Transcript of Proceedings

U.S. DEPARTMENT OF THE INTERIOR
PUBLIC MEETING

ALASKA INDIAN REORGANIZATION ACT OF 1934 (IRA)

August 1, 2018
10:30 a.m.

Elizabeth Peratrovich Hall
Juneau, Alaska

CONDUCTED BY:
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WEDNESDAY, AUGUST 1, 2018
10:30 A.M.

JOHN TAHSUDA: Good morning. Thank you for coming, and thank you for your patience with us. Clearly we don't have the best of communication within our departmental efforts as well, so thank you for being patient with us.

This morning we're going to have a public listening 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.

So, again, I appreciate you being here. So we are a little bit behind on the schedule. My understanding is that there is an event here right at noon, so we'll have to go ahead and break then; but we have the second session in the afternoon starting at 1:00. And if there is a desire to have more discussion on this topic, we can always go and add on to the end of that session in the afternoon at 3:00, add on more time to continue this discussion if that's the desire of the meeting.
So I want to introduce our team. My name is John Tahsuda. I'm the Principal Deputy Assistant Secretary for Indian Affairs at the Department of the Interior. And our office, the Office of the Assistant Secretary, as you probably know, oversees two bureaus, the Bureau of Indian Affairs and the Bureau of Indian Education. These matters fall within both our hallway and within the responsibilities of the Bureau of Indian Affairs.

So I want to introduce -- if you haven't had a chance to meet Gene, Gene is our new regional director for Alaska, and we're really excited to have him on board, both as a member of your community and your family up here, but also his background in a wide range of the issues that are really important to you up here -- subsistence, and he worked for Fish and Wildlife before coming to us. And so I think he's going to be a great addition to our team, and we are really happy to have him on board.

From the D.C. offices we have two of our solicitors. Kyle Scherer is the Deputy Solicitor for Indian Affairs, and Matt is the Assistant Solicitor for Indian Affairs.

Also in the back we have more of
our assistant secretary staff -- Liz Appel, Elizabeth Appel, who is our acting chief of staff and also runs our regulatory affairs and oversees the process of putting these kinds of meetings together to make sure we have good communication with you.

With her is Regina -- and I knew I was going to totally forget your last name.

REGINA GILBERT: Gilbert.

JOHN TAHSUDA: Gilbert. Right.

How can I forget that? Regina Gilbert. I'm sorry, Regina.

So that's the staff we have here from Washington, D.C. And if you have any written statements or comments that you would like us to take with us, you can leave those with Regina and Liz, and we'll keep that with the documents of this meeting.

Now, this, again, is a public meeting. This is not a formal consultation. And so we're not doing a transcript of this meeting, but we do take notes. And we'll be sure to have the comments submitted here today as part of the collection of records that we will keep as we have this discussion going forward.
So I think, to get us off on the right foot, we have a young lady here that will offer an invocation. I know, in my part of the country, we like to start our meetings with this so we start off with a good heart and in a good way.

So if you could lead us in prayer, that would be great.

BARBARA CADIENTE-NELSON: First of all, thank you for the opportunity to gather here together before our sovereign God, the one and only sovereign God. And it's right that we begin our meeting in prayer, particularly in this place where we memorialize those who have passed on, where we celebrate our children and their learning to know who they are and connecting them to this place. We're mindful of the land that we stand on, the land of the Auk and the Taku Kwaan. And so we're grateful to be able to come together in the knowledge of our role in our leadership to benefit our people.

(Speaking in Tlingit.) We come together in your name, in our discussions and our deliberations, to grasp ahold of the vision that you placed within our spirit. We're mindful that you created us uniquely to resemble you, that the
very gift of faith is one that you ask us to ask
for, for direction, for guidance, for wisdom. So
we call upon those gifts that are there for the
asking. We ask that you would permeate our very
essence of being in this place, in this time, to be
mindful of the most vulnerable, our elders and our
children, and even our future.

We thank you for creating us to be
sovereign people who have a direction to realize
our place in this global society. I ask, Father,
that you would lead us to resolve and to refine and
define our path forward. We pray in your son
Jesus’ name. Amen.

JOHN TAHSUDA: Thank you very much.
So I should have said -- let me
add one more point of order for the meeting as
well. When you speak, if you could come up to the
mike and speak just so we can hear you clearly.
And even though this is not -- again, not
recorded -- or not transcribed, we would like to be
able to record which tribe, which leader is making
comments so we can keep that as part of our records
as well.

So if you come to the mike,
clearly state your name and your tribe or village
that you are representing. That would be helpful to us as well.

    So I think you should have received the Dear Tribal Leader letter that accompanied a withdrawal of an opinion from the Solicitor's office. And part of that leads into these discussions about tribal recognition under the Indian Reorganization Act and what that means here in Alaska. Certainly there is some different history here than there is in the Lower 48, and we have to be cognizant of that.

    So just as an introduction, I thought it would be helpful to you for me to give you, from our office, the perspective we have on this matter. And it's really the same that we have on every other matter, every other dealing that we have.

    Our responsibility is to you, to the tribes, and to the Native people, Indian people that we represent. And that's both a trust responsibility, and we have statutory responsibilities. And through all of that, it is our goal to be the best advocate for you that we can.

    So there's a lot of decisions that
we're involved with you, on your behalf, that we take for you. And it is always our goal that that decision be the best decision possible and best means -- not only that it's a decision that's good for you, but it's a decision that we can defend.

It's a favorite saying of both the Secretary and the Deputy Secretary that everything that we do, we have to follow the law. We follow the science, if science is involved. And if there are legal implications, as there are here, we have to follow the law and then follow the facts and make sure that we have the best basis to move forward with a decision, one that we can defend. And at the end of the day, it's my view that if we have made a decision that we can't defend on your behalf, then we've really not met our trust responsibility to you. And so from our office perspective on this effort, that's what this is about.

Taking a look at these decisions, these have been unsettled for a long time. Some of the tribal groups here, I know, have been asking for decisions from the department. Some of these go back decades. And there is another thing you
should probably know about our boss, the Secretary. He's a man of action. He likes to make decisions. And so it's our hope that we can get to a good place on the law and the facts, and that decisions can be made so that people aren't -- villages, tribes aren't hanging out there for decades, waiting for a decision from the department.

So that's really, from our perspective -- you can call it a policy perspective if you want, but that's the ultimate goal here for us, is to make sure we have firm ground to walk on, and then proceed from there on your behalf.

I'm going to -- this obviously has a lot of legal implications. That's why I'm outnumbered by Solicitors up here today. So I thought it might be helpful as well if Kyle could give just a brief intro into the legal issues on this as well.

KYLE SCHERER: Sure. Great.

So as John mentioned, my name is Kyle Scherer. I'm actually Acting Deputy Solicitor for Indian Affairs and the Acting Deputy Solicitor for Parks and Wildlife.

