that only applies to tribes in the Lower 48. So in this case we have this provision, the IRA, which has provisions to recognize groups in Alaska for some
purposes, and they are slightly different, as they
mentioned in the law, as -- as it is for the other
tribes under the IRA, the '34 IRA, but there's no
regulations there.

I don't know if you're mistaken or not because
you said you thought there were regulations already
there to be used, but there are not, and that's --
that's actually part of this process that we're trying
to do, is to figure out, you know, what is relevant
today under this law that we should be pursuing? What
is relevant in your minds? And what can we do to get
the law in our -- our -- our regulatory process
together to implement that law?

And so in this context, I think it's -- it is
a bit of a unique situation. I mean, we had a flurry
of activity after the IRA in the first half of the
20th century, and then we had changes in law that
happened both the Lower 48 and up here, including
statehood. We have ANCSA. We have these laws that
passed, and as Congress seems to do all the time, at
least with Indian Country, is they -- they don't
re- -- revise, revoke, or do anything with older laws;
they just leave them there, and they just paper over
with new laws, and so it falls to us to figure out,
and that's part of the regulatory process, is figuring
out, "Okay. What is the intent of the old law? What's the intent of the new law?" And how do we mesh those and make sure we're doing it in a way that is constitutionally sufficient so that the decisions that we make coming out of that, then, will be able to be upheld by a federal court.

And that's -- for better or for worse, that's particularly acute these days, because it seems like every decision that we make gets challenged in -- in a court, whether it's State court or federal court. And, again, that's kind of -- as I mentioned it in the -- the outset -- in my mind, it's extremely important for us to make sure that we have a good basis to make the decision so that we get the best and the most defensible position for you, and part of that is having a regulatory structure in process.

We always run the risk -- and I'll -- I'll maybe let Matt expand a little bit more -- but we always run the risk of making decisions that we don't have a standardized or a regulatory process for, because then it makes it seem like it's arbitrary, right, and the courts are always on the outlook for arbitrary decisions. And so if we have a standardized process and we work through it, our decisions have a much greater chance of being upheld, and so that's,
again, part of what we're doing here.

I appreciate the comment about consultation. I've got to tell you, I -- I've been consulting myself to death over the last years since I've been in the Department, it seems like, but this is to -- to -- to follow through in this process, this is, like, the early part. This is the initial consultation, in which we're trying to get your thoughts and your input for us to make a decision, which we will then, if -- if we're kind of -- if there's a consensus to do it, we would move forward with the regulatory process, which would, then, include some more consultation on what the actual regulation would be. And so we're early in the process, and I appreciate all of your comments across the board, of course, but I think we will have plenty of property to have dialogue with this and -- and see -- see where we can get it to go.

I'm trying to think. As far as -- so, let me just reiterate, as far as the current petitioners, it is a difficult process for us when we don't have regulations in place. The recognition of -- of groups in the Lower 48 is very difficult, and we have now a 40-year-old -- almost 40-year-old regulatory process in place to recognize them. It's still -- still a challenge. And so for us to try to proceed with
petitioners in which we don't have a standardized process in place, makes it extremely difficult, and in my mind, makes it very, very likely that there will be a legal challenge, that -- and we would not be in a great position to defend that, or at least not as well if we had actual regulations in place to implement and to play out what our basis of our decision was -- was, both on fact law and policy.

So, Matt, do you got a thought?

MR. KELLY: Sure.

I can certainly appreciate the concern. Having worked in represented tribes for 15 years before joining the federal government, I understand how what we do here can seem like the workings of a black box, where you don't know what's happening on the inside.

In terms of meeting regulations now or seeking some kind of guidance in how to implement the Alaska IRA, I think that the existing federal acknowledgement regulations are a good example of where we would like -- what we're trying to do here. The Department in implementing the IRA from 1936 made recognition decisions on an ad hoc basis. It didn't have any set criteria, and it did that for about 40 years.

In the early 1970s, you began having
litigation over the status of tribes, that is whether they're recognized or not, for different purposes, including treaty rights. There's a significant amount of treaty rights litigation in Washington state, and it was as a result of those challenges, the risks of having conflicting judicial decisions on how the Department should recognize a tribe, what constitutes a recognized tribe, that the Department undertook the process of developing the federal acknowledgement regulations, which are Part 83 regulations, which, as John said, have now been in place for 40 years, and they provided a firm and a solid basis for making acknowledgement decisions that have withstood the test of time, and the test of judicial scrutiny.

I think the Alaska regulation -- Alaska IRA has not really changed since 1936 with respect to recognition. We now exist in a different legal landscape. There have been an awful lot of new laws and court decisions about governing how the Department exercises the authority that Congress delegates to it, all of which arose after the IRA, the Alaska IRA, were both enacted, and as John said, that puts new constraints on the Department and requires the Department to be able to show it does have standards in place when it exercises that authority, it's been
delegated to it. Doing so ensures that the decisions we make withstand the test of time, withstand judicial scrutiny, and ultimately benefit Indian Country in the way the Congress intended.

So that really is a major part of why we're here. Before going forward on that, it's really important to get your input to consult, and this, from my view, as the attorney's view, is the opportunity where I can learn about facts on the ground and legal issues that you are closer to and more aware of that I am not, that I can incorporate in my analysis of all the comments and bring to the attention of the policy-makers and their decision-makers, like John.

MR. TRUITT: Thank you.

This is Ken Truitt again. I guess, having heard that, thank you for those responses.

So -- so this is now -- this is 2018. You started this in 2017, this particular round of consultation, and if I'm -- if I'm reading the record correctly, two of the applications that we're talking about have been pending for 17 and 25 years, so it's a little bit difficult to understand why you're having this con- -- conversation now when these applications were ripe for action two decades ago. The legal landscape you're talking about didn't exist when these
applications were submitted. Had you acted on them when they were ready and ripe for executive action, they would be a part of the landscape, the history that you're -- we're looking back on, as instead of saying let's go forward.

What can you say about why this department has sat on these applications for all of these years, and the legal landscape just gets more complicated as time goes on? This would be in the history. There would be no fight. There would be in litigation over this. And -- and I guess I'm wondering, who -- who is this phantom plaintiff that you're so afraid of? And how is making -- I mean, the strongest decision that you can make that can be upheld is making one in the benefit of Indian peoples.

