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UNITED STATES DEPARTMENT OF THE INTERIOR  
OFFICE OF THE SECRETARY  
GOVERNMENT TO GOVERNMENT  
TRIBAL CONSULTATION SESSION (2)

Ketchikan Public Library  
1110 Copper Ridge Lane  
Ketchikan, Alaska 99901  
August 3, 2018  
1:00 p.m.

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P R O C E E D I N G S

1:00

MR. FISH: I understand our host from Ketchikan Indian Community will provide a song and prayer to begin.

MS. BURNS: I'd like to welcome all of you. My name is Gloria Burns. I am the treasurer of Ketchikan Indian Community. On behalf of the tribes and presidents and tribal council, we'd just like to thank all of our neighbors and all of the leadership here. Thank you so much for coming. (Indiscernible) is huge. It's huge for all of us. And so, this morning our neighbors from Saxman offered a beautiful prayer and now would like to share a song with you. And I'd ask each of you to go to your creator in your own way to pray, that we might give our words -- that our words might be heard and they might be felt, and that good action might come from this day, that recognizes for all of the opportunities that -- that are available to us. I will sing the calling the ancestors into the room with song so that we might feel the strength of our people and our loved ones around us.

(Song)

MR. FISH: Thank you very much. So, for our

1 second consultation of the day, our agenda is to  
2 focus on fee-to-trust applications in Alaska in light  
3 of ANCSA and the various statutory and policy  
4 adjustment and indications that have happened for the  
5 Indian Reorganization Act over the years. You know,  
6 I think as we get started and state for the record,  
7 you know, my name is Tyler Fish. I'm counsel to the  
8 Assistant Secretary of the Indian Affairs.

9 MR. KELLY: My name is Matthew Kelly from the  
10 Office of the Solicitor.

11 MR. APPEL: Liz Appel, Acting Chief of Staff to  
12 the Assistant Secretary.

13 MR. PELTOLA: Eugene Peltola, the Regional  
14 Director of Indian Affairs, Alaska Region.

15 MR. FISH: So, as a foundation to start this  
16 conversation, I'd like to just to make underscore  
17 that from a policy perspective, our objective here is  
18 to -- to discuss fee to trust applications in Alaska  
19 with you, so that way we might endeavor to reach, you  
20 know, more defensible decisions regarding fee to  
21 trust acquisitions in Alaska. So that way, you know,  
22 any decisions that the department makes are not left  
23 to the courts to decide something in the alternative.  
24 You know, if -- again, I'll go to the solicitor's  
25 office to (indiscernible) some more thorough

1 description here.

2 MR. KELLY: As explained -- excuse me -- in the  
3 (indiscernible) 2/29/2018, the earlier Alaska fee to  
4 trust (indiscernible) wasn't on for further review.

5 As was explained in the tribal leader letter,  
6 the Alaska (indiscernible) was -- in 2016 was -- 2017  
7 was withdrawn for further consideration of some  
8 issues that were perhaps not clearly dealt with.  
9 That review was part of a directive from President's  
10 chief of staff to consider our (indiscernible)  
11 positions on important issues across the government.  
12 The Dear Tribal Leader letter lays out what some of  
13 those things are and in connection with it lays out a  
14 number of questions that we are seeking input from  
15 Alaska tribes on. And with that, I'll turn it over  
16 to my colleague (indiscernible).

17 MS. APPEL: So, we have the Dear Tribal Leader  
18 letter includes some questions for consideration.  
19 And I think we had Craig Association wanted to open  
20 now with some comments. Want to? Yeah?

21 MR. COOK: Good afternoon. My name is Clinton  
22 Cook, tribal president of Craig Tribal Association.  
23 I'd like to welcome everybody back. I'd also like to  
24 welcome Sid Edenshaw, tribal president in Hydaburg  
25 and also Robbie Sanderson's here. He's the Vice

1 President of Central Council out of Juneau. I have a  
2 few questions for you and comments.

3 The fee to trust process works in Alaska. And  
4 the Craig tribe successfully had a parcel of land  
5 taken into trust. This would not have been possible  
6 without the 2017 M-opinion by Solicitor Tompkins and  
7 the department's removal of the Alaska exception.  
8 Why are you questioning the new process after it has  
9 already been implemented successfully in Alaska?

10 MR. FISH: Due process is not being questioned.  
11 Rather what we're attempting to do is ensure that  
12 future decisions stand on a solid legal basis and  
13 analysis as possible. The amended 151 regulation  
14 remains in place there's been no change in that. The  
15 Alaska exception (indiscernible) does not involve  
16 that. But I do think if you're aware of the changes  
17 to the 151 regulations, you also understand that this  
18 issues has been one that's been discussed at high  
19 levels of the department for many years. And it was  
20 felt at this time that there are still some remaining  
21 questions that should be answered more clearly and  
22 thoroughly, to the extent that's possible. To ensure  
23 the process going forward gives strong and as best as  
24 it can be.

25 MR. COOK: Isn't the department bound by legal

1 positions it took in the Leahy solicitor's opinion  
2 withdrawing the 1978 Fredericks' opinion it briefs in  
3 the Yakuchak act -- Akiachak litigation in its 2014  
4 notice of proposed rule making to repeal the Alaska  
5 exception and the 2014 solicitor's memorandum cited  
6 in that notice and it's final rule published in  
7 December of '14?

8 MR. FISH: I'm not sure I understand the  
9 question.

10 MR. COOK: Are you still bound by the legal  
11 opinions back in December of '14?

12 MR. FISH: Well, we remain bound by all legal  
13 authority, statutory authority and regulatory  
14 authorities. Absolutely.

15 MR. COOK: The M-opinion expressly recognized  
16 that Alaska tribes are no different than tribes in  
17 the Lower-48 and can take land into trust. Your  
18 recent actions regarding Alaska tribes essentially  
19 treat us as second class tribes. Could I have your  
20 attention, please?

21 MS. APPEL: Yeah.

22 MR. COOK: Could I have your attention, please?

23 MR. FISH: Yes.

24 MR. COOK: I don't sit back here and text or  
25 talk when you're talking.

1 MR. FISH: Okay. Please proceed.

2 MS. APPEL: Could -- could we interrupt just one  
3 moment, though? We want to make sure that the  
4 gentleman with the microphone, that you introduce  
5 yourself and that you get any -- everyone's consent  
6 to record the meeting. This is tribal consultation,  
7 so it's intended for government to government  
8 officials. Would you mind introducing yourself?

9 MR. NIEMEYER: Sure.

10 MS. APPEL: Seeking consent?

11 MR. NEIMEYER: Hi, everyone. I'm a  
12 representative with KRBD Community Radio across the  
13 street there. We're the public radio station,  
14 community radio station covering Southern  
15 Southeastern Alaska. The reason why I'm recording  
16 for this consultation is just to get the different  
17 perspectives from various representatives of tribe  
18 and tribe councils on the important issue of this,  
19 you know, of the land trust in general. And yeah,  
20 that's basically what I'm doing. So -- and I'm open  
21 to any questions or comments about my work or  
22 anything of that nature. So, is everyone okay with  
23 the recording here?

24 UNIDENTIFIED VOICE: I'm not.

25 UNIDENTIFIED VOICE: No.

1 MR. NIEMEYER: No? You're not.

2 MR. SANDERSON: I'm not really. You know, this  
3 is a tribal consultation, and they ask how the  
4 consultations. And you know, for the people that,  
5 you know, if they wanted to have a public cons -- I'm  
6 sorry. Rob Sanderson, First Vice Chair of Central  
7 Council. You know, if we were going to go ahead and  
8 do this, we should have been notified. You know, we  
9 didn't really have any recordings in Juneau that I  
10 was aware of, from the Insider. And you know, this  
11 is our consultation process here. You know, if there  
12 was a big interest from our people, from the citizens  
13 of Ketchikan or lower Southeast, they would be here.  
14 You know? And if that was case, the interior should  
15 have had a public consultation process and let the  
16 tribes go it alone at this meeting, instead of have  
17 everything -- because things can get twisted once it  
18 gets out into the community.

19 MS. APPEL: Yeah. So would -- would you mind  
20 leaving and -- I mean, if -- you're welcome to stop  
21 anyone who is willing to speak after our meeting,  
22 with you.

23 MR. NIEMEYER: Oh. Is -- I guess it was just my  
24 misunderstandings then. I did RSVP to attend this  
25 consultation. In particular, I just -- yeah, I guess



1 that was my misunderstanding.