Just to, I guess, frame the discussion, this is sort of a look at the
recognition process under the IRA, the Alaska IRA from 1936. And as John mentioned, we're trying to sort of put the department in the position where we can defend agency action. As you're well aware, I believe we have three applications under the Alaska IRA presently before the Office of the Solicitor, two of which have been there, as John said, each for more than a decade, approaching two decades.

And the challenge is always, without sort of formal guidance or regulation, it becomes very difficult for the department to defend, you know, not only a no but defend a yes. Right? If we get to yes for recognition, it sort of appears one could make the argument that the decision is sort of arbitrary and capricious, you know, absent guidance or regulations similar to what we have for Part 83.

And so I think what we're trying to do is to say: How do we actually move forward? How do we create potentially guidance, potentially rule-making? And that could be varied. It could be sort of, you know, a formalization of the 37 memo. It could be something different. But the reality is, we've only had three tribes that are before us right now that have used the Alaska IRA
or are attempting to use the Alaska IRA for recognition and, to my knowledge, no tribes that have come under Part 83. So we're trying to -- that's the purpose of what we're trying to do.

And we are here to listen and to, you know, frankly, hear your suggestions on how to move forward with this. And we hope that whatever the result of these listening sessions and consultations are, come December we'll be in a place to quickly move forward with whatever the next steps are and then come back to you with what those next steps look like. And then we'll have another round of discussion before we finally implement something.

Anything else, Matt?

MATT KELLY: The only thing I would add is that, as was indicated in the letter -- just to clarify what was stated in the Dear Tribal Leader letter, another purpose is to provide clarity and transparency to groups who are not yet recognized who are seeking recognition in Alaska; so we're not talking about tribes that are already recognized in Alaska.

KYLE SCHERER: That's helpful.

Thank you.
JOHN TAHSUDA: So thank you. I think I would like to open it up to the floor now. And I’m going to take 30 more seconds, ma’am, and then I will turn it over to you.

So I think it would be helpful as well -- I know there is, as we’ve said, a lot of legal issues that are entangled in this. But as we build -- you can think of it as the record, or you can think of it as a platform for moving forward. But for our office in particular, a look at policy should undergird what we’re doing here as well. So I would encourage you, you know, over these meetings that we have, and encourage you to talk to your fellow leaders, to express for us in this record -- I know it may have been expressed many times before in different contexts, but to express to us as a matter of -- what you perceive, as a matter of policy, what is important in recognition as a tribal group, different than villages, different than the regional and village corporations here.

So if you can also give us an insight to that, I think that is guidance for us as well as we move forward on the policy side as well as the legal side of this. And that would be very
important for to us have in our record as well.

Thank you, ma'am, I'm sorry. I'm sorry to interrupt you.

UNIDENTIFIED SPEAKER: I'm sorry.

I couldn't hear what Mr. Kelly was saying.

MATT KELLY: Can you hear me now?

How is this?

I just wanted to also point out -- because I understand that there were some concerns expressed on this issue by groups that are recognized in Alaska -- that, as was indicated in the Dear Tribal Leader letter, one of the goals of the department is to provide clarity and guidance for groups that are seeking to organize under the IRA, not groups that are already organized under the IRA. I just wanted to emphasize that point.

JOHN TAHSUDA: Thank you.

So we'll turn the floor over.

And, again, if you can state your name and your village, tribe, for us for the record, that would be great.

RICHARD PETERSON: Good morning. I didn't want to go first. I was hoping to hear from some of our villages. My name is Richard Peterson, and I'm the president of Tlingit & Haida. And I
think the silence (audio interference). Can you hear me? Hopefully that's better.

So I think the silence that you hear right now is a direct reflection of the lack of understanding and why we're even having these consultations.

We're concerned from Central Council's standpoint. We're kind of considered a regional tribe. We don't fit under the IRA or are recognized by Congress, but we want to uphold the IRA tribes that exist now. We want to make sure any of these changes don't threaten their authorities or existence. And as a region, we want to stand strong and support our tribes. However, we're concerned that reopening or reexamining might cause them some threat or harm. And so we want to make sure that that's not the case.

I appreciated the Solicitor on the end's comments. You guys keep saying "Dear Tribal Leader letter." I feel like that's a Dear John letter. So, you know, we're a little bit on edge because of some of the rumors that we hear.

And not to sound so critical, but I don't feel like communication has been very good for the last couple years. And we want to see
better communication from your department to the tribes. And these Dear Tribal Leader letters that are vague and kind of oblique don't help us and don't give us any comfort.

So I know we have several sessions over the coming days, and we have an opportunity in Ketchikan that is an actual consultation -- am I correct? So we'll be prepared for official comments to a lot of this.

But, you know, I want to stick to what's germane, but this one is about the Indian Reorganization Act. You have one on BIA reorganization, and then another on Fee To Trust. That seems a little -- what is the word I'm looking for? -- frenetic. It just seems like there's a lot going on, and we're worried that there's stability in the Department of the Interior.

So we have far more comments, but I really, in the silence, just wanted to hopefully see some of the IRAs who -- these are very capable and amazing people before you. But, again, because there hasn't been clear communication, I think many of us are sitting here -- "what is this?" We're having a consultation because there may be three tribes -- or three groups that want to be
considered IRA? Is that what we understand?

And if that's the case, we have no
problem with recognizing more tribes. We support
that. We just want to make sure that reopening or
reexamining this isn't a code for, you know,
limiting or taking away from the already existing
IRA tribes.

And, you know, I've developed a
mantra -- "Healthy tribes make healthy
communities." And I come from the village of
Kasaan. I don't want to speak for them; they're
here. But I can tell you, the Indian
Reorganization Act and the power of the tribe and
that recognition has been the economic and social
engine in my home village, and I'm sure that's
quite the case here and throughout all villages.

So I hope folks will get up and
share those experiences. I know we have very
active tribes here in Southeast Alaska. And I'm
glad to see Andrea coming, so I'll yield to Andrea.

ANDREA CADIENTE-LAITI: Good
morning. This is working, and I don't think we're
getting any feedback.

I'm Andrea Cadiente-Laiti. I'm
the tribal administrator for the Douglas Indian
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Association, which is an IRA, federally recognized tribe. There's always a misnomer with being called "Douglas Indian Association," because clearly there is an English name Douglas, but we represent people of the Auk Kwaan and the Taku Kwaan, which comprises our base membership.

One of the issues that we have, first and foremost, is how we're defined, and through the Department of the Interior and the Bureau of Indian Affairs, one of the issues is, you know, that we're defined by our membership in terms of how the Department of the Interior sees us. And so our funding is hinged to our membership, and our voting is hinged to our membership. Our constitution, of course.

Pardon me. Sorry. That's one of my staff members. I come up with a train of thought, and it takes very little to distract me when I'm on a mission.

But the other thing is, in accordance with our constitution -- constitutions were written in 1934. And in 1934, things were very different than they are now. Douglas had a capital city grow up around it. And when you get swallowed up in those type of events and historical
trauma, with the seizing of land, the burning of the Indian Village. Mayflower School, which was funded by the Department of the Interior, should have come back to Douglas when they vacated it. And instead, it ended up in the city's hands.