By refusing to act, are you not creating for yourselves liability against the people you're supposedly acting in their best interest for, us? Are you not being arbitrary and capricious by refusing to act? I'm going to submit you are. If you're a federal agency and you've got statutes in the books and an existing process on the books, and you're refusing to act on an application that's ready for -- ready for a decision, but you're just sitting there because you're worried --
I -- I kind of feel like I'm -- I'm living the 1984 George Orwell world, where you all are saying, "We don't want to be arbitrary and capricious," but your very actions are arbitrary and capricious. Which -- which is it? Who are you afraid of?

MR. TAHSUDA: Thanks, Mr. Truitt. Good -- those are great comments. I -- I can't speak to previous administrations. I will say that -- that there has been concern about how to proceed -- I hope that's the right way to say it -- for a long time with actions or decisions that may come out from -- from the Alaska IRA provisions, and so this is not a new thing. There's been, I think, a desire to try to understand what -- you know, what would be the best path forward for a long time, and that speaks to why these have been sitting for a long -- now, I -- I would presume. Again, my tenure is relatively short there.

But I think that it does -- it -- if there was a structure in place to follow, it does make the decision-making process easier. We unfairly, I think, oftentimes depend upon the lawyers to dream up a path forward for us, when we don't have a structure in place, and, you know, sometimes they're able to, and this -- I think in this case, you know, the challenges faced by all of these different laws have been passed
over time have made it virtually impossible for them
to find a clear path forward. It may be that they're
eventually is one, but we've got to work through that,
I think. So that's our interest, so that we can
actually get decisions done.

I will say this: So my boss, the Secretary,
is a man of action. He -- whether it's yes or no, he
likes for us to make a decision and -- and get it
done. And so that's part of what we're doing here, is
to get, you know, our hands around the whole problem
and get something in place so that we can move forward
with decisions in this context.

MS. WILLIAMS: Good morning.

Excuse me. My voice is a little bit gone.
I've been yelling bureaucrats all week, so I apologize
in advance.

My name is Kristi Williams. I'm a consultant
for Hobbs, Straus, Dean & Walker, and we represent two
of the petitioning tribes before you, the Quteckak
Native Village, and also the Knugank tribe.

I'm just going to speak today a little bit.
I've -- I've been to a few of the other sessions in
the past in Fairbanks and also here on Wednesday, and
we have submitted comments for the record, so I'm not
going to go into too much detail, but I do want to
briefly summarize some points from some of our submissions.

I want to state, though, for the record, prior to my comments about Knugank, which I'll focus on today, the meeting schedule, when you're putting together your consultation schedules, it would be very helpful to tribes to have more notice, and also the timing of this is -- is a little bit poorly coordinated. The NCAI Conference is happening this week, and Tribal leaders from the State of Alaska need to be there. So having the ANC consultation prior to the Tribal consultation this week, where Tara Sweeney, the Assistant Secretary, sat and spoke with leaders at that Wednesday consultation, was a little bit backwards. I think it might have been helpful to have the Tribal consultation on Wednesday with the Assistant Secretary, and today's consultation for the ANCs who aren't going to be at NCAI. So just in the future, if you could think through that when you're scheduling your consultations here.

In terms of the Knugank request, I'm going to speak to the common bond standard quickly. Groups of Indians -- this is the common bond standard for those who are not familiar with the language right off the top of your head -- but there's a common bond standard
that's laid out that includes occupation, association, and residence within a well-defined neighborhood, community, or rural district, and they may organize to adopt constitutions.

The Department has issued guidance and decisions that provide further insight regarding the parameters of that standard. Assistance Secretary Larry Echo Hawk testified before this at Indian Affairs Committee back in 2012, and he followed that up with a letter to Senator Murkowski talking about the difference between the common bond standard and the community standard that's applicable in the Part 83 process. They are very different processes, and the reason they're different is because Congress delegated the authority to the Department to act on behalf of Alaska when it amended the IRA in 1936.

The reason they did that is because the Part 83 process doesn't fit in Alaska, as you know. It's -- it's made for reservation tribes. So the common bond standard was well thought out and delegated as an authority to the Department to apply when tribes here petition the Department for recognition. This standard has been used in the past. There are a number of tribes here that have already gone through the common bond standard. They are also a number of
Native groups who have been denied recognition through the standard. The Department has recognized Eagle and Circle, which are two tribes in the Interior, and it hasn't been challenged, to my knowledge, in court. There hasn't been any kind of urgency to recreate the drawing board. So it is a little bit unusual for the Department to spend so much time on an issue that isn't broken.

Regulations are great, but they're -- they're complicated, and they -- you know, the promulgation process takes time. These tribes have been under scrutiny by the Department through the application process for nearly a quarter of a century. I mean, this is just -- it's -- it's absolutely ridiculous that they've had to wait this many years for a decision. One way or another, they deserve to have a decision, and the Department should act accordingly. That is a statutory duty that Congress delegated to you.

The common bond standard, again, Knugank met -- met the standard in 1936. They continue to meet this standard. It's -- Knugank is -- for those that don't know, it's a traditional Alaska Native village that's separate and apart from its non-Native residents. Census records from the 1930's show that
Alaska Natives resided in that geographical boundary of the Knugank Village way back in -- in 1936. All but one of Knugank's members were born and raised in the village of Knugank. Their descendants and members of the Alaska Native community have been living there since 1936. Many of their elders have passed because they've been waiting so long for recognition. It's -- it's a travesty, really, that they didn't get to see recognition while they were alive.

So the Knugank, they're on the Nushagak River near Dillingham, and they petitioned the Department to organize pursuant to the Alaska IRA in 2001, so they've been -- their application has been pending for a very long time, and I'm not going to talk about Qutekcak today, but that application has been pending even longer. Knugank has been responsive to every issue raised by any official within the Department, and ANCSA compounded the errors, contributed to this problem. There was an administrative error within the Department that left Knugank, which was then called Olsonville, Inc., off of the 1994 list of federally recognized tribes.

The Department incorrectly carried out the ANCSA enrollment process for the tribe, for Knugank, and they undercounted the Tribe's membership by a very
large number. Because of this error, they incorrectly labeled Knugank as a Native group instead of a Native village, and as you know, Native villages, not groups, were included on that Ada Deer list in 1994. So this could have been alleviated through an administrative correction, but that didn't happen, so they -- Knugank actually has two, kind of, tracks for recognition; one through the Alaska IRA process, and also for an administrative correction.

As you can imagine, the Knugank people are very frustrated. They've been waiting for the Department to act on their application for an extremely long time. The Department has all of the evidentiary material necessary to make a determination regarding whether Knugank is eligible to organize under the common bond standard. And, in fact, Assistant Secretary Roberts was ready to act on their petition. Unfortunately, given administration change, and again Knugank's application, which was a breath away from approval, fell through the cracks.