2 MS. APPEL: I -- and I'm sorry. That's totally  
3 our miscommunication.

4 MR. NIEMEYER: Okay.

5 MS. APPEL: Yeah.

6 MR. NIEMEYER: Thank you.

7 MS. APPEL: Thank you for being understanding.

8 MR. NIEMEYER: No. Of course.

9 MS. APPEL: Thank you for being understanding.  
10 Sorry for the false start there.

11 MR. BOWLEN: Just a quick heads up. Scott  
12 Bowlen with the Ketchikan Daily News, who's present  
13 as well. Thank you.

14 MR. COOK: Thank you. I'll start over. The M-  
15 opinion expressly recognized that tribes -- Alaska  
16 tribes are no different than tribes in the Lower-48  
17 and could taken land into trust. Your recent actions  
18 regarding Alaska tribes essentially treat us as  
19 second class tribes and questions the rights and  
20 privileges that we, as federally recognized tribes,  
21 are entitled to. Just like the tribes in the  
22 Lower-48.

23 The next comment is, are all trust land  
24 applications in Alaska now on hold while this review  
25 goes forward?

1 MR. FISH: No applications are on hold that I'm  
2 aware of through all land process.

3 MR. COOK: Okay. When will this review be over?

4 MR. FISH: I believe the comments -- we're  
5 collecting comments through the end of the year.

6 MR. COOK: Right. Are you expecting to propose  
7 regulatory changes after this review is over, and how  
8 long will that take?

9 MR. FISH: I don't think we can answer that  
10 right now. That's all -- we're going to be looking  
11 at comments. That's certainly one thing that is  
12 under consideration, and that's one something we're  
13 certainly seeking comments and input on, in these  
14 consultations.

15 MR. COOK: Is it possible the department will  
16 propose reinstating the Alaska exception?

17 MR. FISH: I can't speak for what will happen in  
18 the future. I'm not aware of any plans to anything  
19 like that. Right now it's a question of consulting  
20 with people, getting information in, and assessing  
21 their comments and input.

22 MR. COOK: Okay. All right. And lastly, I'd  
23 like to say what President Wallace spoke earlier, is  
24 you picked a bad time to -- to have us consult with  
25 you, with our time of harvest. You know, we're --

1 we're people of the forest and we rely on our -- our  
2 assets here, as tribal people, to put food on our  
3 table through the winter and having consultations in  
4 the height our subsistence season is really tough for  
5 some people to get away. And in the future, it'd be  
6 nice if you consulted with tribes on dates that are  
7 better and locations that might be suited better for  
8 others. And thank you for your time.

9 MR. FISH: Thank you.

10 MR. KELLY: Thank you, sir.

11 MR. SANDERSON: Good afternoon. Rob Sanderson,  
12 Fourth Vice President of Tlingit and Haida Central  
13 Council. And I also serve as the local area  
14 president for Tlingit and Haida here in Ketchikan.  
15 So I would like to welcome our tribes from Prince of  
16 Wales and every -- everybody that's in here.

17 We spoke at length about this in Juneau. And  
18 you know -- you know, it's a government to government  
19 process. And -- and I'm not going to go back and  
20 forth with you guys, you know, as we kind of did up  
21 in Juneau. The thing is, I would like to talk about  
22 here, is that, you know, and -- you know, the -- and  
23 I, you know, here in Alaska we don't have thousands  
24 of acres that we're trying to push into trust, like  
25 the tribes do in the Lower-48. We're talking small

1 sections of land, buildings. You know, we're talking  
2 about tribes wanting to put their smaller clinics  
3 into trust so they can better prepare and get better  
4 funding for their tribal citizens, wherever they may  
5 be.

6 As you know, that a lot of our people from the  
7 interior and western Alaska made that long trip down  
8 into Juneau yesterday. You know, and again, I know  
9 that you guys probably get tired of hearing this, but  
10 this was an absolutely wrong time to have a  
11 consultation process here in Southeast Alaska. You  
12 know. And I believe a lot of those guys that came  
13 down from TCC, you know, they probably had to break  
14 from fish camp to come down here. And that's a good  
15 over 800 miles away, and some further. So, that's  
16 just for the record. Maybe we could be more mindful  
17 in the future and honor that.

18 So, having said that, you know, I was over in  
19 D.C. at the time, myself, and Clinton Cook from  
20 Craig, when we thought that Craig's -- and I'm not  
21 speaking for Craig, Clint. I just -- I just want to  
22 make you know that I was there at the time, when  
23 Craig's land was signed into trust.

24 So, in listening to the different remarks from  
25 our panel here up in Juneau, I see it changed a

1 little bit, what -- and I -- and I know what you guys  
2 said, you know, that you guys are looking for a  
3 better process for a better outcome. What -- at the  
4 time when Craig was signed in to land into trust to  
5 now, what -- what exactly is interior looking for?  
6 Is there something that you missed? And you know,  
7 it's bothersome, you know, to come back and to go  
8 through this process again, you know. You know,  
9 Central Council, you've had, as stated up there in  
10 Juneau by one of our vice presidents, that, you know,  
11 we've had -- we have a couple of applications sitting  
12 on the interior's desk and for about 10 years now.  
13 So to say that you are on a review of looking at it,  
14 that begs the question; are you guys really looking  
15 at that? Or is that just something that your higher  
16 ups want you to say? Ten years is a long time.  
17 There's a lot of work put into this by tribes that  
18 don't have a lot of money. A lot of resources to get  
19 lawyers, to get people that can -- really know what  
20 they're doing on putting land into trust. And for  
21 the interior to do a roundabout on the State of  
22 Alaska is just not right.

23         So that again, begs the question, why Alaska?  
24 Why put so much effort into the State of Alaska? And  
25 I'll say it, you know, we're -- we're being treated

1 like a -- like a second class citizen, you know? I  
2 really doubt if the tribes down south are having this  
3 hard of a time. You're talking apples and oranges  
4 here. We don't have that -- we don't have that land  
5 that is going into trust in the Lower-48.

6 Again, we're talking small parcels. Why such a  
7 big deal. When our tribes, again -- I'm going to say  
8 it again, are trying to put land into trust so they  
9 can receive better funding for their law enforcement  
10 officials, for clinical care. You know, I serve --  
11 and I stated this yesterday that, you know, I serve  
12 on a statewide suicide prevention council. And I  
13 don't know where John is today, but you know, there's  
14 a lot that interior, I believe, that can do to help  
15 ease a lot of the struggles that our people go  
16 through here in the State of Alaska. Alaska is two  
17 and a half size -- two and half times the size of  
18 Texas. when our women and our kids are assaulted and  
19 are sexually assaulted in the far flung reaches here  
20 in Alaska, we don't have the resources. The state  
21 surely don't have the resources or the law  
22 enforcement resources to get out there. Even in the  
23 summertime. Let alone wintertime. So when law  
24 enforcement actually does arrive in a lot of the  
25 communities, the evidence is gone.

1           And I'm taking these points off that young lady  
2 that spoke about getting her clinic into trust and  
3 the land -- and the land around it so they can get  
4 better funding. And when you get better funding, you  
5 get better services for the people that go through  
6 these traumas. You're able to reach out to the  
7 larger communities; the Bethels, the Nomes, the  
8 Fairbanks and Anchorage and Barrow -- Iguavik (ph),  
9 excuse me. And, you know, for -- for the interior to  
10 -- to do a roundabout and continue to stretch this  
11 out is -- is heartbreaking to our community, to our  
12 villages, to our tribes here in the State of Alaska.

13           And so, you know, again, I'm going to go back to  
14 this one lady that, you know, spoke before the  
15 statewide suicide prevention council in Nome, Alaska.  
16 And this ties directly into what we're trying to do  
17 here.

18           I've -- I've been around the State of Alaska and  
19 I've seen a lot of hardships. They're everywhere. I  
20 believe firmly in my heart that if this young lady  
21 had the resources, the law enforcement behind her, to  
22 deal with what happened to her, and this is pretty  
23 hard for me to say it, but I'm going to say it. She  
24 struggled for years trying to get help, of a family  
25 member and other peoples in the communities

1 assaulting her. Not assault, sexual assault. And  
2 she looked out to the statewide suicide prevention  
3 council and said, is this what it takes? Is this  
4 what it takes? She wore a hinged mask that went  
5 around her ears, testifying and crying before the  
6 council, which brought me to tears, which is pretty  
7 hard to do. Is this what it takes to get the  
8 attention of the people that fund these clinics, that  
9 fund these law enforcement places in the farther  
10 reaches in the State of Alaska? She attempted  
11 suicide by gun. Missing the whole half of her bottom  
12 of her face. And she stated to us, is this what it  
13 takes to get help? It shouldn't have to be like  
14 that. I firmly believe that we can probably -- we  
15 could, not probably, we can avoid a lot of these  
16 tragedies if we can get a lot of these place that a  
17 lot of these communities that want to put their small  
18 clinics and their small VPSO or whatever it may be,  
19 law enforcement places, into trust, or clinics,  
20 little places around it.