So a lot of trauma has happened to our tribe, including some of those events were put forth by two former BIA officials, who were seated on the Douglas City Council at the time. And they vacated office as soon as they were successful in burning the Douglas Indian Village.

My point is this: In the long haul, because there is so much to share with you, and it is that, while we're defined so much by our membership and service area, that the Department of the Interior, I believe, and maybe other fellow tribes, have forgotten that we're also defined by our tribal territory.

And so our constitutions are limited from the time, because they're so dated -- 1934. So how it was written then, in response to the Indian Reorganization Act, inadvertently limited what ANCSA recognizes. And ANCSA recognizes our tribal territories. That's how we -- that's how we've divided up and identified
with regard to the regional corporations, plus the 13th region, and then urban corporations and village corporations like Shee Atika and Goldbelt Inc. versus the regional corporation, the Sealaska Corporation.

But my point is this. While ANCSA recognized tribal territory, in essence, by those boundary lines, we're still struggling with the Department of the Interior understanding, you know, that federal law, actually, and that we should not be confined to tribal territory, which is just -- you know, just a grievous error completely without taking into consideration the tribal territory of each and every tribe. And the expanse of those tribal territories is great.

And we're land- and water-based tribes. "Tlingit" for us means the tribal people, so our transportation routes are the waterways as well. We have two Indian reserves on the Taku River that ended up in Forest Service hands. And who would have laid claim to it are past folks that came here during the mining era, and they were basically squatters on tribal territory. That's how we lost a lot of our land.

So we need to have more dialogue
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with the Bureau of Indian Affairs to understand these issues of historical trauma and multigenerational grief.

Recently we had a tribal cruise. And it was an IRA cruise, and it was hoping to bring together the IRA governments so that we could form a common bond to deal with these issues and to better interact with the tribe, and because our fish are in jeopardy. National resources are in jeopardy. We have -- the strong sockeye runs, king salmon runs, et cetera, in the Taku River, which is Douglas Indian Association's tribal territory, have been harmed by the Tulsequah Chief mines. So we -- our issues aren't only locally, you know, but they're international with the river, with the mine being Canadian-based.

So I can go on and on; but I'm taking advantage of having the mike now, and hopefully it will spin off the discussions.

Back to the cruise. The IRAs that were represented were Petersburg Indian Association, Chilkoot Indian Association, Klukwan, and then also -- let's see. I'm missing one. Sitka Tribes of Alaska. I'm sorry. And another one as well.
But this is on the cruise, and we all -- it was a very healthy experience, and now we've bonded with regard to the common denominators that connect us. And we see the need for a tribal summit. And hopefully, in conjunction with Sitka, Georgiana Hotch will be able to move forward and will be able to do those things because, collectively, I wish all the IRAs were represented here. This is so important. This is an all-time first in the 40-plus years that I've worked for tribal governments to see you up there.

And so, welcome. We don't want to be unwelcoming; but as you can see just from my spiel, we have a lot of issues to deal with.

Thank you.

(Applause.)

KYLE SCHERER: Ma'am, could I ask you a clarifying question? You had said that "We shouldn't be defined by our tribal territory." Are you referring to the ANCSA-defined territory?

ANDREA CADIENTE-LAITI: No. No. We should be defined by our tribal territory.

KYLE SCHERER: Should be.

ANDREA CADIENTE-LAITI: Should be, yes.
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KYLE SCHERER: Thank you. I'm glad I asked the clarifying question.

WILL MICKLIN: Hi. I'm Will Micklin, Third Vice-President, Central Council Tlingit-Haida Tribes of Alaska. I'm an adátx'i child of the white man, grandchild of the Gaanax.ádi Raven. I'm a T'aáú Kwáan, a man who married the Bear House, from Ketchikan.

So just for the purposes of my remarks, I just want to bring you back to the General Allotment Act of 1887. The law authorized the President to allot tribal lands to individual Indians in amounts of 160 acres. And any land left over was sold or opened up for white settlement.

As the Supreme Court described it, the objectives of the allotment were simple and clear-cut. It was to the extinguish tribal sovereignty, erase reservation boundaries, and force the assimilation of Indians into society at large. Section 5 of the Allotment Act provided that title to parcels allotted to Indians would be held in trust by the United States for 25 years. Any conveyance or encumbrance made during that period was void.

Section 6 provided that members of
allotted tribes shall have the benefit of and be subject to the laws, both civil and criminal, of the state or territory in which they may reside. I believe it was 1905, in Heff, the Supreme Court held that Section 6 of the General Allotment Act subjected individual Indians to plenary state jurisdiction immediately upon receipt of an allotment.

    In response, in 1906 Congress amended the Act to provide state jurisdiction. It did not attach until the expiration of the trust period, and the lands had been conveyed to Indians by patent and fee. The 1906 amendments also authorized the President to extend the trust period on any allotment indefinitely, so the General Allotment Act came to be viewed as a failure.

    And it was ended with the Indian Reorganization Act of 1934, and the subject this morning is Section 16 of the IRA. The first three sections of the Act prohibited further allotment, extended existing trust periods indefinitely, and restored surplus lands within a reservation that were still in federal hands to tribal ownership.

    Section 16 of the IRA authorized tribal governments to adopt constitutions for
self-rule. The Supreme Court acted on the IRA in Williams v. Lee -- I think that was 1959 -- and affirmed tribal sovereignty. That decision in the case reaffirmed not only the right to reservation Indians to make their own laws and be ruled by them, but also that states have no power to regulate the affairs of Indians on the reservation.

The Section 16 powers of a tribe established under that section are broad, but they are -- and this is the basis of my question, having gone through that short excerpt of federal Indian policy and jurisprudence. They provide for self-rule and self-governance, stated in a broad sense.

Now, that is a -- the IRA was enacted for the benefit of Indians and, through a number of Supreme Court rulings and lower court rulings, should be available to the Indian canon of construction, where statutes enacted for the benefit of Indians, where there are ambiguities, should be construed for the favor of the Indian.

There appears to be a growing belief -- not growing -- there is somewhere a belief that the Chevron deference, where an administration's interpretation of a statute should
balance other questions, applies. And my concern
is where it is weightier than the decision that it
is balancing against is in conflict with the Indian
canon of construction.

I think the modern federal Indian
policy is that that is not a contest, that where
there is a statute enacted for the benefit of
Indians, and where there is ambiguity, there is no
contest that the Indian canon of construction
applies, and that the Chevron deference should not
be applied to any interpretation that would be
contrary to that interpretation.

I'm concerned by your question
No. 5 in the Dear Tribal Leader letter that says
"What should be the limits of those powers?"
referring to the Section 16 organization of a tribe
and the powers stated within that Act. They are
broad. They're not dispositive in many instances,
but they should be interpreted under the Indian
canon of construction for the rule-based decision
that I just mentioned.