So this is something that the tribe -- it's just been a comedy of errors for this tribe over the, you know, pending time period that they've been waiting for acknowledgement, so it's something that the Department needs to act on, and we ask that you
issue a decision as soon as possible for the Knugank Tribe.

If the Department chooses to move forward with promulgating regulations on the Alaska IRA process and the common bond standard, we ask that Knugank and Qutekcak's be grandfathered in to the current process that they've been anticipating action on for 17 and 25 years. To require the tribes to endure additional bureaucratic stagnation when the Department has everything that it needs to make a determination, is -- would be unjust and unfair.

Thank you.

MR. TAHSUDA: Thank you.

Any other comments? Yes, ma'am.

MS. PITKA: Hi. I'm Rhonda Pitka, Chief of the Village of Beaver. It's -- it's been a very long week with a lot of AFN events, and before First Alaskans, Elders and Youth. And a lot of Tribal leaders are headed to NCAI tonight. This consultation, I think, should have -- should have been taken in advance of the ANC Corporation, of -- of them, because that's how Tribal consultations generally work, is you do the Tribal ones, and then you do the -- and then you do the ANC ones.

I have to find my notes. We were at the AFN
banquet a little bit late last night. It was a good one.

So the July letter, I went to the Fairbanks consultation -- or was it a listening session? I can't even remember now -- and it just seemed odd to me and really suspicious that the -- that we're consulting about a 1936 law about -- and -- and especially about events that took place in 1994. I actually graduated high school in 1994, and I didn't realize until Kristi said that, that that was 25 years ago.

It just -- it just seems like we're going backwards on -- on things when we should be moving forward. Re-looking at -- at old processes and -- and this stuff, it just -- it doesn't make any sense to me right now. Unless you are heading into termination era, you know, policies, I mean, in that case, then I -- I would definitely have to strongly suggest that you stop. That's deplorable.

So during the Fairbanks listening session, the solicitors clarified that this notice seeks to assist not recognized groups and would not impact already recognized tribes. Given the history of the State and federal agencies deferring to private interests that seek to undo recognized Tribal sovereignty authority,
this letter raises many concerns. So if there are only two groups in Alaska seeking this recognition, the amount of money and resources spent holding listening sessions and consultations across Alaska is incredibly suspicious. The Department does not need regulations for the organization of groups of Alaska Native not yet recognized because Congress provided a statutory standard for the Secretary to apply, and the Department has already issued detailed guidance on the process for the organization of these groups.

So in 1936, Congress amended the IRA to make it applicable in Alaska. Congress made clear that groups of Alaska Natives not previously recognized could be organized under the IRA and then become federally recognized. This statute itself contains the standard the Department must apply when determining whether a group of Alaska Natives is eligible to organize. This standard requires a common bond of occupation or association within a well-defined neighborhood, community, or rural district. In 1937, the Department issued detailed instructions on the process that should be applied when organizing a group of Alaska Natives.

So I think for those two groups of Alaska Natives that Kristi Williams mentioned, I mean, it
just needs to take place. You need to make a decision as quickly as possible, and, you know, probably issue an apology to those two tribes. The lack of federal recognition is -- is really heartbreaking for the tribes in Alaska, and it is a travesty, and it is an injustice to our people, and I really don't appreciate it, and I especially don't appreciate coming in on a Sunday to another Tribal listening session on laws that have already taken place way before my grandmother was even born.

Thank you.

MR. TAHSUDA: Thank you.

So Kristi commented, and -- and, Chief, you commented as well on scheduling of consultations. Trying to schedule, organize consultations is a no-win proposition; right? I mean, we can never get it right exactly because at no point is it convenient for everybody, but -- so we had tried to schedule these both in a time frame that could accommodate all of the different activities that go on up here. We had input in from both folks up here, as well as -- as everybody from the congressional delegations. At some point they thought they might want to sit in on one of these. So I appreciate that it's difficult, and my apologies if it makes it a challenge for anybody, but
we can only do our best in trying to get these
scheduled in -- in a manner that can try to
accommodate as -- as broad a perspective as well, and
that's why we've tried to have a number of these as
well around the State. And also, too, realizing that
it's difficult sometimes for folks to be able to get
around, and it's obviously more convenient when you
have something like AFN going on to assist us in
trying to have as much participation as possible.

So let me reiterate again as well, so I
appreciate 1936 is a long time ago, but it's a law
that we're being asked to implement -- we're being
asked to use, I guess I should say -- and so hence,
we, you know, have to put the effort in to make sure
we have authority to act under it and what the
parameters of those authorities are.

And, you know, 1937 was a long time ago. I
appreciate that guidance was issued in 1937. The
world is a very different place, and so it seems to me
a very valid question is: Is that guidance still
good? Does that still apply to us? Alaska was not a
state in 1937. Believe it or not, that makes a
difference to people. We didn't have ANCSA. We
didn't have ANILCA. We didn't have a whole host of
other laws that apply specifically to Alaska, apply to
subsistence hunting. There's a whole host of things that have come in that intervening time, and so that's part of -- what would be great for us to get into a record to help us move forward on is, are the things that were relevant then still relevant now? If they are, great, let us know. Are there new things that have come along? Are there things that should change some of that thinking? Then you're the best people to tell us that. Please help us work through that.

And, again, guidance is great, but I don't know that we have the best track record as far as guidance being, you know, reviewed by the courts in supporting something that they're having questions about, the -- the authority or -- or constitutionality of a provision, if we have actual regulations in process -- I mean, in place, that I think at least there are Supreme Court cases that say that, you know, they can give a little more deference to us if we've gone through the regulatory process, as opposed to just putting out a piece of paper that says, "Here's some guidance on how to do something."

So I think at the end of the day, it's -- it's helpful for us to actually have regulations in place to do something -- something that's as important as tribal recognition. I think that it's also -- it's
also -- let me say this, as somebody from the Lower 48 -- and I think -- I think Ms. Williams alluded to it, or somebody else did -- you know, that -- that some of the laws in the IRA itself in 1934 really contemplated a different context, and so what was the intent in 1936? And, again, what -- what is relevant about that intent now that we've had several other pieces of legislation layered over it, and how should we best implement that now?