21       And so, you know, I'm not going to continue to  
22 go around that one. I think you guys got that pretty  
23 clear. Hopefully.

24       And again, you know, it -- you guys are the  
25 largest managers of land in the United States. And



1 another thing that we're experiencing here in Alaska  
2 is drug abuse. There happens to be a lot of meth  
3 cooking on federal government property. And that's  
4 something that the interior should really take a look  
5 at. I know it happens a lot down south on  
6 reservations. I know that because when I go to  
7 different meetings in the Lower-48, I network with  
8 people and we talk about -- about these things that  
9 happen on their reservations. Sometimes these guys  
10 completely take over them. And we -- we have a  
11 problem here in Alaska, with people cooking meth on  
12 federal lands. Prince of Wales, my home island, is  
13 one of them.

14 Ketchikan, being the port of entry into the  
15 State of Alaska, you've got just about every  
16 knucklehead in the land that comes through here  
17 before they make their way out or they're turned back  
18 or they're caught, you know, with drugs and this and  
19 that. And so, and I'm just going to leave that on  
20 that.

21 And so, no, and my last talking point that I was  
22 thinking about that I missed up in Juneau, is that  
23 you guys mentioned that you guys were, you know, are  
24 responsible for the outer reaches of the continental  
25 shelf. After Three Mile it goes into federal waters.

1 And I know this is a department of commerce issue,  
2 but I also believe that the interior department can  
3 play a big role in that. And that is called by-  
4 catch. We are now experiencing one of the worst  
5 fisheries failures that I could ever remember. I  
6 can't remember when this bad. There's people  
7 actually turning it in now and just saying, you know,  
8 enough is enough. We can't even make our fuel  
9 payments, let alone pay our crew. So that's another  
10 thing that, you know, that the interior, I believe,  
11 and I could be wrong, but, you know, this is our time  
12 to, you know, talk to you guys. And I think -- and  
13 it was mentioned by John yesterday that, you know,  
14 the interior can work with other agencies to help our  
15 tribes achieve different goals, you know. And that's  
16 one of them I think that the interior can play a big  
17 role in.

18 In 2007, over 140,000 Chinook king salmon were  
19 as-by catch kicked off over the side. And why we are  
20 experiencing low king returns here in Southeast  
21 Alaska, our -- for the entire state, is we can't put  
22 our finger on it. But we do know one thing for sure,  
23 is that by-catch has taken a lot of our Chinooks, and  
24 our chum salmon and our halibut. And I believe the  
25 interior department working with the department of

1 commerce and the agencies that fall under it, NOAA,  
2 NIMPS, North Pacific Fisheries Management Council, I  
3 think there could be a lot of good that can -- that  
4 can come out of this. You know, I know this is a  
5 land and the trust things, but I just wanted to put  
6 something out here that I missed yesterday.

7       So, and then thirdly, and again, is -- for those  
8 of you that are -- weren't up in Juneau, you know, we  
9 talked about trans-boundary. And, you know, 80 --  
10 about 86 miles from Ketchikan, about 12 miles inside  
11 the border, they have a mine called the KSM, the  
12 Kerr, Sulphurets, Mitchell mine, it's not up and  
13 running. They have the infrastructure there. They  
14 have the power grids, they've got everything they  
15 need. They just need a buyer. One investor. One  
16 major investor before that thing goes up in  
17 operations. You'll have three -- you'd have three  
18 mountains that will start up about 3,000 feet.  
19 They'll drop them down to sea level. And two of  
20 those mine will be the largest open pit mines in the  
21 world. And yes, that mine is in Canada, but  
22 understand that Canada does not -- has no obligation  
23 to reach out to the U.S. or the State of Alaska and  
24 consult with us in any way. And this is another  
25 place that I think that the interior department could

1 work with the state department on. Again, I could be  
2 wrong, but I'm putting it out there.

3       And going back to this mine here, it sits in the  
4 Unuk River watershed. And the Chinook king salmon  
5 ford this -- ford the Unuk River, and it's been  
6 identified as one of the rivers that was a great  
7 producer of Chinook, hooligan. They're not coming  
8 back. The hooligan run is pretty much shot there.  
9 And what we believe comes from a small mine was --  
10 that was mined on a tributary leading into the Unuk  
11 River, the SK Creek Mine. They just up and left  
12 everything there. About four years ago there was a  
13 run of hooligan salm -- hooligan that showed up in  
14 Carol Inlet at the south end of the road system here.  
15 And you know, hooligan are glacially river-driven  
16 fish. They don't spawn in normal rivers of all -- in  
17 non-glacial fed rivers. They go to glacial streams  
18 -- rivers to spawn out. And you know, that's another  
19 thing I think that the interior department could work  
20 with -- with the state department on and the forest  
21 service.

22       So, you know, these are just a few of the things  
23 that -- that are happening here. And lastly, who is  
24 going to take care of these mines when the life of  
25 the mine is up; over? The KSM Mine is -- is

1 projected to last 53 years. And tailings sites for  
2 this -- for this mine, there'll be two earthen sized  
3 dam, and I think I may have mentioned this, that will  
4 be bigger than the Hoover Dam. No mining company, no  
5 mining company can take care of a tailings sites in  
6 perpetuity. They would not have enough money.

7       If you go back and look at what happened in  
8 Mount Polley, northeast of Vancouver a couple of  
9 years ago, when that mine failed, that was -- that  
10 mine was the gold standard. Their tailings site was  
11 the gold standard of how tailings sites should be  
12 operated and ran. It wasn't supposed to fail. It  
13 failed in less than 20 years. And Quesnel Lake below  
14 it, they did nothing to help the people there. So  
15 what did they do? They can't pay for it, so they  
16 might as well use the dam wake and put our tailing  
17 sites in there. And that's exactly what they're  
18 doing.

19       You take the Red Chris Mine up in the Stikine  
20 River watershed. It's up in operations. It's the  
21 same setup as Mount Polley. They're already finding  
22 high levels of selenium down river in the Stikine  
23 River.

24       You take the Tulsequah Chief Mine, the  
25 (indiscernible) mine on the -- on the Taku River

1 That mine closed in 1957. It's been leaching acid  
2 generated tailings for well -- up to this day it has.  
3 And Canada, the provincial government B.C., the  
4 federal government, has done nothing to even try to  
5 clean that up. Yes, the mine minister Bill Bennett  
6 and Lieutenant Governor Walker at the time, they flew  
7 out there by helicopter to take a look at it and see  
8 what they could do, and they come up with an MOA,  
9 which is non-binding.

10 When the tribes went forth to the state to see  
11 if we cannot get a trilateral agreement with the  
12 state, and the state just said no. And so again,  
13 this is why I'm asking the interior, you know, help  
14 us on some of these issues that are critical to our  
15 livelihood here.

16 There is so much that is going on in Southeast  
17 Alaska. You look down in Florida, that green algae,  
18 that red tide they call it, it's putting millions of  
19 fish up on the shoreline dead. It's happening as we  
20 speak. You take the whole Gulf of Alaska, all the  
21 way out to the Aleutians, all the way down into  
22 Washington state, what they call the green blob. I  
23 think there's a lot and it will be a lot. I feel  
24 that's coming from climate change. And I may be  
25 jumping around here, but I'm just going to put these

1 out there as they come to my mind. I think there's a  
2 lot of that the interior can do to help with climate  
3 change.

4 You know, our coastal villages in western  
5 Alaska, they're eroding off the map. And it costs  
6 tens of million dollars just to relocate. And we're  
7 talking federal lands here again. You know, I think  
8 the interior department has to help our people in the  
9 State of Alaska when they are looking for relocation  
10 when events like this happens.

11 So, and lastly, you know, I don't -- I don't  
12 really want to talk anymore. I've pretty much said  
13 what I had to say in Juneau, but, you know, I don't  
14 know what the -- the -- I'm trying to search for the  
15 right word here -- is that you know, the interior,  
16 you know, by holding these -- these hearings, will  
17 anything ever come of it? Like you said, you don't  
18 know. You know, you're just here to, you know, to  
19 host these. I mean, to have these hearings for the  
20 people that do have the power.

21 You know, we have our tribal presidents here,  
22 our tribal leaders here in this room. And we don't  
23 get that from you guys. We should have people that  
24 are a little higher up than the people that are  
25 sitting at the table. You know, and I see the titles

1 here. You know. That's all good and well. But if  
2 you really want true consultation, we should have  
3 people that at least have a little bit of decision  
4 making, at the table listening to what we are talking  
5 about. I know that'll never happen, but it's worth  
6 putting it out there for the record. You said it's  
7 for the record? Well, there's for the record.

8 So, again, I just want to thank you for your  
9 time and, you know, welcome to Ketchikan and we do  
10 appreciate you guys. Don't get me wrong; we do  
11 appreciate you guys being here.