I am concerned that there would be
any consideration that the powers of a tribe
established under Section 16 of the IRA would be
any different, any less, any less sweeping or
effective than the powers of any other tribe, whether in the contiguous Lower 48 or anywhere else.

So I would express my concern that that not be a consideration of the department, that it is -- should be ineligible for reconsideration or revisitation because of the clear jurisprudential rule established on the Indian canon of construction, and specifically that it is more weighty than the Chevron deference that the department could wield, if not for the Indian Canon.

I think those types of considerations lend themselves to deferred decision-making. And if we have learned anything in Indian country, is that once there's an opportunity not to make a decision, a decision is not made, so that there would be -- any decision resting upon your consideration of Section 16 of the IRA I think would be misplaced; that there are other activities and decisions that are, to coin a phrase, on your desk that need attention. This, in my view, does not rise to that level, particularly in light of the clear policy requirements and jurisprudential requirements that would really
argue against reconsideration or revisitation of what is well established and I would consider dictum in this area.

So thank you.

(Applause.)

JACQUELINE PATA: I, too, would defer to any of our village representatives first. But seeing that none has gotten up at this moment, I'm Jacqueline Pata. I'm the Second Vice-President for the Central Council Tlingit & Haida Tribes of Alaska. I'd like to welcome you to my homeland. It's always nice to be able to see my D.C. counterparts here at home. So thank you so much for taking the time and making sure that you also came to Southeast Alaska, and I really appreciate that.

I'd like to speak to a couple of provisions that you mentioned in your notice. And I want to reiterate -- first of all, I want to thank my fellow council members and president for their earlier comments and recognize that, even as we sit here in this room today, even though Central Council is a regional tribe, we have a close working relationship with our IRA tribes as a region, even with our regional corporation, Sealaska, who is also represented here, and our
village corporations and our tribal governments that, as a collective, we recognize that we are Alaska Natives. And these kinds of policies affect all of us, particularly because of the uniquenesses of the setup of ANCSA and how it addressed the tribal recognition of tribes in the different way and mannerism.

And what we're finding is that tribes -- like in the Lower 48, tribes are the foundation for their tribal citizens and the programs and services that get delivered for their tribal citizens. And it's important that tribes in Alaska have the same abilities as tribes in the Lower 48 to be able to deliver those services and have the jurisdiction to be able to apply those.

And so I also wanted to make sure that we recognize that the acknowledgment for any new tribes -- American Indian, Alaska Native tribes -- whether they're in the Lower 48 or in Alaska, we want to be able to make sure that it doesn't disrupt, as was said earlier, the existing tribes. And we also don't see any reason why the existing federal acknowledgment process of Part 83 cannot be applied to any new groups petitioning for tribal recognition in Alaska, just as it's applied
to tribes in the Lower 48.

And that's what I wanted to bring up, because sometimes I think that we continue to recognize the uniquenesses of Alaska because of the ANCSA provisions, but it seems to create barriers rather than opening doors. And a good example of that is the challenge of one of the consultations we'll be having later this week, which is the Land Into Trust.

It wasn't that there was a statutory requirement that kept us from being able to participate in Land Into Trust in Alaska; it was an administrative provision. And so Alaskan tribes -- and we can go through story after story about how we have been harmed by not being able to participate in the benefits of those programs, those opportunities that were guided for and on behalf of tribes.

And so when I look at this particular issue here today before us, I question, once again, like others have questioned: What is the purpose of this conversation? Why are we revisiting this? And I think part of the challenge is that when these pop up, these questions pop up out of the blue on things that have been well
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settled, very difficult conversations in Alaska about how do we address these issues, everybody is concerned. What is the real -- what is the administration really thinking? Why are they bringing up these questions? And without having the context of how these pop up, it immediately creates tension amongst ourselves to try to figure that out. And so I wanted to be able to recognize that there is this concern that why is this being re-raised, this question being reraised.

And then the other thing I wanted to be able to bring up is just in the way we address these questions. So if you look at your Question No. 4, and as No. 4 you say, "In your view, should a group of Alaska Natives, sharing a common bond of occupation, have the ability to exercise sovereign governmental powers?" It's kind of like the way the question is framed almost states that there is a question of the sovereign rights of tribes, and particularly as Alaskans. So it isn't to recognize whether or not we have the ability, but actually to recognize that we have the authority to exercise those sovereign powers.

And so that's a question that continues to plague us in Alaska because of the
interpretations -- Land Into Trust and other interpretations about who tribes are, public safety policy, education policy. The list goes on. And so wanting to be able to make sure that it's clear that tribes in Alaska serve their citizens like tribes in the Lower 48, with the ability to provide those programs and services as prescribed under the intent of Congress, and certainly as a recognition of our sovereign powers. So I wanted to reiterate that.

Thank you. Gunalchéesh.

(Appause.)

JOHN TAHSUDA: Well, maybe I'll respond real quick while it's fresh on my mind. Can you hear me okay? Is that better? Okay. Because I get easily distracted as well, and I have to say things that are on my mind right away or they're gone forever.

I think you raised a couple good points that I want to make sure that everybody is clear on. So this is not an exercise in trying to create issues. In our view, these are issues. And I know sometimes, you know, there can be a view, if there hasn't been a thorny issue -- well, I should say if there hasn't been a difficult court case
come up within the last couple of years, people start to think the issue has gone away. That's not necessarily true.

The issue and the problem that we have in the department -- and it's not just Alaska. It applies across the board for us in Indian Affairs. If any of you are students of the legal history of tribes in the United States, we have layers of policies, legislation -- some of them are court cases that have been added on for 200 years now -- and it's not always clear. And sometimes if we don't have good decisions that we have made, that go back to the point of having decisions that can be well-defended, that then plops it in the hands of a court and a federal judge, who may or may not understand the policy issues, the people issues. All he's going to be looking at are the legal issues. And so that's for us, I think, part of the exercise of this, is to flesh out the policy, the people, issues that are guidance for us as a matter of policy.

We also have legal issues that we have to work through on this. And that's part of the difficulty of having these -- you can think of them like strata, like you're looking at, you know,
a canyon, and you can see all the different layers; right? We've got the IRA. We've got ANCSA. We've got ANILCA. We've got FLPMA. And from my time on the Hill, I can tell you I know there are any number of -- I can't even count them on two hands, the amendments to those various laws that were passed, primarily by your delegation here, with the best of intentions. But it doesn't always lead for us into a clear path when you have to go back and consider, you know, where the legislation started, where it has ended up, and what is our policy path supposed to be through there.

And so that, for us, is the ultimate goal. And, again, I suppose we could, you know, kind of stick our head in the sand and say, "Well, we'll just wait for some case to come up, and then hopefully the judge, hopefully, will rule in a way that works for us and works for you."

But to be honest, that's not my preference. It's not the Secretary's preference. I think that there's an opportunity here to maybe flesh these out and get ourselves on firmer footing for ourselves, and that's the ultimate goal.