I -- I think that, you know, there was some thought process that over time the IRA provisions were, you know, sort of frozen in time, and that there was a new regime. There was ANCSA that came along and other things, and, you know, now we have a request -- and we've had it for a long time. It's not new -- but to say that we'll know -- that needs to be considered as well, and I think that's a very -- completely valid, but we have to think through that process, and that's part of what we want to do here, is get that thought process understood by us from your perspective. We'll obviously have to have, you know, a legal perspective, you know, from the Solicitor's Office on what we can and can't do, and under the authorities of these different laws and how they impact each other.
So, again, I think, from our -- from our perspective at least in moving forward on policy decisions that are this important, having a thought-through background on it, as what we're trying to do now, and then having a thoughtful regulatory promulgation process will be very helpful to us down the road. I would say, you know, there are more than two, I think. I mean, I guess -- I mean, in part, let me say that, you know, this is as relayed to us by groups. There -- there may be only two that formally filed a position or have one pending with us, but it's my understanding, anyways, that they're -- if we had a process that could be moved through, that there would be some other groups. So I think it's not just those two. I think there are others that may be interested, and so I think it's well worth the time to do that.

I also think it's well worth the time because in some way also the thought process of "what does it mean to be an IRA tribe in Alaska" also may have some -- I'm not saying it does, but it may have some impact on the later discussion we're going to have about fee to trust, because those fee-to-trust provisions come out of the same law; right? And so -- as with the Lower 48, and we went all the way to the Supreme Court, "What was the intent of the '34 law? What
tribes does that apply to?" et cetera.

So I think thinking through the process of what recognition under the IRA for Alaska tribes means, also, it can help enlighten us. So what is the intent on what was meant for them to be -- once they become recognized, what is meant for them, for us in implementing that law? So I do think it's a worthwhile endeavor for us to go through this, otherwise I wouldn't be up here. I love your state. I grew up in British Colombia, you know, next door, and so I love the north, believe me, but I -- you know, if I didn't think it was important, I -- I -- I certainly wouldn't be up here and spending time with you just to have fun.

But, anyways, thank you. I'm babbling on here. Any other comments?

MR. JOSEPH: Okay. I appreciate your comments. But with respect, and I need you to hear this, is that, you know, when I think about the consultation that took place earlier with the ANCs, you've got to think about that, if the Assistant Secretary was there and not here, where is she putting her importance? And where's the fairness in that? And so if she couldn't be at both of them, she shouldn't have been at either one of them is what I'm
thinking, and so I think that's really important as we look at who truly has the government-to-government relationship, and that's the tribes. So I just wanted to share that thought.

Secondly, this is an old law. We know it's an old law, and we know when Alaska became a state, but some of the other applicants that have been recognized happened after those laws and after we became a state, and so I think that's also an important statement. So this process has been used. It has worked, and it should be able to continue to work.

If there's going to be any changes because of your consultations or listening sessions, you should also understand that it shouldn't impact the current petitioners, and those should be continued to move forward, and I think that's just as important of what's going on here.

So I don't mean no disrespect, and I'm glad you like Alaska, but there is a lot of concern about what's going on here, and when you walk away from today, I hope you hear that, because it is that trust relationship that we're trying to hold and uphold and understand. And so as we move forward, I'd really like to get around to this whole thing, moving on beyond this and not having to rework or refight things
that are unnecessary. We've got other things we have
to be doing.

Also, too, I do appreciate this happening on
-- this happening, I guess, but just getting back to
the date and time, look in the room. We've got --
we've got almost half the tribes in the United States.
You've only got a handful of people here. There's a
problem with that. And we were all here just a few
days ago, and so I think if you worked with us more a
little bit better on the timing, I think we could work
out solutions where this could have been a really
productive time where we had many Tribal leaders here
talking with you about this important issue and our
concerns.

Thank you.

MR. SINK: Good morning. My name is Charlie
Sink. I work for Chugachmiut. I was here on
Wednesday for the ANC in the morning, not the
afternoon. And thank you, Matt, for the paper for the
M-37045.

I kind of want to draw a story from -- from
the -- an example, and I'm going to preach to the
choir here on this side, but a long time ago, I was --
I was reading some books about Alaska when I lived in
Washington state, and -- and I just couldn't figure
out, you know, how these miners got into Alaska with all of the provisions on their back, and it -- and it took me a while to figure it out -- because it wasn't stated in the books -- that it was actually the Native people that helped these people survive here in Alaska.

Later, when I lived on the Yukon, I did a study where I finally figured out that Alaska was divided up by the Alaska Native groups in -- in their subsistence areas, the gathering places where the fish -- (indiscernible) -- in the summer, which kind of consolidated into the villages of today. And when I lived in Galena, we were the guests of a couple families of the traditional camps there, and then the -- the hunting grounds were off the rivers, and -- and those areas were part of those family groups, and that's -- that's the basis of the Alaska Native in Alaska. Alaska is fully occupied, and so if you have that baseline, that they were everywhere here, the Alaska Native people.

And then I was reading in the M-45 example where they're talking about the preliminary powers of Congress over Indians, but it's also superseded by the -- the grant of -- of grants to the United States by the Indians, which precedes that relationship, and
that was an interesting thing I didn't really understand and had not known before, that the governing part is -- is -- is the gift of land to the United States government by -- by the Native people, as -- as something they had done.

And then we get to the -- the Alaska Native claims Settlement Act, and that is exactly what happened back in 1971. It was the gift of lands to the United States government in return for, depending on who you talk to, you know, 900-and-some million dollars and 44-million acres of land giving back to the tribes. Well, it's a settlement agreement. It was a gift to the federal government, and I think that sets a precedence here, is that the federal government got a huge gift, because we're talking about all the land and its resources that the Alaska Native people had.

And then we -- we look back on to law -- you talk about the law and changing the laws, the past laws don't pertain. Well, that's -- that's not true, otherwise you could get rid of the Declaration of Independence, and yet we don't. We the People hold -- hold up the Bill of Rights, and these -- these other institutions that were recognized. And what we see over time in the -- in the paper is -- is the outright
acts of assimilation that occurred, and there was a period here in Alaska where that pertained, the 1908 Allotment Act for Alaska Natives, and I didn't really understand -- I'm -- I'm still learning more about the implications of the 1908 Allotment Act, and that was its attempt to provide Alaska Natives with land to survive upon.

This understanding was -- was the common bond that was not recognized very well at that time, and the common bond is how the Alaska Native people work together in their family groups and -- and their associations, and that is the common bond of Alaska. And so when you do an individual allotment act, the separation of Indians from their family groups, it doesn't make real sense to the local people here. And -- and so you see the corrections that Congress tried to attempt in 1934 and 1936 for Alaska to -- to establish a better trust relationship with the tribes, was trying to correct these actions, to kind of bring the common bond and -- and the people back together again.