12 I will ask this of you, and I -- I looked at the  
13 schedule on your consultations hearing, and I think  
14 it would be wise for the interior to have a  
15 consultation process. Not just one or two, but maybe  
16 a couple of days during and around Alaska Federation  
17 of Natives time in Anchorage. You know, you get  
18 five, 6,000 people that come to Anchorage to go to  
19 AFN. And you pretty much have every tribal leader in  
20 the state there at that time. And I fully believe  
21 that if you held a consul -- a tribal consultation,  
22 not a public consultation, a tribal consultation in  
23 October at AFN, I think you would have a great  
24 turnout. And you'd hear a lot more different things  
25 than the people that -- from the tribes that had



1 already had spoken to you, from our first day in  
2 Juneau up until now. I think they'd have a heck of a  
3 lot more to say on what's going on in their areas.  
4 You know, so again, I just think that there's a lot  
5 that the interior can do to help other agencies help  
6 us protect our way of life, protect our women and  
7 children, you know, and drug abuse, and put a stop to  
8 that, you know -- you know, just doing things on  
9 federal properties. Work with the state. And I  
10 don't forget what John said; we can work with other  
11 agencies. And I want to hammer that point home. If  
12 that is the case, then do it. Then if that's really  
13 -- if he meant what he said, that's what I would  
14 expect the interior to do, is work with the agencies  
15 that I've spoken about, on the things that really,  
16 really matter to our people here in the State of  
17 Alaska, our tribal people, you know.

18 I -- I'll go as far as saying that, you know,  
19 our tribes, our citizens in the State of Alaska, I  
20 think, you know, the people that come up here to  
21 visit this great state, when they did come up here  
22 and they go out to the fishing lodges and this and  
23 that, and I know they pay a lot of money to do that,  
24 they -- in my opinion, this is nobody else's opinion  
25 but my on, for the record -- I truly believe that

1 they have more rights than our citizens in the State  
2 of Alaska and our tribal citizens. They get hundreds  
3 of thousands of boxes sent out every year from the  
4 State of Alaska. But our tribal people we catch one  
5 over the limit, our gear is taken in some case, our  
6 boats confiscated in some places. And these are  
7 things that our people are having to deal with. Not  
8 only -- not only from the state, mind you, but from  
9 the United States Fish and Wildlife Service. There's  
10 a big problem with the Fish and Wildlife Service  
11 harassing our people. All the way from the Arctic  
12 all the way down to Saxman. The United States Fish  
13 and Wildlife Service, along with different federal  
14 agencies, they go out of their way to, I believe,  
15 imprison our young men that are trying to make a life  
16 for themselves, a livelihood by way of trapping sea  
17 otter. And sea otter is raising hell with our -- our  
18 shellfish here in Alaska; Southeast Alaska mainly.  
19 Those things are planted here. And I think that's  
20 another arena that, you know, that's a federal issue  
21 that you -- that the interior could work, again as  
22 John said, work with -- with the, you know, things on  
23 the marine mammal protection act, you know. Right  
24 now I know that -- as I speak, a lot of our areas out  
25 on the west coast, there -- there's places that you

1 can't even go in there, that were once plentiful.  
2 And nothing is being done by our federal government,  
3 or the United States Fish and Wildlife Service to  
4 protect our tribal citizens from I would say -- I  
5 think -- I -- you know it's to the point where you --  
6 I think it's -- it's almost like committing genocide,  
7 when your food is taken. I know that's a really,  
8 really strong word, and I understand that. But when  
9 you have whole areas in Southeast Alaska that are  
10 getting wiped clean by sea otter, our Native food,  
11 Dungeness crab, clams, cockles, (indiscernible) sea  
12 urchin, the list goes on, mussels. And I -- again,  
13 that's another one that I think that the interior  
14 department could work closely with -- with the United  
15 States Fish and Wildlife Service on. If they're not  
16 going to do it, maybe you guys can weigh in and put a  
17 stop to this travesty. Because the U.S. government's  
18 letting it happen.

19       So, anyway, I -- I think I had enough to say.  
20 But I appreciate you guys for coming to Ketchikan and  
21 to Juneau. So again, thank you.

22       MS. BURNS: Good afternoon. Gloria Burns from  
23 Ketchikan Indian Community. I wanted to address  
24 several of the questions, but before I do I -- I  
25 wanted to say how very important it is for us to go

1 forward, and for people to know that they're going to  
2 be able to put their land into trust. Too long was  
3 Alaska discriminated against. Too long were we  
4 treated like in the other Indian, without the ability  
5 to take care of our people. And I think it's very  
6 important from the bureau to go ahead and fulfill  
7 this obligation. And one of the reasons is because  
8 of the way in which you failed the people in  
9 Ketchikan.

10 In Ketchikan, we had the majority of downtown  
11 that was restricted deed property and fee simple  
12 property that was taxed illegally by our city. And  
13 when the city illegally taxed it and took it from our  
14 people, we did not have the bureau here to help our  
15 people. Our people would be self-sufficient. They  
16 would own the best property in town. They would have  
17 businesses. And that was a failure of our trustee.  
18 It was a failure to take care and to make sure that  
19 that property was for our people from time  
20 immemorial.

21 And so in the answer to these questions, it's  
22 heartfelt. You think to my -- yourself, what is it  
23 to have everybody look at you and say your landless,  
24 when your people stood on land since time immemorial.  
25 Or married into other families in this area, and to

1 be considered landless. And that is what is at the  
2 heart for me of this. The people around Indian  
3 country and around the nature see us as different  
4 kind of Indians, without the ability to have a land  
5 base and take care of ourselves. It is just so  
6 heartbreaking, to very heartbreaking.

7 My first job working for Ketchikan Indian  
8 Community, my first job I did a walking tour as a  
9 young woman where my aunt, who happened to be my  
10 supervisor, had us walk around and point to every  
11 single building that was illegally taxed by our city  
12 in Ketchikan that now had multimillion dollar  
13 businesses sat on it. And she'd say, you know that  
14 family over there, that family out at Saxman or that  
15 family out the road, they would be rich. But their  
16 land has this shop on it, this jewelry shop. They  
17 can't take care of themselves because the Bureau of  
18 Indian Affairs, who put this land into fee simple and  
19 into -- land into trust was not here when the city  
20 chose to send a tax bill, and they just wanted to  
21 keep their land so they paid the tax bill. Not  
22 knowing as soon as they paid that tax, or not knowing  
23 if they bequeathed it outside of a certain way, that  
24 their people would lose that ability forever.

25 And so I say to the bureau, it's your

1 responsibility to look at this and say what is right?  
2 It is right to fix this for us in Southeast Alaska  
3 and in Alaska in general. Because we are not the  
4 only people to have this issue. Only we can look at  
5 the creek, we can look at where the smokehouses were,  
6 we can look to people like Mrs. Dundas who knows the  
7 history of this area, and we can look to know people,  
8 families who were drug out of their homes in the  
9 middle of the night and the next day the property was  
10 owned by somebody else, and it was restrict deed  
11 property.

12         And so it is time to answer these questions and  
13 to make it right, and to move forward and to stop  
14 discriminating against us. So I know that it's --  
15 the intent is not to go backward, to create a better  
16 system in the future, but that better system needs to  
17 provide for us to be treated like the rest of Indian  
18 country. To be able to access the money that is  
19 available for other tribes. To know that we will not  
20 be landless, that we will be able to take care of our  
21 own, and for them to be economically viable.

22         And -- and so -- and that is what I have to say  
23 about that, because I think maybe as you walked in  
24 you got your fish down by the creek and you think  
25 about that, all that land from Tatsuda's on down was

1 owned by our people, by our Tlingit and Tsimshian and  
2 our Haida neighbors. It was owned and there are  
3 people alive today that are passing away as they  
4 watch the people become rich on land that should  
5 belong to them. Because the city taxed it and there  
6 was nobody here. Our trustee was not here, did not  
7 answer our call when it was time to answer it.

8       So to the first two comments and questions,  
9 rearrange myself, thank you, the first one is, how do  
10 you view the impact, if any, of the Alaska Native  
11 Claims Settlement Act and the Federal Land Policy and  
12 Management Act of 1976, and the Alaska National  
13 Interest Lands Conservation Act on the secretary's  
14 ability to land into trust? I mean, for me that  
15 seems like a really silly question. I mean, there's  
16 the ability to do it. You should do it. You know,  
17 it's neither ANCSA or FPLMA, I'm not sure how you  
18 guys like to say that acronym out loud, or ANILCA;  
19 none of them have been amended or repealed. None of  
20 those provisions did that for the Indian  
21 Reorganization Act. You know, it's basic statutory  
22 construction of congress, and it must be specifically  
23 amended or repealed. So, I -- you know, go forth and  
24 do it. The secretary has the ability, has the  
25 responsibility, and is in fact required to take land

1 into trust for tribes in Alaska because the secretary  
2 has -- secretary has taken land into trust for tribes  
3 elsewhere. And the 1994 statute requires the  
4 secretary to accord the same privileges to the tribes  
5 in Alaska. So do it. And keep doing it.