There have been -- if you look at this -- and I don't want to get too far into it,
because there's other people here (indicating) who should be explaining it better. But there have been attempts by the Solicitor's office for decades to take a look at Alaska as some of these changes have come along. You know, they've tried to take a look at how this has changed the landscape. And one of the -- I guess I would call it more recent. I don't know. 20 years ago now or whatever. The Solicitor looks into this, though, and said, you know, "This is a really complicated area of law. It's a complicated policy area, and Interior should really take an in-depth look at this."

But then close the page, a new administration came in, and that wasn't really followed up on.

So I think, you know, again, and we -- we come from a perspective of trying to find solid policy ground to work on. We looked back and saw that. That was new to me. I hadn't seen that before, but that was an interesting view on it, I thought. And that, in part, engendered our discussion, that maybe now is the time to do that. Let's take an in-depth look at this. We'll look at the legal side of it. And, again, for us, we want to bolster it with the policy side, the people side
of this.

And how -- I mean, I know there are a lot of corollaries; but as with all of Indian country, different parts of the country have different histories. Things have progressed differently for them. And so I think it's also incumbent upon us to work that into this, you know, process as we look at it. And that's part of the questions that were -- you know, what we're trying to ask.

So if you follow the Alaska IRA provisions on recognition, there are provisions to have organizations that are, you know, "Based on the sharing of a common bond of occupation." Now, at least as a legal matter, that doesn't look like the traditional Lower 48 concept of having a tribe who may or may not have had a treaty, and then they go forward. That's a different construct, you know, legislatively and legally.

And so our hope is to get an understanding of that, and how does that play into this question. And it seems like -- and I know 1934 was a long time ago, but they certainly were trying to think of things as they were on the ground here. You know, obviously, Alaska, again,
has had a different history than much of the Lower 48. And so it's our job, I think, to try to sift through this and see, you know: What does all that mean? And at the end of the day, then, where are we now, and where do we need to be?

KYLE SCHERER: And I'll just follow up a little bit. And maybe when written comments are submitted, we can sort of take another look at what some of these answers to the questions are.

But as John said, you know, Part 83 is -- Alaska tribes that are trying to seek acknowledgment are free to use Part 83; but to date, that hasn't happened. So, you know, we have applications pending before the department now that are seeking to use the Alaska IRA for recognition. And, you know, just looking at that, as Matt said, some of this is about transparency; right? You know, Part 83 -- we have an entire office of career professionals that include ethnographers, historians, genealogists, that their entire job is to investigate these issues as they relate to recognition.

There are significant -- you know, there's rule-making and regulations that talk about burden of proof. And, you know, the most recent
amendments to Part 83 shifted the burden of proof in certain situations. There are, you know, opportunities that are spelled out in the regulations for meetings with OFA, with the Office of Federal Acknowledgment, for applicant tribes.

And so, you know, those types of criteria are things that we're trying to, you know, sort of ask questions about. What does that look like for Alaska tribes that are seeking recognition under the IRA? Some of it is, again, transparency for applicant tribes, and some of it is just how do we actually defend these types of decisions, as John said, when they do get challenged. You know, if we were to issue a yes opinion, a court could take a look and say, "Well, is this common bond, a bond of occupation?" because that is not a criteria that exists for tribes in the Lower 48. So sort of fleshing that out I think is important, so when we do issue yes opinions we're able to better defend those.

HARRIET BROUILLETTE: Good morning. Harriet Brouillette. I'm the tribal administrator for the Chilkoot Indian Association from Haines. Just looking through the questions, Questions 2, 3, and 4 makes me -- you
know, it's an issue that I know that I have been struggling with since I started working for the tribe over 20 years ago, because it seems like we sort of tiptoe around common bond and occupancy and those sorts of things because we have to. It's part of our constitution, and it also is directly tied to the way we provide services for our people in our communities. And if we didn't have the ability to define our tribe using words such as "common bond," then we would not be able to provide those services.

We have tribal members in our community who do not have roots or ancestral ties to our community; but we have to provide services for them, and they're part of our tribe. It makes things difficult in some cases and unclear; but since we've had to work with this constitution for so many years, we've learned how to work around those sorts of issues.

But, you know, sitting here thinking about this, I think this is actually an opportunity for us, as IRAs and tribal members, to talk about how we want to reorganize our tribes so that the definition is not so muddled. I think this is an opportunity for us as IRAs to redefine
ourselves. We knew this day was coming. I mean, we all -- realistically, we knew this day was coming. So rather than being scared of this, we really need to embrace it as an opportunity.

And I think that, rather than allowing somebody else or a court case to define who we are -- I'm just speaking to our fellow tribal members -- let's embrace this. Let's get together. Let's have our IRAs meet and talk about how we want to be defined and tell the federal government, "This is how we'd like to be defined," rather than having someone else do it for us.

Thank you.

JOHN TAHSUDA: Thank you.

Ma'am, I'm sorry. I didn't catch your name? Can you --

HARRIET BROUILLETTE: Harriet Brouillette.

KYLE SCHERER: And I just wanted to make one more point. This is going back, I think, to an earlier speaker. But there was a question of why, sort of, if we're not thinking about -- you know, and certainly this isn't on the table of doing anything with currently federally recognized tribes and why we are -- thank you. I'll speak up.
So the earlier question was: If this isn't meant to impact already recognized tribes, then what is the purpose of sort of this conversation? And I would just say that this is the same kind of conversation that happened when Part 83 was revised. You know, when Part 83 -- which is the other recognition process, when we were -- when the last administration was looking to revise that process, we looked to already federally recognized tribes, people who had gone through the process, as a way of informing us going forward. And one of the reasons we had a public meeting under Part 83 and had that conversation was because that was the only way to bring in tribes that were not already federally recognized, because consultations are obviously limited to already acknowledged or recognized tribes.

MATT KELLY: If I could ask one follow-up question as well on one of the points you raised, just to make sure that I understand it correctly.

Is one of your concerns that, because of the language in your constitution which references this language from the IRA, that discussion, particularly with the phrase, "common
bond of occupation," for example, would have an impact on how the tribe looks at its members or the services it provides to members and so on that would have a sort of backward effect as well?

HARRIET BROUILLETTE: Yes.

MATT KELLY: Thank you.

ROB SANDERSON JR.: Is it morning, or noon? It's still morning.

Mr. Chair. Thank you. My name is Rob Sanderson Jr. I serve as the Fourth Vice-President of Tlingit & Haida Central Council.

And on Question 4, you know, it talks about the common bond of occupation and the ability to exercise sovereign governments. And, gentlemen, I just want to -- I hope to enlighten you on a way of life that has been practiced for thousands of years here in Alaska. And if you could just bear with me just for a little bit. This won't take very long.

For the balance of our people here in the state of Alaska, the overregulation of subsistence resources have thrown our rural communities out of balance. The loss of our ability to harvest what is needed to sustain our livelihoods has left most Alaskans in conflict with
their traditional beliefs and modern system of management.