And then since I represent Qutecak that's petitioning the federal government for recognition, I kind of -- I went back and read a little bit of the
history of -- of the Seward area, and it was recognized that there was a Tribal group in the area. A lot of those lands that the -- were -- were given to the Port Graham Village Corporation and Nanwalek Village Corporation. Nanwalek sold some of their lands, and the Kenai Fjords Monument, now national park, back to the federal government.

But they did recognize that, but they didn't recognize the area in Seward, and -- and some of the -- the assimilation things that occurred at that time was based on history. You know, in 1902, it was decided to build a railroad from Seward to -- to Anchorage, and this is prior to the 1908 Allotment Act, and then the pressure there was to -- to be assimilated.

And so one of my fellow employees is coming by and is talking about the, kind of, coercion of labor, those times where people were paid -- undervalued, and they worked for these different companies and ended up owing a relationship to those companies, and this -- this goes back to Russian times when they -- when they worked for the people back then collecting hides, pelts, and it carried on to when America acquired Alaska. So there's this -- kind of this relationship where Alaska Native people were coerced into forced
labor, basically, and ended up owing their soul to the company store.

And then in the great insight, there was some -- some events that occurred in 1924, probably the smallpox epidemic, where they transplanted a bunch of Alutiiq children to Seward to an orphanage, and so now -- now we're moving groups from one area to another to live somewhere else, and then this is part of that story that -- that -- that occurred in Qutekcak. So you're bringing in people from around Alaska, Native people, coercing them to live in Seward and work on the railroad, bring in orphans and assimilate them on the lands that belong to another group.

And so it's kind of an interesting story on how -- how that occurred, but we -- we look at this attempt of assimilation and the correction thereof, and -- and then I look at your questions, when you talk about common bond, and you talk about neighborhood community, rural district, and then you move on down to a common bond of occupancy, have the ability to -- (indiscernible) -- and sovereign governmental powers. I'm not sure where you guys are going with -- with -- with that kind of language, but we look back to the plen- -- the powers of Congress, they -- they recognize Indian Canon Law, and I had to
look up "Canon Law" because it pertains to the Catholic Church and the powers of the Catholic Church, and -- and they -- they use that term as applied to Indian law so -- so the Indian groups have their own laws, their own ways of doing things. That's part of that common bond -- bond, and -- and that -- that Alaska Native peoples have carried on over time, and you think it might be dated, but I run a village safety officer program in our villages, but I can't always get somebody to go to a village and -- and -- and work as a community safety officer.

In lieu of that, what we find is that the traditional chiefs and -- and certain designated people, are the ones that -- that act during times of -- of -- of unfortunate events, if there's no police force there, in other words. They're the ones that act -- act, and they're seen traditionally as the ones that act there. So what we're seeing in real life is that this Indian Canon Law is still being acted around the State in -- in lieu of State or federal assistance, or lack thereof. And so we had this strong bond, and -- and also this strong traditional way of doing things at the Tribal level, you know, Indian Canon Law that is recognized by the United States government.
And so I think the probably more suspect thing that I -- I don't -- I would like hear from you guys is that when you ask that question of us, where are you going with -- with this -- this -- (indiscernible) -- of powers? I have some traditional chiefs that are -- are trying to maintain their -- their sovereignty as -- as best they can. For example, on our four small villages, it's the tribe that is the City council and is fighting very hard not to become a State -- State-Recognized city council, and -- and so they're trying to keep their -- their -- their Indian Canon Law going and maintained.

And so -- and then we're talking about things change over time; it's changed a lot, but is it for the good, or for -- for the better? I think you're asking for clarification on some things. I think the clarification is possibly better suited to the things that are already accorded the Alaska Native people, recognition that these people need land, a great amount of land and resources, the United States and the obligations that Congress gave to the Alaska Natives applies here, and all the decisions should be in favor of the tribes. And so if there's a challenge to what's in favor of the tribes, I think that's been spelled out to Congress in more than just one law.
Thank you.

MR. ERICK: Thank you.

Ernest Erick from Venetie. Pretty much a federal-recognized tribes says -- you know, I think this is a little group here, like I heard it from other people here, that we should take it back to the federal-recognized tribe, where they're located at is very important for us and our people to listen and have John and Matt to be there. You're more than welcome to come to Venetie or Arctic Village to have the same consultation that we're having here. Other tribes have to be included. This is just a little group that we have here that's -- you know, we don't want to get farther into law and our lawyers, to identify what is really going to happen in the long run, but that long run has been here for a number of years, and I'd like to present that and let it be.

Thank you.

MS. PITKA: Thank you for inviting me to this consultation, but I have to leave to go check out of my hotel room shortly.

I just wanted to reiterate that it is a Sunday and a lot of my elders are -- are very against having meetings on the Lord's day. Our Tribal elders don't -- don't need that kind of mess in their life, so I'd
just really appreciate it -- I would invite you to, perhaps, have sessions at the BIA Providers Conference at the end of November. That would make a lot of sense, and it would be really good timing, I think.

Thank you very much.

MR. TAHSUDA: Thank you for coming.

MR. DEMOSKI: Good morning, John. I don't know if I'm happy to see you again. I've seen you twice already in listening sessions. This is the first consultation of these issues that you're bringing forward to us. I won't get into what Ms. Williams or Rhonda Pitka or this gentleman over there discussed about the lack of informing tribes in Alaska. We -- we do comprise 40 percent of the tribes in the nation, and this is not Tribal consultation, as -- as a lot of us already explained.

I'm a little disturbed at your -- the Department's wanting to define common bond and occupation of community lands. I'll give you a historical perspective of where I'm coming from. In the 1700s when the United States was still under jurisdiction of King George in England, the Russians came through the Yukon River into our villages. After the Russians left, the English came 50 years later. After the English left, the Americans came through the
missionaries and everything. All of these people, but we're still occupying our Tribal lands. That has never changed. That should be your description of common bond and occupation of defined territories.

Nulato was not an IRA tribe, but I do respect the tribes that are IRA. They took advantage of wanting to be federally recognized. It didn't need to happen. We were already a sovereign government way before the Russians came. I'll give you an example. In the mid-19 century, we were still having Tribal wars in the Yukon River. In fact -- in fact, Nulato was almost wiped out in the mid- -- but those were our sovereign powers to declare war without any intervention from any other foreign government, and I believe that relationship with the United States is still true.

We -- we don't need to reinvent IRA constitutions in Alaska. It's already been working. Why re- -- re-dig it up again. That's -- that's my main concern, is why you people need to ask us to define a common bond and occupation of community lands. We already had that for thousands of years, and you should just recognize it.