6 We were so excited when our neighbors in Craig  
7 put their land into trust because we knew how life  
8 changing that was going to be. And we want that for  
9 our own people. And we will have that for our own  
10 people.

11 You know, the '94 amendments do not permit the  
12 secretary to create two classes of tribes, based on  
13 geography or history or culture, or any other  
14 category. Unless congress ha expressly and  
15 specifically required that discrimination in the  
16 statute.

17 The second that I'd like to respond to, is what  
18 impact, if any, do the 1994 amendments to the Indian  
19 Reorganization Act have on the secretary's ability to  
20 promulgate rules specific to federally recognized  
21 tribes in Alaska? You know, it's -- to avoid  
22 violating the 1994 amendments, the secretary must not  
23 promulgate specific or special rules to -- for tribes  
24 in Alaska. And I just want to say that congress has  
25 not done so, and any attempts to pressure congress or



1 to rewrite such rules, Ketchikan Indian Community  
2 strenuously and loudly and adamantly oppose any kind  
3 of modern day discrimination. We've been there and  
4 done that. We're still living in it. We -- we still  
5 know what it's like to be without the ability to take  
6 of our people. And we will not be quiet about this  
7 issue. So we look forward to a transparent, fast  
8 action on land into trust applications.

9       The Ketchikan Indian Community fought alongside  
10 Tlingit and Haida Central Council and many other  
11 tribes for far too long for every bit of restored  
12 sovereignty and tribal identity we have, and we're  
13 not going to allow anything to push us backwards. We  
14 know that we have had lawmakers and everybody all  
15 over continuously finds a way to make sure that  
16 Alaska does not have access to what everyone else  
17 does. And our people are poor. We have the highest  
18 rates of every social economic dysfunction that you  
19 want; you know, from suicide to drug abuse, heroin  
20 addiction, everything, domestic violence. We need  
21 the things that can come from having that land into  
22 trust, the money that we can access by it. And in  
23 the end, honestly, I truly feel in my heart of  
24 hearts, and this is only me, that if the Bureau of  
25 Indian Affairs had done what they should have done

1 and kept our land from being illegally taxed, our  
2 people would be rich and I wouldn't need to stand up  
3 here because we would own, by virtue of our own  
4 economics, the entirety of Ketchikan. Thank you.

5 MR. WILLIAMS: Randy Williams. Let me talk a  
6 little bit about what Gloria just said. I won't deal  
7 with the perspective of the historical side of it.  
8 I'll just deal with the future side of it.

9 I've worked for several tribes in the Lower-48.  
10 I've put land in trust for several tribes in the  
11 Lower-48. They protect that right exclusively. And  
12 they do that because it creates economic development  
13 for their tribal membership. And so I think that's  
14 what we're fighting for today, is our right for  
15 economic development.

16 So, self-determination, self-governance,  
17 sovereignty, all easy words. But they don't mean  
18 anything without land. Because you can't move  
19 forward without land. And so that's -- that's why  
20 we're here today.

21 Culture identity, that's better said by others  
22 than me. I deal with the economic development side  
23 of land.

24 I put several business in for tribes, because we  
25 put land in trust. What did that mean for their

1 community? You all know that, right? You see it all  
2 over the United States. Improvement for the tribal  
3 membership, social and economic improvement.

4 As you know, the economic development is a broad  
5 spectrum. You know the C stores that they all put  
6 in. You know the smoke shops they all put in. All  
7 economic drivers for the community. Gaming; you know  
8 that's an economic -- huge economic driver for all of  
9 the tribes in the Lower-48.

10 Oftentimes they couldn't buy the land to put in  
11 trust unless they had the opportunity. And that was  
12 derived from their ability to game on their property.  
13 I'm not advocating for gaming in the state of  
14 Washington. What I'm advocating for is the ability  
15 to put land in trust for economic development.

16 I agree with Mr. Sanderson. Our hunting and  
17 fishing rights will be protected, better protected by  
18 us having land in trust. I think that's an important  
19 aspect of what we see and what we have today.

20 And to put it straight forward, it's the heart  
21 of Trump's presidency, is economic development. And  
22 that's what we're asking for. The right to develop  
23 economically. And that comes from our ability to put  
24 land in trust. Thank you.

25 MS. PICKRELL: Good afternoon. My name is Susan

1 Pickrell. I am a KIC tribal council member with  
2 Ketchikan Indian Community. I am Alaska Native. I'm  
3 Haida. My Haida name is (Native language). My  
4 parents were Albert and Frances Brown, and my father  
5 was one of the last Haidas to grow up in a small  
6 Haida village. There were three Haida villages that  
7 moved to the village of Hydaburg. And all those  
8 villages came together. As a young girl, I asked my  
9 dad, dad, why did -- why did they move away from  
10 Haida -- you know, from the smaller village where he  
11 came from, which was Howkan. And he said, because  
12 when the missionaries came, they realized that their  
13 lives had changed. The changes that the missionaries  
14 brought meant that in order to make a living and, you  
15 know, as Randy said, to be -- to have the ability to  
16 make a living and to raise your children, and to have  
17 them have an education so that they could make it in  
18 the white man's world, they realized they had to  
19 change their lifestyle. And had to change where they  
20 were living and how they lived their lives. And so  
21 they chose, as a -- as a village, as a people, to  
22 move.

23         And then I asked him, well, dad, why did you  
24 -- why did you move from Hydaburg to Ketchikan? And  
25 he said, honey, because I grew up having to go away

1 to Sitka to go to boarding school. And he said, I  
2 was beaten because I spoke my language, and other  
3 children shamed me and were taught to shame me for  
4 speaking my language. And as all -- the whole time I  
5 was growing up, my grandfather and my father would  
6 never speak Haida in front of me. If they were  
7 speaking and laughing when we came into a room and  
8 they were speaking Haida, they would stop speaking.  
9 And I said, dad, why is that? And he said -- he  
10 said, for one thing it's rude. And he said, and for  
11 another thing, it's lessons learned. We were beaten  
12 for speaking the Haida language. And so that's  
13 -- it's not something that we do today.

14       And I tell that story to let you know that self-  
15 determination did not start in 1978 or 1988 when many  
16 of the tribes in Indian country, you know, decided  
17 to, you know, to start the self-governance movement.  
18 It started in 1911, when my dad was born. It started  
19 in -- when he was seven years old and he moved to the  
20 Haida village. They determined for themselves what  
21 kind of life they wanted. And the biggest push for  
22 them to do that was economic development. Was having  
23 a future for their children.

24       My aunt, Helen Sanderson, who's -- who's Rob's  
25 grandma, Rob Sanderson's grandma, was the person who

1 signed up the Haida people under ANCSA. And so she  
2 had to -- she had to essentially reach out to ever  
3 single Haida to say, you know, how much blood quantum  
4 do you have? Where did you come from? Where were  
5 your ancestral homes? She did all the interviewing  
6 on behalf of the Department of Interior so that those  
7 determinations could be made for that ANCSA  
8 legislation.

9       And I say all that to say that our people have  
10 been living in this land for tens of thousands of  
11 years; long before the Russians came, long before the  
12 Department of Interior came, you know, long before  
13 anybody else was here we were here. And -- and my  
14 dad said, literally, he remembers as a little --  
15 little boy, very, very little, having huge Haida war  
16 canoes that would travel all the way to Hawaii, all  
17 the way up north, all the way to California, all the  
18 way to Washington. They traveled all over the place.  
19 And he said they didn't just see the -- this was not  
20 their land that they owned themselves; they used it.  
21 They owned the whole -- the whole state, the whole  
22 land as a resource.

23       So, when ANCSA came along and they said well you  
24 have to determine where you lived at and where your  
25 ancestral homes were at, and how do that when you

1 travel thousands and thousands and thousands of  
2 miles?

3 My point bring -- bringing all of that up is  
4 that there have been thousands and thousands of years  
5 when people who do not live in Alaska come and ask  
6 us, well, what do you think about the laws that we've  
7 created about your land, that you've lived here  
8 10,000 years? And how should we treat you? And how  
9 should we interpret that law? It's a little bit hard  
10 to take, because we're going to be here 10,000 years  
11 long after all of this is gone. And that's -- again,  
12 I think that's why you have people traveling from all  
13 over the place to provide this -- this kind of  
14 testimony, and to let you know how important it is to  
15 us.