More emphasis is needed to be placed on giving the ability to manage the fish and game back to the customary and traditional users. Localizing management will reinstate the local ownership of the resources. This will help bring our communities and the people back into balance with our resources.

Stewardship of the land is essential for the long-term health of everything that lives in the areas that we call home. Our spiritual connection to the land, air, and sea, which abound, give our people purpose and identity. It is more than just a food source. It provides the ability to harvest resources from nature, which gives each person, family, and community a reason to live in an area which they have called home.

There is a special connection to the land, air, and sea which our people have developed thousands of years ago, that our ancestors have encountered with the animals, birds, sea life, our environment when harvesting, gathering, hunting, traveling, migration, or even war.
That special encounter with an animal in our environment to this day survives and reminds us that our people have endured with the same determination to perpetuate the history of our subsistence way of life for the next several generations. The harvest results in food, shelter, heat, and artistic accomplishments. This opportunity also nourishes our bodies and souls. This has been a way of life since time immemorial, our way of life. The ability of our hunters and gatherers to bring the spoils and share with the greater body of people binds our communities together, and this way is not really known to the larger population out there.

And, gentlemen, what I'm reading to you here is something that I've put together over the years, and it just -- I just want to give you -- what I'm reading to you is how we practice our way of life. And I'm going to get to the end of this, and I want to explain to you just what I mean by that.

Our way of life has always provided for the economy of Alaska Natives. It has provided the ability to harvest adequate customary and traditional resources in a short window of
opportunity and has proven instrumental in sustaining our way of life. Barter and trade has always provided stable economies in our traditional lifestyle, and this is the reality for most Alaskan Natives. It is just part of life.

With certain resources that are always scarce, such as fuel in rural Alaska, the activity to barter and trade to meet our needs is what keeps us moving in a direction of tribal self-sufficiency. We must do all we can to protect this lifestyle, which we call our way of life.

The ability to gather resources in Alaska for a person, family, or community takes immense pressure off the state and federal government. If the government had to provide for all of our needs in rural Alaska, the cost would be outrageous. Our way of life has always been best for the best social and economic benefits. I share with you when I have enough, or you may share with me when I need it and you have enough.

It is a way that we care for each other in tough economic times. It is our ability to do this for one another that gets us through each day. Our food is our wealth. It is the tradition that is of the most high respect. Our
families and communities use the wealth of this land, air, and sea to barter, trade, and share. This method socially connects us from points as far as from Southeast Alaska to the furthest points north. This was our way, and our people were spiritually connected in the words that I have just spoken above.

So, gentlemen, you know, this is just a way of life that can be jerked away in a heartbeat. And in looking at your letter, as our president stated, it almost looks like a Dear John letter. And so if something were to happen, going down the road -- I firmly believe that this administration has the power just to wipe that off.

We have the status already. And, yes, we know there are applications out there. Again -- and I want to echo this. You know, we don't want it to hurt our other tribal members, our other tribes in the state of Alaska and what they have already going on for themselves. Our people have worked too darn hard over the years, all the way back to the 1930s when the IRA was established. My grandmother, Helen Sanderson -- she was the ANS Grand President, 1939-1944, and they fought hard to get the status to us. And I believe that she'd be
John Tahasuda: Well, I'm not clear on what you're asking, I guess, because, again, this is not intended to be an exercise at looking at all the tribes that are currently recognized.
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asking --

ROB SANDERSON JR.: Well, it seems to be such a large undertaking, considering that the BIA and the Interior is understaffed, in my opinion, and from what I'm hearing. Do you guys have the manpower to carry a lot of these regulations out now?

JOHN TAHSUDA: We have the manpower to meet our responsibilities, and that's what we're doing.

I think that, you know, this is an effort to get it right. You know, if there's going to be recognition of additional tribes in Alaska, then we want to do that right. And so it's incumbent upon us to find the resources to do that.

So that's -- you know, but at this point, you know, we're going through trying to build a basis to go forward. And if, at the end of the day, you know, we want to find a way to have Alaska groups go through Part 83, then there's resources already there for that.

If there would be a new process, we would have to, you know, promulgate some regulations, and we would have to move on that. So that would be an effort that we would make at that
time. Whether it would take new staff or not, we'd have to make that determination at that time.

    ROB SANDERSON JR.: All right.

Well, you know, you mentioned that you guys want to get it right, and we want you to get it right. We do. We're pulling for you to get it right. And we also want, down the road, for our tribal recognition to remain intact. We don't need to open up the Act and have things moved around or just completely wipe us off the map, and that could very well happen. So, you know, I know what you're saying; but, you know, there's a lot of feeling that that may happen, you know.

    So those are my comments, and I thank you.

    JOHN TAHSUDA: Thank you.

    So it's not actually within our authority or even the President's to change legislation. The legislation is there. The issue for us, as I said before, is we have multiple pieces of legislation that were enacted over decades. And sometimes they're not entirely in sync, and we have to find our way through that patchwork.

    So I'm glad there is -- again,
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this is not any exercise in trying to relook at the tribes that are here. You know, our boss is very comfortable with Indian country. He loves to meet tribal leaders, going around the country. We have great backing from the Secretary. And, in fact, he calls himself the greatest champion of Indian country, because that's the primary focus of our bureau, is Indian country.

So this is not an exercise in that. This is really just an exercise looking forward for us, making sure that we're going to be going forward on a good foundation and good basis.

CATHERINE EDWARDS: Mr. Chairman, Catherine Edwards, Sixth Vice-President, Central Council Tlingit & Haida.

I had some other questions, but in response to what you just said, if you're not relooking at something, why would you treat the new applications any different than you treated the other ones? And that goes into part of my question. If your effort is to be transparent in asking and holding this session today, is what we say here today going to affect those current applications? That's part of my question.

Then I have a question about
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No. 4. "In your view, should a group of Alaska Natives sharing a common bond of occupation have the ability to exercise sovereign governmental powers?" I'm wondering why that would even be a question. Why would it be any different than the IRA tribes that we already have, that are already established? They have those sovereign powers.

And then "Should there be any limit to those powers?" Also, again, why would that be a question and why would the new applications be treated any different than the previous applications?

Question No. 1, "Is the Alaska IRA's organization provision still relevant in today's Alaska?" Did the IRA amendments in 1994 take care of that? Again, I'm wondering why it would be any different in establishing, in these sessions, new ways of handling these new applications.