As far as the IRA -- this -- this consultation, I feel it's unnecessary. Just accept
our views, even though we're only a small portion of Alaska tribes. Accept our views, and just drop it.

    That's what I think.

MR. TAHSUDA: I'm sorry, sir. Could you state your name and stuff for the record, please?

MR. DEMOSKI: Oh, I'm sorry. I'm Peter Demoski. I'm a member of Nulato Tribal Council, and I'm also the Elder Advisor for Tanana Chiefs Conference.

MR. TAHSUDA: Thank you.

MR. BURGETT: Yeah, my name is Chief Burgett. I'm a regional rep for -- and I speak for six tribes, and I was down in Juneau for the consultation down there, but even at that meeting, there wasn't one support from anybody sitting in the audience of this change. When we started this meeting, you said you wanted to see a census of what -- what the people thought. Well, we're all saying don't change it. Let's not -- let's not -- let's not go there. It's -- you know, too many years have gone past. Because you touch this one law, then you're going to impede on your -- your valid existing rights and your trust responsibility to us. And so, just saying that, like I say, I've never seen anybody stand up in support of even addressing this, and this is my second consultation.

    Thank you.
MR. HOPKINS: Good morning, and thank you for coming here. My name is John Hopkins. I'm from the Native Village of Eyak, and you're -- you know, you're talking about having a common bond, and there has been nothing else spoken in here except a common bond. Everybody says the same thing.

Thank you.

MS. WILLIAMS: Excuse me. I just wanted to add, too, in speaking about the common bond that, when you're working with Alaska tribes, we have a very vast geography here with numerous cultures, very different cultures across the state, and even with our vast geography and our different cultures, we operate as one. The common bond standard applies to all of our tribes, and even though the federal government is not recognizing a trust responsibility and a duty to consult with tribes that are yet recognized, that common bond exists with our brother and sister tribes throughout the state, even if the federal government has not yet acknowledged them.

Thank you. Kristi Williams.

MR. TOTEMOFF: Good morning. This is Chuck Totemoff. I'm the chairman of the Chenega IRA Council in Prince William Sound.

I think every one of the tribes in Alaska is
facing extinction efforts by the State of Alaska, and we're constantly having to fight their jurisdiction. It was brought up a few minutes ago about the State's interest rate in our -- all of our core villages under the Alaska Native Claims Settlement Act. We had to participate in this thing with -- they created a new program under State government within the Department of Commerce, called the MLT Program, Municipal Lands Trustee Program, and these are lands located in every single village across Alaska that participated in ANCSA, and it completely undermines the authority and jurisdiction of every IRA council in Alaska.

We haven't seen much help from the federal government in trying to correct this situation, and we also know that the State government here in Alaska is wanting all of our villages to be wards of the State of Alaska, mainly with the political subdivision of a municipality, so this completely undermines the Indian Reorganization Act and our Tribal powers and sovereignty.

I -- I -- again, I keep saying this, I can't think of any better way to kill off a Native village in the State of Alaska than to have this happen to them. It completely does away with all of these treaties, all of these acts that have occurred and
that really culminated in an Indian Reorganization Act. So there's a complete injustice that has occurred over time, and we are not in favor of altering these IRA constitutions that were agreed to. And -- and in Chenega's case, we do have a constitution charter and bylaws that was approved by the Secretary of the Interior. That still stands today.

So what we need, is we need help from the Bureau of Indian Affairs to try to correct this problem right in our core villages. So we are under direct assault on many levels; regulatory, jurisdiction, enforcement, you know, it goes all the way down the line to the Fish & Game resources to where we basically have been almost regulated out of existence right now, and as far as I know and understand, the BIA has a trust responsibility to stand up for our rights and responsibilities and jurisdictional questions here in Alaska.

So that's where your energy should be focused, rather than try to go figure out if this is an old and outdated law, which it isn't. We are desperately trying to recognize and enforce the provisions of the Indian Reorganization Act, but we are being assaulted on many different levels. We need the help of BIA and
the federal government to try to bring this act into fruition.

Thank you.

MR. TAHSUDA: Thank you, Chairman.

Let me -- let me try to make sure, again, and be clear. This discussion is not about changing IRA tribes that are currently recognized, their constitutions or anything like that. This morning's discussion is -- is about the process to recognize new tribes under the IRA prov- -- the Alaska IRA provisions. So I appreciate your -- your thoughts and your comments about some of the challenges you face now.

And Chief from the Village of Beaver had to leave. She mentioned earlier a session during the Providers Conference. I want to say, if you're able to make it, we are looking at trying to schedule a listening session during the Providers Conference specifically for the IRA tribes. And it's not that other people are excluded, but -- but these are some of the -- I think, some of the questions and issues that we'd like to hear about there, you know, for you as an IRA tribe, what are the challenges you're facing now? What are we not doing to support you as we should?

You know, kind of, I -- I -- I get this feeling over time -- again, I'm not from Alaska, so, you know,
this is helpful to hear from you -- I get the feeling -- the feeling over time that -- you know, that since there are several different types of entities, Native entities here in Alaska, that we haven't always given attention to, you know, some entities as we have with others, and so -- and when we did the consultation in Juneau, I thought we -- we heard very strongly that's what started the process of looking at the Providers Conference, but very strongly from some of the Tribal leaders there that there were issues that the IRA tribes were facing that maybe some of the other entities aren't, or -- but, anyways, we needed to hear that voice.

So that's -- I -- I would encourage you, if you can make it, to the Providers Conference session we have there. I think it's -- I think it's going to work out. I think we're going to have a meeting schedule there, so I'd love to hear that, sort of, current -- current challenges and issues that you face.

Yes, sir.

MR. DEMOSKI: John, I just heard you say that you're hoping to be with IRA tribes during the -- (indiscernible - away from mic) -- Providers Conference?

MR. TAHSUDA: Yes.

MR. DEMOSKI: I don't agree with that. You
MR. TAHSUDA: I -- I can appreciate that. Unfortunately, there are only so many days on the calendar, so many hours in a day, and for us to have a -- a process where -- where at least our senior leadership can be there to attend, it's helpful to be able to do it in conjunction with some -- with an event like that, where we have a lot of the folks in one place, you know. And it may be that we can find, you know, a way to move that further forward and meet more individually later on, but I think at least that's a first step for us to take, and I -- I'm really looking forward. I -- I -- I'm -- I hope I can make it. I'm not sure between me and the Assistant Secretary whether one of the two of us will be there, though, but to -- to hear that sort of kick off to this, you know, discussion, I think would be great. So I appreciate that thought.

Any other questions?

MR. SINK: Charlie Sink again with Chugachmiut.