16 So that being said, does the department have the  
17 authority to take land into trust in Alaska under the  
18 IRA? And specifically, should congressional intent  
19 or legislative history play a role in determining  
20 whether the secretary should accept land into trust?

21 So, to me it's a reexamination of congressional  
22 intent and legislative history. And it's never  
23 warranted when the legislative text is clear, when  
24 it's pretty plain what the leg -- what -- what  
25 congress meant when they put this into law. The

1 Indian Reorganization Act is -- expressly applies the  
2 secretary's land and trust authority to tribes in  
3 Alaska. The 1994 amendments to the IRA expressly  
4 state that the secretary may not treat tribes in  
5 Alaska differently than he treats tribes in the rest  
6 of the country, in Indian country.

7 So what I want to ask you today is, what part of  
8 the 1994 amendments is not plain and clear? Why do  
9 you have to reexamine it?

10 No other act of congress, no ANCSA, not ALCMA  
11 (ph), not ANILCA expressly and specifically alters  
12 the Indian Reorganization Act authority of the  
13 secretary to take land into trust in Alaska. So KIC  
14 believes there can be no question of whether the  
15 secretary has this authority. The only legal  
16 question is whether it is lawful for the secretary to  
17 question his own authority and whether it is lawful  
18 for the BIA to continue its long, slow delays in  
19 processing the fee to trust applications for tribes  
20 in Alaska. And that's what Gloria was up here today  
21 talking about, what Rob was talking about, what  
22 Randy's talking about. Is the self-determination for  
23 us. To apply, to put land into trust, and to have  
24 that carried out by the department.

25 I want to offer this quote from the late Supreme



1 Court Justice Antonin Scalia who said it best.  
2 Examining the entrails of legislative history is a  
3 fool's errand. The statute is what congress voted  
4 on, not what some committee member said he thought it  
5 meant. I don't care what he thought it meant, since  
6 the rest of congress didn't know what he thought it  
7 meant when they voted for the law.

8       And of course you know that the Indian  
9 Reorganization Act says plainly the secretary is to  
10 accept land into trust for Indian tribes. It does  
11 not say except for tribes in Alaska. And you have  
12 heard, you know, Mr. Kelly, I know you have heard  
13 several days, you know, of testimony regarding this,  
14 where people are saying, why are we being treated  
15 differently than other tribes in the country who have  
16 already, you know, been given the ability to put land  
17 into trust? The plain meaning of the law leaves  
18 nothing much to consult about.

19       The other issue that I wanted to address today,  
20 and that is the process for taking land into trust.  
21 And specifically regarding your question on the 25  
22 CFR 151, Part 151, land acquisition. If this is an  
23 appropriate process for tribes in Alaska to request  
24 the department take land into trust. KIC believes it  
25 is appropriate for tribes as it is for tribes in the

1 rest of the count -- Indian country.

2       And then the secretary asks whether there are  
3 challenges specific to tribes in Alaska that make the  
4 requirements of Part 151 particularly challenging to  
5 satisfy. The only challenges unique to Alaska are  
6 the ones caused by the many decades of unlawful  
7 interior department refusals to take land into trust  
8 for tribes in Alaska. With all due respect, the  
9 department's opposition is our sole challenge. While  
10 we celebrated the turnabout in department policy a  
11 few years ago, the department has dragged its feet on  
12 all fee to trust applications for all tribal  
13 applicants across Alaska since and except for one  
14 small parcel in Craig. Meanwhile, the department  
15 continues to process tribal land in trust  
16 applications for tens of thousands of acres for  
17 tribes outside of Alaska. The overwhelming challenge  
18 for Ketchikan Indian Community is that we are  
19 landless. Ketchikan was overlooked when ANCSA was  
20 enacted, and even though we have been organized and  
21 recognized since 1940 under Section 16 of the IRA,  
22 Ketchikan was dropped off the list of tribal  
23 communities listed in ANCSA. And so we have no  
24 village corporation and no land as a part of the  
25 ANCSA settlement.

1 I really want to thank you for coming today.  
2 And -- and I know that listening to hours and hours  
3 of testimony, and people who are directing their ire  
4 at you is probably not fair. But on the other hand,  
5 I think back to my dad when he was, you know, first  
6 talking about why we were -- why we were essentially  
7 moved from a, you know, the small villages where we  
8 lived into a, you know, larger village, and then why  
9 my mom and dad felt they had to move us over to  
10 Ketchikan, because they couldn't raise their  
11 children, you know, given -- given the way the  
12 education system was organized at that time. To me,  
13 it's all about self-determination. And I really  
14 agree with statements from prior speakers today about  
15 tribes do well when we can do it ourselves.  
16 Ketchikan Indian Community has a 20-year history of  
17 doing it ourselves and doing it very, very well. You  
18 know, as you drove here today, you drove by our --  
19 our clinic. We were able to get Coast Guard land and  
20 put our own clinic in, you know, buy the -- build a  
21 building with our own monies, and, you know, and some  
22 help, you know, obviously as well. But the point  
23 being is, we are doing very well. And we think we  
24 can do it better than the federal government. And  
25 that -- for that very reason alone, to me it's always

1 better. I agree with Randy. To me, this would --  
2 this would be, you know, Trump's legacy, if he will  
3 allow tribes to do it themselves and do it better  
4 than the federal government can.

5 Thank you very much for listening.

6 UNIDENTIFIED VOICE: I don't want to address you  
7 guys issue, but I want to address the tribal leaders  
8 here. Because I've been through the process of land  
9 into trust in Alaska after (indiscernible) decision.  
10 And when you've got something to gain, you're going -  
11 - the municipality will attack you. Like you're a  
12 second class citizen. Maybe it was an exception in  
13 Hydaburg. Hydaburg had a very very good relationship  
14 with their city. They do a lot of things with their  
15 land. And we should be proud of them for doing that.  
16 But every other community, you're messing with the  
17 municipality will attack you and try to bury you.  
18 You think their on your side? They're not, because  
19 we have something to gain in land into trust. And  
20 they don't. So be ready. And I challenge you, you  
21 run brave. You heard the comments. They might not  
22 have been hurtful to you, but to me they were  
23 bigotry. Emotion. And be attacked as leaders, hurt.  
24 So when you guys allow us to keep moving forward with  
25 land into trust, you need to be there for the tribes

1 with languages on municipalities. Simple things.  
2 Public law 280. Our city thought we were  
3 (indiscernible) fugitives, and they never be able to  
4 come onto our land, or we've had drug dealers there  
5 that we protect. Or what if somebody backed into  
6 your car? Tribe ain't going to help you with the  
7 insurance. The asinine things they ask, pardon my  
8 language, but you need to be ready. The lawyer in  
9 the room need to be ready, Bill. They're going to  
10 attack you guys. Because we have something to gain.  
11 And I hope you guys are there to help when the  
12 litigation hits. Gloria's right, they have our land.  
13 True tribal leaders didn't like ANCSA, because they  
14 took land away from the tribes. Our homeland. They  
15 were right. We all had bad waterfront lots. Gone  
16 because of taxes that weren't paid. Small burdens to  
17 people that they could not pay when there was no  
18 commerce in our lives. Two generations ago.

19       You talk about your dad. My grandmother said  
20 when she was a child, her childhood concern of her  
21 shelter and her food. Two generations ago, very  
22 little commerce.

23       And interior isn't going to be there for tribes.  
24 I know you might not want to think they need to be  
25 there, but they need to be there. And the bureau as

1 well. You need to be there when that city is  
2 attacking us. You need to help protect us. BIA.

3 Thank you.

4 MS. DUNDAS: Well, thank you. My name is Irene  
5 Dundas. My Tlingit name is (Native language). I'm a  
6 Taagweidi killer whale from the house that anchored  
7 the village of Kake. My father's people is the  
8 Sanyaa Kwaan people of Saxman, or Cape Fox Village.  
9 My great -- or my grandfather's people is the Taant'a  
10 Kwaan Kadakwadi of Tongass. My great-grandfather --  
11 great-great-grandfather's people are Gaanax'adi and  
12 Teikweidi of Tongass.

13 We are on land of the Tongass people, the  
14 Gaanax'adi people. My father's people gifted the  
15 Gaanax'adi this land, the Ketchikan area.  
16 Ketchikan's original name is Kichxaan. Some people  
17 say it means the smell of the salmon. There is the  
18 big Ketch -- or the Ketchikan Creek that's down  
19 there, and the smell of rotting fish. But it's when  
20 the wings of an eagle are spread out, there is an oil  
21 gland that's right in here. And that oil gland  
22 covers the wings and that's what it mean. It's a  
23 small that the oil produces when the wings are spread  
24 out.