KYLE SCHERER: So part of the answer is transparency for potential applicants. And just to compare it to the Lower 48, when the IRA was originally passed and the department was in the process of administratively recognizing tribes, we found ourselves in a similar situation. Part 83
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1 didn't exist yet. And so, just like in the Lower
2 48, regulations were developed to build an
3 administrative record for the agency to defend its
4 decision to say yes.
5  
6 And just like Part 83 was
7 promulgated long after the IRA was passed in 1934,
8 it has also been amended, you know, most recently
9 in 2014.
10  
11 So we're always looking for sort
12 of a transparency element to provide tribes the
13 best information about what criteria actually will
14 get to a yes. And, again, you know, that's very
15 much spelled out for the Lower 48. You know, there
16 are, I think, maybe four or five different ways to
17 get to Category B, which is different criteria;
18 right? For Alaska tribes trying to organize under
19 the IRA, it's really just this language in the
20 statute, and that becomes difficult to defend
21 should we get to yes. And --
22  
23 CATHERINE EDWARDS: So what we are
24 saying here today is going to affect those yes
25 decisions?
26  
27 KYLE SCHERER: We haven't made any
28 decisions, and that's part of the problem. Or I
29 shouldn't say "problem," but that's the part of the
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reality that we're in, is that we have had tribes, you know, that have been in front of department -- not only in this administration, not only in the last administration -- but it began, the IRA recognition process, you know, in some cases close to 20 years ago.

And so part of the reason it's taken so long is because we don't have guidance or rule-making in the same way that we do for the Lower 48. So we're hoping that we can hear from you as to what that might look like. How do we get to, you know, what do these criteria look like that we should be using? What does a "common bond of occupation" mean?"

CATHERINE EDWARDS: Well, what did it mean when the other IRA tribes in Alaska were organized? That's where I'm confused. Are you creating two classes of IRA tribes? Why would they have anything different?

KYLE SCHERER: I'm not necessarily saying that they would. I'm not necessarily saying that the answers would be no or yes.

CATHERINE EDWARDS: Well I guess then I'm wondering why you gave raised the question. You gave us a list of questions. So why was it
JOHN TAHSUDA: So part of your question, I think, relates back to the -- there's a temporal issue here, a time issue; right? Just like with the Lower 48 IRA tribes, there was a lot of activity in the 1930s and '40s in which tribes were recognized. And then that was not exercised for a long period of time. And when it was started to be re-exercised again in the '70s, there was the realization that we needed a more formal process.

Part of this is also the way the federal government handles its business. If you go back and look -- and the IRA itself is a good example of this, I think. It's an old piece of legislation. It's very broad, has very broad, sweeping terms, and leaves a lot open to be -- you know, there's not a clear guidance from Congress to the administration on that. We have had problems with that. All right? We've had litigation over that, and it's been an issue that the department has worked hard on to develop a regulatory structure that bolsters the Act itself.

Nowadays when Congress passes an Act -- and there has been a fair amount of Supreme Court guidance on this, that Congress needs to do
this. It needs to be pretty specific on what it's
directing the administration to do; right? And
that's sort of the regime of federal law that we're
under now, administrative law, and making sure that
we have provided whatever it is -- due process,
public notice, transparency, all these things that
are now part of how we view the government does
business. We didn't have that fully fleshed out
100 years ago, and so that's part of where we are
now.

A lot of what happened with the
tribes that are recognized now under the Alaska IRA
happened a long time ago, and then there has been
this large gap. And not only has there been a
large time gap, but there have been a number of
intervening pieces of legislation that may or may
not have changed the outlook from Congress
directing us on what to do.

And so, again, I don't want to
belabor this point, but that's part of what we're
wanting to do here is, we have to fix that; but we
want to hear from you, both on the legal side but
also on the policy side, what would be the best way
for us to interpret these different intervening
laws.
And then at the end of day, when we come to now, if we're going to exercise this provision out of this old statute, probably the best way for us to issue decisions is to have a strong administrative record, to have regulations that have been promulgated using full promulgation, due process, public notice and comment. Once we have those in place, then the record that is built out of that is far more defensible for us in court.

And so that's a long way around of saying yes, we're hoping, actually, that what we get from you and what we go forward with from here will guide us in making these decisions.

RALPH WOLFE: Thank you. Ralph Wolfe, Fifth Vice-President for Central Council.

I have a couple of questions here. So my first one is, it seems that the way that you're approaching this will absolutely create two different classes of Natives. We're looking at -- we've already done this before. When you look at ANCSA, we separated from village corporation to regional corporation; and it's absolutely something that we don't want to go back to and look upon.

And I still don't see how it's different from tribes in the Lower 48. To be more
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specific, the Fort Peck Reservation and the Fort Berthold Reservation are under common ground. It's pretty straightforward. They're there, they are acknowledged, and they move forward.

I think that for us, separating another classification for us, the indigenous people of this land, is absolutely horrifying and takes us back ten steps. I think that we need to keep moving forward. And I understand your wanting to get it out there and to get the questions asked, but the way we're going about this -- and it's been mentioned before, and I'm going to keep -- I hope everybody keeps saying this -- the vagueness of the questions, the vagueness of the agenda, the vagueness of what you guys are trying to get out of this -- and we're getting more answers now, thank you, but it puts us on edge. We don't need any more separation. We don't need any more lines to be drawn.

Thank you.

JOHN TAHSUDA: Thank you, Mr. Wolfe. Let me comment real quick. I had to do this in a number of contexts. But I want to say that this is a public meeting, of course, but we're also doing consultations; and we're really having a
lot of the same discussion.

So for us, it's always a bit of a challenge, striking the right position for us to be in when it comes to consultation. We need to have enough information for us to have a discussion and start a consultation. But if we have provided too much information, then I think there is a presumption, oftentimes by tribal leaders, that we've gone too far down the road without consulting with them first. So we're always trying to strike the right balance there in getting enough information to start a discussion, but not getting too much so that we get plenty of input from you to guide us forward.

So I think, you know, hopefully, as we go through with these, we'll get more and more information out, and we'll get more from you, and we can react more that way.

KYLE SCHERER: And then the only thing that I would add to your point is, I do hear your concern. And I would just say that, looking at the Lower 48 example, there were sort of pre-Part 83 tribes. There were Part 83 tribes that existed pre-2014, when the rules were amended. And, you know, the Department of the Interior treats all of
those tribes the same way. And, in fact, in the privileges and immunities amendments, the IRA tries to make sure that we can't treat those tribes differently, depending on sort of the unique circumstances in which they were recognized.

HEATHER KENDALL-MILLER: Good morning. My name is Heather Kendall-Miller. I work with Native American Rights Fund, representing tribes in Alaska for the past 25 years. Thanks for coming to Alaska. Thanks for being here, listening to people.

I have risen today because I wanted to follow some of our tribal leaders in emphasizing the fact that the notice that you have put out of the public meetings has been met with a lot of anxiety by our tribal leaders. I wanted to say that, in part, I think that the notice was very unclear.

You are looking specifically for information regarding a process that applies to maybe only three tribes that are seeking to be recognized. And yet the way that the questions were presented and put out for public review has raised all kinds of questions among the tribal community and made people interrupt their
subsistence activities, made them spend money to come into town to be able to appear before your various panels, made them expend financial resources, scarce financial resources, on getting their attorneys to look at the questions and try to ascertain the extent to which these are serious questions that may impact the legal status of existing tribes that have obtained federal recognition.