What I find is -- is that your questions are limited, and you're talking about defining certain things to -- to interpret it on a legal sense. So maybe it would help us a lot to prepare if you could
look at the kinds of questions in addition to what's written here that you're looking at for us to respond to, because what -- what we're reacting to is the vagueness of what you're asking of us, and -- and something -- what -- what -- what language are you looking at besides common bond and neighborhoods to interpret? And so to us, it looks like a minefield that we're stepping into, and we're unprepared.

MR. TAHSUDA: Well, again, I think, as I said in the beginning, the thought process for us was to ask really broad questions so that we don't exclude anything, we can try to get as much information as possible, so, I mean, that's -- that's the intent in this.

I mean, again, I -- I think it's helpful for -- for us where there are specific -- so there's statutory provisions, right, that talk about common bonds, and what does that -- what has that meant historically? What does that mean now? You know, but not to -- not to -- (indiscernible) -- on that as if it's the only thing. I mean, we, again, want sort of a broad -- as much broad information as we can.

MR. SINK: Well, broad information, but I -- what I've already heard you state is that you want us to look at this and then maybe reinterpret things, and so
so in Indian Country, when you say "reinterpret the laws," you know, our -- our flags are flying very high, going, like, "What the hell are you guys talking about?"

Because I'm not a lawyer, and probably most people on this side are not lawyers. There's a lawyer or two on our side over here looking at this stuff.

But when you talk about changing laws and -- and vacillates with Congress between assimilation and -- and protection, we are trying to protect what -- what the -- what the rights are of -- of the Native people of America, but also the Native people of Alaska, from our point of view, and if we don't understand the implications of how the interpretations of these common words you say, common bond or neighborhood, affiliation, what the implications that you're looking at from a legal standpoint, how are we going to prepare and gain our knowledge to -- to -- to answer in a way that's -- that's from -- from our point of view? That's what I'm asking.

(Indiscernible - away from mic). We -- we -- we don't know what you're -- what you guys are looking at, you know, I mean, as I see the first four questions on today's session, that it starts with "common bond" and goes to "neighborhood" and "affiliation," and then it goes to -- to "sovereignty"
and how -- how we wish to implement that, and it's --
and it's -- it's -- like, it's kind of a progressive
questionnaire, and it -- it leaves -- gives us pause,
because it looks at basically challenging who Alaska
Native -- Native people will be, and then also, what
are the powers of the Alaska Native people, the -- the
sovereignty issue. And I think that's fairly well
established, but if you're looking at that, is that
the discussion we're having here, the powers of -- of
-- of the -- of the Alaska Native people in -- in --
in tribes in general? Is that what's being
interpreted?

Because when you put a question down like
that, that's our reaction to it, and -- and we just --
I -- I've been feeling unprepared from the beginning
coming in this session, and I've had a few days to
study it and I'm still kind of questioning what's
being interpreted here. What are we facing here on
this interpretation that -- that -- on the listening
session? So it's kind of like, you know, we don't
know what you guys are looking for. We're afraid of
the challenge to -- to -- to the recognition that we
have now.

MR. TAHSUDA: Well, again, so none of this is
intended to challenge any recognized tribe now, and --
but in trying to interpret the 1936 Alaska amendments, I -- I guess in part, I would say we don't know what we don't know. So the more you can tell us, the more it helps us understand.

There is -- I mean, I'm not entirely sure. This, I guess, the solicitors maybe can dig up, but clearly there is some difference if you have to amend a '34 law with a '36 law to apply to somebody else. What does that mean? I don't know. And why is there different language into the IRA than there is under the Alaska amendment? What does "common bond" mean?

All right. And so the -- the '34 IRA applied to the Lower 48 tribes, and we have a -- you know, we don't even have a great of an understanding of where things are now with that; right? We keep getting Supreme Court decisions that we have to deal with all the time, but what does it mean, you know, for Alaska in -- in doing something different in '36? I don't know. You know, is that -- is it the same? I don't know. I'm asking you guys. Is it best for it to be the same? Should it be something slightly different to fit your situation? Is that why they did it in '36? Is that why they passed new laws in -19 --

When was ANCSA? '71?

MR. KELLY: '71.
MR. TAHSUDA: -- in '71? I -- I -- again, I
don't know what I don't know, and it would certainly be
helpful to get as much information and background from
you from that perspective, but I don't want to -- I
don't want to limit it to that either. I think it's
very helpful for us as well to hear, you know, a very on
the ground -- sort of, you know, what is important to
being a Native village or to being an IRA tribe. What
is important to you that you've been exercising all of
these years? What is it that you feel like we're not
doing for you? I mean, what -- what is -- what is
something that's important to you that you feel like we
haven't supported you enough? Those are -- those are
factual questions that go into telling us from a policy
perspective what is important about the law. What's
important to you.

Obviously Alaska Native folks, Alaska tribes,
were the intended parties by the '36 amendments, so,
again, what does that -- you know, what does that mean
today, I guess? It means something in '36. Does it
mean the same thing today, or does it mean something
different? I don't know. In your minds, what does it
mean?

MS. WILLIAMS: Hi. This is Kristi Williams
again.
Sorry. Mr. Kelly, did you want to add to that?

I just wanted to say that if we look back at the legislative history of the time period during the act and then the Ickes guidance that followed, Ickes -- the Ickes guidance laid out very clear procedures for how this was to be applied for federal acknowledgement. There's clear evidence in the record.

ANCSA, as you referred to, was a land negotiation. It was a land deal. It wasn't about tribes. It had nothing to do with Tribal government or recognizing tribes. In fact, in 1971, the vast majority of thought about tribes here was that we didn't exist. You can't look at ANCSA as context for something that predates ANCSA.

MR. TAHSUDA: Don't we have to look at it, though -- I mean, it is something that happened. We can't ignore it either; right?

MS. WILLIAMS: Absolutely.

MR. TAHSUDA: I mean, that's my whole --

MS. WILLIAMS: Absolutely.

MR. TAHSUDA: -- point, is help us think through this. That's all --

MS. WILLIAMS: I commend --

MR. TAHSUDA: -- that's all we're asking.
MS. WILLIAMS: I commend your -- your action here. I commend that you're looking at this and trying to determine a path forward, but I would -- I would really respectfully ask that you focus on the two petitions in front of you first, and then exercise this -- this thoughtful activity after you've determined what the outcome for these two pending tribes will be.

Spending time on this effort with all of these Tribal leaders who aren't really, really invested in it because it's not something that affects them, is -- is really just an effort in futility. We really need to have you focus internally on the process that's been failing these petitioning applicants for 20, 25 years, and work out within the Department whether or not the answer to approval will be yes or no.