25 Anyways, my -- I came here on behalf of

1 Ketchikan Indian Community. I'm a former tribal  
2 council president. I'm now tribal council.

3 Ketchikan Indian Community is -- we have about  
4 6,300 tribal members. It's one of the largest tribes  
5 in the State of Alaska. We have our own clinic. We  
6 negotiated our own compact with IHS and we also have  
7 various housing programs with NAHA SDA and Indian  
8 road programs that we -- that we also manage.

9 Ketchikan Indian Community, in the last several  
10 years, has really expanded. We have our -- we have a  
11 high school that we have 99 percent or 100 percent  
12 graduation, which is wonderful. It's an alternative  
13 school. We have purchased buildings and property  
14 over by Tatsuda's, which is part of the original  
15 Indian town. We have purchased also property in the  
16 -- I guess maybe down here. It's right below the  
17 Cape Fox Lodge. We have built a veteran's housing.  
18 We have a 7-plex that is on the other side of town.  
19 We have a whole housing unit that we've -- that we've  
20 went into I guess partnership with Tlingit and Haida  
21 Central Coun -- or Tlingit and Haida Housing  
22 Authority, and there's a whole division of houses  
23 that are up in that area. And then we're expanding  
24 up onto the hill we -- we've built a 7-plex for low  
25 income.

1           We -- also part of our expansion, because we  
2 also recognize the epidemic of the opioids, the  
3 methamphetamines and the heroin that's affecting all  
4 of Indian country and just the nation in general.  
5 And this year the council had made a wonderful  
6 choice, a precious choice to do expansion of our  
7 behavioral health program, which we are employing 11  
8 more doctors to deal with the opioid epidemic.

9           Also last year, I guess to go into Ketchikan  
10 -- so, Ketchikan Indian Community has been really  
11 growing to try to -- to be self-sufficient. It's  
12 written in our charter to be economic -- to be  
13 economically self-sufficient. In the 1940s  
14 constitution, in the 19 -- amended 1970s constitution  
15 it states to be economically self-sufficient. And  
16 last year, in 2017, what was the date, September --  
17 oh, October of 2017, Ketchikan Indian Community was  
18 the first tribe in the State of Alaska to do --  
19 successfully do a constitutional reform that worked  
20 very well with the BIA. And we amended our  
21 constitution to fit the needs of today. And that was  
22 a wonderful effort by our -- our tribal council and  
23 our tribal members.

24           So, Ketchikan Indian Community has begun to  
25 purchase land as best as it can, in order to build



1 back the land base. But all of our holdings are in  
2 fee simple, and subject to alienation and loss. Some  
3 of them to taxation. Ketchikan Indian Community  
4 seeks to have some of its -- some of its several  
5 parcels placed into trust to protect the tribal land  
6 for future generations, to enable greater tribal  
7 economic development, and to facilitate our tribe's  
8 access to federal funds available only to tribes with  
9 land.

10 KIC is painfully aware that none of the \$2  
11 billion that President Obama allocated to the tribal  
12 communities as a part of the recovery act after the  
13 last recession in 2009 and 2010, none of it made it to  
14 Alaska because no tribes outside of Metlakatla were  
15 eligible to receive it. That \$2 billion went only to  
16 tribes with restricted or trust land. Many federal  
17 programs are available only if the tribe has  
18 restricted lands or trust lands.

19 And today, Ketchikan Indian Community, and I  
20 want to welcome you Mr. Peltola, and welcome you to  
21 Ketchikan and your new position with BIA. And  
22 Ketchikan Indian Community would have submitted this  
23 document in Anchorage, and we would have flown to  
24 Anchorage to submit this document, but since you are  
25 present, we're going to submit this document now.

1           We have here, and hand delivery, our application  
2 for our 30 -- roughly 34, 35 acres of land that  
3 Ketchikan Indian Community had purchased last year to  
4 go into land into trust.

5           Will you begin to quickly process the 34.732  
6 acre fee trust application that we are submitting  
7 today so Ketchikan Indian Community can have the  
8 protection of federal law against taxation and  
9 alienation for at least some of our home lands on  
10 this island? We are submitting this application to  
11 you by hand today in order to make our point that  
12 there should be no need for consultation. The law  
13 and your authority is quite clear. Your office, on  
14 behalf of the Secretary of Interior, is obligated to  
15 provide Ketchikan Indian Community the same  
16 privileges that BIA routinely and regularly extends  
17 to dozen of -- dozens of tribes in the 48 states.  
18 Your office must accept our 34.732 acres into trust.  
19 Our 34 -- I'm just going to say 34.8 acres -- parcel  
20 is undeveloped land. Valuable timber was removed  
21 from it before we purchased it. It is a vacant site  
22 with economic development potential. We do not  
23 contemplate any change of use, but the borough has  
24 been asserting the growing property tax liability  
25 against Ketchikan Indian Community for which we seek

1 federal trust protection. So I ask, will your office  
2 immediately begin to process our application of 34.7  
3 acres? Any delay on your part is costly to us and  
4 would violate what congress has established as the  
5 rule in 1994 -- in the 1994 amendments. You cannot  
6 create two classes of tribes. You cannot  
7 discriminate and provide one group of tribes  
8 privileges -- privileges you withhold from another  
9 group of tribes.

10 And then, if you -- if the department were to  
11 promote regulations governing land into trust  
12 acquisitions, specific to federally recognized tribes  
13 in Alaska, how might those regulations differ from  
14 the part -- from Part 151? Such regulation should be  
15 and would be struck down in court because they would  
16 be in violation of the 1994 amendments to the Indian  
17 Reorganization Act. There is no lawful or practical  
18 reason why the department should promote rules  
19 specifically regulating land into trust acquisitions  
20 by tribes in Alaska that are different from those  
21 rules regulating all other tribes.

22 And so, to today, by no disrespect, I hand you  
23 our application for our property that is out north.  
24 It's right across from -- I don't know if you guys  
25 have been to Ketchikan before. Totem Bight. There

1 is a beautiful totem park there. We have a big  
2 parcel of land that we just purchased last year. And  
3 actually, Ketchikan Indian Community was pretty savvy  
4 about purchasing the land, because we have also had I  
5 guess maybe issues with community -- other community  
6 members when the tribe was to try to purchase land,  
7 been taken advantage of. And we got pretty savvy and  
8 formed an LLC outside of the State of Alaska, and we  
9 did not have to disclose who the buyer was. And we  
10 purchased the property for a good fair amount without  
11 it spiking up to about 3,000,000. So, thank you.  
12 and I hope that you review our application, and I  
13 hope that we get a speedy response. (Native  
14 language).

15 MR. WALLACE: President Lee Wallace, Saxman  
16 Organized Village, Saxman IRA Council. Well,  
17 gentlemen and women, you just heard from KIC with the  
18 application that they just handed over to Gene. It's  
19 imperative that you practice your trust  
20 responsibility to the federally recognized tribes of  
21 the 229 tribes in Alaska, and reinstate what was  
22 previously ruled on. Now is the time to withdraw  
23 that. Not in October, but today. So when Gene goes  
24 back to Anchorage he could get his staff going on  
25 their application and go through the process. Craig

1 has done that.

2       When Craig gained their trust status, land into  
3 trust, there was applause from all the 229 federally  
4 recognized tribes that the process will work. And  
5 it's a process that's needed that our tribes need to  
6 put some of their lands into trust. For obvious  
7 reasons; economic development, housing, and other  
8 needs that will enhance our -- our growth in  
9 perpetuity of our -- of our nation. So now is the  
10 time to get that and make that action. Don't delay  
11 it any longer.

12       And again, the tribal councils should have been  
13 undertaken before the solicitor made his withdrawal  
14 of the 217 M-opinion. Not after. So here are guys  
15 saying, oh, solicitor we withdrew it, now let's hear  
16 from tribes. That's all backwards again. Again,  
17 it's really all about trust responsibility and  
18 following through with that.

19       You know, we were at the dinner with Matt  
20 Newman, or lunch with Matt Newman, and we had slow  
21 service at the restaurant. And I said, darn, we're  
22 going to be late getting back. After I got after you  
23 guys for starting late. But when I got back, I  
24 observed President Cook at the podium here, and I  
25 noticed the man with microphone. I said, who's that?

1 In my mind, I said it had to be media. Not that I'm  
2 opposed to media, like our president, because media  
3 is good. They're good for the government and they're  
4 good -- especially good for the citizens of the  
5 nation. And I did notice Scott Bowlen from the  
6 Ketchikan Daily News and -- but he stood and when the  
7 discussion was happening, I called for Scott. I  
8 said, Scott, it's not that we don't want you here.  
9 And I said, probably tribes would be welcome to talk  
10 to you after the consultation session. But now is  
11 not as a place to have media and any others in this  
12 room, except tribes and the U.S. government. Because  
13 it's a government to government. It's not -- not --  
14 well, like your 2002 letter, there's a listening  
15 session. Probably media and others would be welcome  
16 there. Public meeting in Juneau, media and others  
17 could have been there. But all of your other  
18 consultations are closed to the general public.  
19 That's why I raised the whole thing about  
20 consultation policy. And I think consultation policy  
21 if it was right here and open, I think you guys  
22 probably would have told the two gentlemen, I'm  
23 sorry, you're probably not going to be invited here.  
24 But as soon as it got my attention, discussion was  
25 happening and, of course, then they politely left.