Now, as you probably know, Alaska tribes that are federally recognized, and have been for many, many years, include tribes that haven't organized under the IRA; right? So we have many traditional tribes as well that have all of the preexisting authorities, tribal authorities, that haven't been extinguished. This notice has put questions in people's mind as to whether or not the department is interested in creating classes or categories of different tribes.

So I would like to suggest that, prior to coming to AFN and having your next round of consultation, which should be consultation, that the department think clearly about modifying the questions that have been posed and clarify that they really are not intended to in any way impact
the tribal status of existing federally recognized tribes.

Your inquiry pretty much focuses on the two to three tribes that are seeking tribal recognition, and it should not -- the questions should not be the basis to bring a lot of people into town at great expense, that have to stay over and meet, just to get assurances that tribal existence itself is not under any threat. That would be very much appreciated. That clear communication would be really, really helpful.

I also wanted to suggest that your next round of meetings -- I know you're going to have one down in Ketchikan tomorrow -- that it be treated as one -- as a tribal consultation, because the questions that you're asking go to the heart -- especially this afternoon's round of questions, when you're speaking about the IRA relationship with the Secretary and taking lands into trust and such, that deserves a tribal consultation in its full form -- not just showing up and putting your name down and hoping to have an opportunity to speak at the microphone for three minutes, but a real engagement. Because, obviously, these issues have long histories, cover 20, 30 years, not just
different executive administrations but litigation; and they deserve that kind of fullness and fairness in discussion.

So I hope -- I'm assuming that the nature of the questions here are focused on specific questions that can be responded to by tribal leaders through letters and other things, because this little engagement is not sufficient. And I think, as I mentioned earlier as I opened, the questions themselves established a presumption in tribal leaders' minds that, for whatever reason, their existing tribal status is potentially being relooked at. And with that possibility, obviously that's a great certain, a grave concern to all tribal nations in the state of Alaska.

So it would be really helpful, before your next round in October when you come to AFN, for the department to clarify specifically and delineate very carefully what it is that you are asking the tribes to comment on with respect to these lines of questions. Because, from what I'm hearing from you and what has been reported to me from the other listening session, is the department is not interested in existing tribes, but in asking for input on the process for recognition of the
three communities that are seeking tribal recognition.

So with that, I thank you.

(Applause.)

JOHN TAHSUDA: Ms. Kendall-Miller, can I ask you a question real quick? So we have three applications that have been pending before the department, and so I would ask you: You've been an attorney with NARF but also up here for a long time. Am I mistaken in thinking that there would be more, if we had a clear process laid out, that might want to avail themselves of that?

HEATHER KENDALL-MILLER: I cannot speak to that. I'm not aware of more than the three. But I think the historic process has been adequate and has worked. As you probably know from reading the history, the policy history of Alaska, there were reasons why the IRA didn't necessarily apply to Alaska initially until it was readopted in '38. And at that time, it was recognized that tribes have a different history up here than they do in the Lower 48. And because of that reason, they were not required to go through the Part 83 standards.

Now, I think those -- the reasons
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why that was, still exist today. And that should be the inquiry, if anything; rather than imposing a new standard on Alaska, given our history and the relationship that we've maintained over many, many years, utilizing that standard and not putting in more difficult standards.

And, again, I just want to get back to -- and then clarifying to tribes, federally existing tribes, that this is not intended to impact or affect the government-to-government relationship in any way. This is being done solely to seek a better way of dealing with those three tribes that are seeking recognition.

Thank you.

JOHN TAHSUDA: Thank you.

WILL MICKLIN: I just had a quick -- will Micklin, Central Council Tlingit & Haida Tribes of Alaska, Third Vice-President. I just have a quick follow-up question to Heather Kendall-Miller's line of inquiry.

So my question is whether the Tribal List Act of 1994 doesn't settle this issue. It requires in statute that tribes in Alaska be treated the same as tribes in the Lower 48 without distinction, without disparate class.
The question arose and in discussion as if the bonds of -- in Section 16, where it refers to occupation, association, or residence, are any different than the three affiliated tribes. I've talked to my friend Sherman Fox about the challenge of governing Mandan, Hidatsa, and Arikara people, widely disparate people on the same reservation, treated as a single tribe. They're not unique -- Confederated Tribes of Washington, Colville, the Morongo Reservation in California, Rincon and Luiseño and others thrown into the mix -- really, people that were thrown together in the initial Indian period in the late 1800s. There is no distinction between the two, and how one can draw that there is a difference between that in the Lower 48 and in Alaska, given that the Tribal List Act governs, is the question.

So there was stated that you're not seeking to change statute. So in regard to the response that there's pre-Section 83 tribes and post-Section 83 tribes, I'll just refer to 25 U.S.C. Code 5119, where it provides that sections in that title apply to the Territory of Alaska, provided that groups of Indians in Alaska
not recognized prior to May 1, 1936 -- so these are the IRA tribes recognized under Section 16 -- as bands or tribes, but having a common bond of occupation or association or residence within a well-defined neighborhood community or rural district, may organize to adopt constitutions and bylaws and to receive charters of incorporation and federal loans under the various sections of that title.

So there are post-1936 IRA tribes that this statute governs. So that's one class. And it requires that there not be a separate or distinct class with rights, privileges, and immunities lesser than this in statute. If you're not looking to change statute, you're governed by this statute, and you're governed by the Tribal List Act; so I don't see the line of argument that is being put forward here.

If there are three applicants, it ought to be decided under the statute that they're applying under, and the regulation, without distinction. You're governed by the Tribal List Act and 25 U.S.C. Code 5119. So I don't see the prerogative, and I don't see the difference in tribes that exist in the Lower 48.
(Applause.)

JOHN TAHSUDA: Thank you. Thank you for your comments. Again, we have to shut down here. They have another event happening in just a few minutes. And I know we got off a little slow this morning, so if we want to have more discussion on this issue after we have this afternoon's discussion, we're happy to stay here and visit with you some more. But we'll close this meeting. Thank you.

(Public Meeting concluded at 12:00 p.m.)
CERTIFICATE

STATE OF ALASKA )
) SS.
FIRST JUDICIAL DISTRICT )

I, LYNDA BARKER, Registered Diplomate Reporter and Notary Public duly commissioned and qualified in and for the State of Alaska, do hereby certify that the foregoing proceedings were taken stenographically before me and thereafter reduced to typewriting by me or at my direction.

That the foregoing transcript is a full, true and correct transcript of the proceedings, including questions, answers, objections, statements, motions and exceptions made and taken at the time of the foregoing proceedings.

That all documents and/or things requested to be included with the transcript of the proceedings have been annexed to and included with said proceedings.

That I am not a relative or employee or attorney or counsel of any of the parties in these proceedings, nor a relative or employee of such attorney or counsel, and that I am not financially interested in said proceedings or the outcome thereof.

IN WITNESS WHEREOF, I have set my hand and affixed my Notarial Seal this 21st day of August, 2018.

______________________________
LYNDA BARKER, RDR, Notary Public for Alaska
My commission expires: 5/6/2020