You can justify the court -- you know, I know you want to have a strong court argument so you can back up your -- whatever decision you make for these tribes. You can do that individually for the two petitions, and then after you finish with the decisions that have been pending for so long, you can look at the broader scope of things. We really need you to see the trees right now and not the forest. We really need you to act on these two petitions and utilize your -- your very stretched limited resources
within the Department to focus on getting something
done, and then look at this broader important
discussion after that's been completed.

Thank you.

MR. KELLY: What I was going to say earlier was
that, first of all, to your point, I think you've
answered two of the questions, the two questions four
and five, which go to the question of sovereignty.
You've indicated what you feel. They're not necessary.
Why do we have to even deal with this issue? That is
exactly the kind of thing that we want to hear.

I wasn't involved in preparing these
questions. I don't know where they come from, but
certainly I think an argument can be made that these
questions -- a legal argument can be made that these
questions have been addressed by Congress itself in
1994.

So we're not trying to hide the ball or
anything. We're trying to cover all of the issues
that can come up in our internal discussions and
before the courts with respect to these important
issues, and we want to make sure we cover all the
basis, and if that's your view on these questions,
then, you know -- (indiscernible) -- shouldn't be
here, they've been answered, whatever it is, we need
to hear that, because if everyone is saying that, then
the answer seems to be pretty clear.

With respect to the comment about ANCSA having
nothing to do with tribes, I think I would have to
respectfully disagree with that, and I think by
reference to this 1993 solicitor's memo from Thomas
Sansonetti, which discusses specifically the effects
of ANCSA on Tribal governmental jurisdiction over
territory. So in a sense, these two issues, fee to
trust and government powers, are connected, they do
overlap, and they have been impacted by these various
statutes and other regulatory developments.

However, with respect to the pending
petitions, I think that, as a legal matter, I can see
a path forward where precisely because those petitions
have been pending for so long -- and as you indicated,
you know, there is a possibility that an argument
could be made that one is the result of a previous
administrative error -- that those issues can be dealt
with parallel with the other issues that we're seeking
consultation on, because ultimately any guidance that
comes out of these efforts, that discussing these
things together will not affect or may not affect the
two pending petitions, but ones that groups are now
considering submitting, and if they are also part of
the Alaska common bond, notwithstanding that they may not have a formal government-to-government relationship, then it is important, I would imagine, to address those issues on their behalf too.

MR. DEMOSKI: Yeah, John, if you haven't attended a BIA Providers Conference before, it's a week-long event the conference is scheduled, a tight schedule. So if you haven't contacted the regional office in Juneau to put you on the agenda, I would friendly suggest that you do so.

MR. TAHSUDA: Yeah, we're working through that. Thank you, though.

I didn't make the one last year. Unfortunately, I have not been to one before, and I really -- I was planning to come last year, and it didn't work out, but I'm really hoping to come up and be here for that one.

MR. HOPKINS: This is John Hopkins again, Native Village of Eyak.

You asked a little while ago what was it that we're asking for, and I think it states it pretty clearly in this amendment here in this letter that you wrote to us, so to me it's pretty clear.

MR. TAHSUDA: Let me just add as well to your comment, Ms. Williams. We -- we have -- so we -- we do
have to make a policy decision ultimately here, because on -- on recognition, the current policy, which was established in Alaska administration and so far we have carried forward, is that all Tribal recognit- -- recognition decisions will go through the Part 83 process; however, the Part 83 process is probably not appropriate for Alaska, and, you know, I mean, if there's something similar to that that -- that would be -- (indiscernible) -- into one thing, but we still have to cross that bridge as well. Is -- are we not going to follow? Are we going to change the current policy? So that -- that's a decision that has to be made as well.

MS. WILLIAMS: So, yeah, I -- I appreciate that, Mr. Tahsuda, and I actually worked for Kevin Washburn's counselor in -- in the Department when he was the Assistant Secretary, and I was on that committee working on the Part 83 process, and Alaska wasn't contemplated. It was actually taken off the table because it was so complicated. So we -- we did look at the Part 83 process as being separate from the Alaska process and the statutory authority that's delegated to the Secretary to, you know, acknowledge tribes in Alaska and different -- different processes that's not part of the Part 83 process.

In response to Mr. Kelly, I -- I appreciate
that -- that ANCSA did have to do with tribes, but in
terms of the sovereign power of tribes, the sovereign
power of tribes is anything that Congress hasn't
abdicated. So for us to be talking about parceling
out what the tribes' powers are is -- is a little bit
frightening to me, that we're going to put a box
around what the powers are, because Tribal sovereignty
is everything that Congress has not abdicated.

Thank you.

MR. ERICK: I'm Ernest Erick from Venetie.

Again, I have to go back and tell you that we
need to bring it back to the root level, we're come --
where we're coming from. We have a lot of people up
north. Not Fairbanks or Juneau or Anchorage, you
know, these are not our people, yeah.

And you have some bullets ready (ph). I have
documents since every -- since the 1800s, okay, and we
went by the law, how it's written. I don't understand
treaty where you come from. I understand Tribal ways
of a tribe from the immemorial time, and we're going
to stick with that. But the closest that my people
could go, they cannot listen, but we don't have our
lawyers here today. Thanks to Kristi for making good
comments and direction and identify some of the very
important -- for the tribe, the IRA tribe within the
State of Alaska.

Common, it's just a common tribe, that's local village council, that common. It's just like Roberts Rules of Order, that you created. My father, my grandfather's name is Robert. Those rules, order was coming from him back in the 1700s, and today it's changing because I don't understand treaties.

And I know where you're coming from. I'm coming from the roots of the land that exercises the constitution of my constitution tribe within the State of Alaska. We were not part of them. We went on our own. All the children understand what tribe is within my area, from the heart, and to make Anchorage or Fairbanks making a decision for the tribe, even if you're not -- it says, "Public meeting will be open to anybody else," you know, that's going to hurt me, the tribe. So you need to go back, bring your people up to my area to discuss this, a consultation, ways of doing things, Tribal, government, government-to-government relationship. The State will be there too.

Thank you.

MR. TAHSUDA: All right. We're getting pretty close to our time frame here. Any last comments?

All right. Thank you, guys. I really
appreciate you taking the time to be here, and for those of you that -- that are interested in the fee-to-trust discussion, we'll start off in an hour or a little over an hour, 1:00, and talk about that portion of the Alaska IRA.

    Thank you. We'll close this session.

    (Off record.)