1 So, that's -- that's my whole thing.

2       And you know, the same questions are -- that I  
3 gave this morning, I'm still not really satisfied  
4 with that, you know. You're still in the middle of  
5 all our seasons to gather food, catch fish, hunt, all  
6 that. Now is not the time. The time again, like I  
7 mentioned earlier, is look at AFN, look at BIA  
8 providers. They're two of the largest meetings in  
9 the State of Alaska. Probably the men in Washington  
10 D.C. didn't realize that. They probably didn't  
11 discuss this with the BIA regional director.  
12 Probably just made it on their own; let's -- let's  
13 just do this again. So, totally just attack. Attack  
14 on the IRA governments in Alaska. Attack on our  
15 sovereignty. Disregarding our sovereignty. You  
16 should have had that consultation prior to the  
17 solicitor's withdrawal.

18       You know, again, the consultation that I'm  
19 recommending, and BIA providers, our AFN, or maybe  
20 even both of them, it's where you're going to get the  
21 largest participation, and you're going to get  
22 advance warning, and you'll have more input from all  
23 the tribes that you're probably not going to get from  
24 -- from these sessions. You need far more than two  
25 hours. From all the tribal leaders in the whole

1 State of Alaska.

2       You know, the process -- and again, I mentioned  
3 Craig and the process worked. And for Craig to get  
4 there, there took many years of consultation, many  
5 years of meetings to happen to -- to overturn  
6 Alaska's omission from land into trust. And so when  
7 the decision was made to -- to have Alaska  
8 participate and be able to put land into trust, that  
9 process with Craig happened. Today you got the KIC  
10 application. And I'm sure there's many more tribes  
11 that -- that are in the chute, preparing to submit  
12 applications. I know in Saxman we had the discussion  
13 of land into trust and as president, I -- I see some  
14 of our land that we currently own, I definitely want  
15 to put into trust. And I know the -- it's a  
16 protection that we'd have for our land from now and  
17 forever. Where without it, we don't have that  
18 protection. And I think it'd only be great to  
19 enhance our economic development in Saxman. But  
20 again, I'm going to repeat, now is the time to really  
21 reinstate the 2017 opinion.

22       Again, there's a lot of history and I think  
23 maybe attorneys would be best to cover all that, but  
24 -- but it's been years of litigation and consultation  
25 and work on a lot of individuals and tribes and part



1 to get us to where we were before the withdrawal of  
2 the solicitor's. And so again, it's just time to  
3 reinstated it. And again, my frustration of timing  
4 involved.

5       You know, many -- many of my tribal leaders  
6 welcomed you here. Verbally. I really haven't said  
7 that, except for giving that welcome to Gene.  
8 Because of my opinion of -- of the whole process  
9 here. To me, it was all backwards. If it was done  
10 in the right way, tribal leaders here and tribal IRAs  
11 would probably lavish you with gifts in a real  
12 welcome. But the way it was done, I -- it's -- I  
13 just can't do it. And if we see forward movement on  
14 reversal, then wow, I'm going to -- going to say you  
15 listened to some of the people that -- we can't wait  
16 until the October sessions. This is got to happen  
17 now, because KIC wants their -- their process to  
18 happen now, not -- not to be delayed and shelved for  
19 countless months or years. Thank you.

20       MR. MICKLIN: Will Micklin, third vice president  
21 in Central Council of Tlingit and Haida Tribes of  
22 Alaska. This morning, as part of the IRA discussion,  
23 I went through the Indian Reorganization Act, the BIA  
24 list of 1993 of federally recognized tribes that  
25 included Alaska tribes and the 1994 Tribal List Act.

1 That, along with the withdrawal of the moratorium and  
2 the non-gaming fee to trust regulations under Part  
3 151 of 25 USC and CFR, that is removing the  
4 moratorium on fee to trust in Alaska, there stands no  
5 barrier to the secretary exercising his discretion to  
6 convey lands in trust for the benefit of Alaska  
7 tribes. That, we feel, is a clear expression of  
8 substantive law that provides not just the  
9 availability of discretion, but the obligation under  
10 the federal trust responsibility for the secretary to  
11 take that action.

12 That being the case, it is -- there would seem  
13 to be some underlying more -- less explicit rationale  
14 for a question of why the clear authority, both  
15 regulatory and statutory, would not be exercised by  
16 the secretary. So, on the presumption that there is  
17 further questions to be addressed and resolved, I'll  
18 address those -- a couple that would rise in my mind  
19 to be a reasonable use of our time in discussion.  
20 And that would be the -- a brief discussion on Indian  
21 country, on the -- the inherent tribal authority for  
22 tribes in Alaska, with the various statutes that have  
23 -- and court decisions that have been decided, and  
24 the Chevron deference versus the Indian canons of  
25 construction.

1           So, I'll start off by saying that the -- by  
2   asserting that fee to trust conveyances and the  
3   designation of an area as Indian country is, as you  
4   have heard in testimony today, particularly from KIC,  
5   is incredibly, extremely important to Alaska Native  
6   tribal governments. Through Indian country and fee  
7   to trust and a parcel established in trust through  
8   the fee to trust process, we recognize our right to  
9   control our own lives and affairs within territorial  
10  jurisdiction. In Indian country, Alaska Natives  
11  enjoy inherent sovereignty, the right of self-  
12  government and self-determination, and specifically  
13  in Indian country a tribal government has the power  
14  to enact and impose taxes, to adopt and enforce our  
15  own internal tribal laws, to adjudicate civil  
16  disputes, to issue marriage licenses, to buy and sell  
17  property, to regulate land use, to provide essential  
18  and non-essential governmental services, and to  
19  regulate affairs and provide public safety services  
20  on tribal land.

21           Alaska tribal governments also enjoy the same  
22  sovereign immunity possessed by federal and state  
23  governments. They can be sued only if they consent,  
24  or if they engage in acts beyond the scope of their  
25  authority. These are expressions or the actual

1 attributes of governments that are necessary for the  
2 functioning of a government.

3       You heard the -- from -- again, from KIC, the  
4 testimony that trust lands provide real opportunity  
5 to economic development. It also, at a very basic  
6 level, provides the eligibility for federal funding,  
7 which is in most instances, predicated upon  
8 satisfying the eligibility that the entity, the tribe  
9 making application for funding, possesses and  
10 interest in trust land. Without that, as in for  
11 example the tribal energy -- the Energy Policy Act of  
12 2005, the term of art, the definition for Indian  
13 lands, which is the qualifier, the eligibility  
14 requirement for tribes to receive funding, is trust  
15 land. In different forms. It could be reservation,  
16 formal reservation or generic trust land, however  
17 adopted. Once trust land, that tribe that possesses  
18 and interest qualified for funding. Without that,  
19 you do not. So we are challenged for energy funding,  
20 we are challenged for law enforcement, for public  
21 safety funding. I could go through a long list of  
22 federal programs that are funded for every other  
23 tribe that has trust land, but is denied to tribes  
24 that are without trust land.

25       So, given the fact that this is a -- important

1 to our communities, and the conveyance of -- the  
2 approval of trust applications would mean a  
3 significant improvement to our governmental and  
4 social welfare and public safety interest, just by  
5 adopting a parcel, half an acre, an acre, or 38 and a  
6 half acres with KIC, makes an immediate difference in  
7 the federal funding pipeline for tribes, and the  
8 opportunity for economic development and leveraging  
9 private funds or public funds for the greater good of  
10 our constituents.

11 So, let's examine some other nuances of -- that  
12 -- that could be holding us -- holding you back in  
13 proceeding, which -- again, which we think is a clear  
14 path to exercising that -- that discretion that we  
15 feel is the obligation of the federal trustee.

16 According to the -- and first, let's look at the  
17 canons of construction. According to the federal  
18 Indian laws, canons of constructions, statutes  
19 enacted for the benefit of American Indians and  
20 Alaska Natives must be liberally interpreted in their  
21 favor. But a doctrine of statutory interpretation  
22 challenges certain applications of the Indian canons.  
23 So, I'm referring to the supreme court in Chevron USA  
24 v. Natural Resources Defense Counsel, Incorporated.  
25 That doctrine requires that -- which is called the

1 Chevron deference. That doctrine requires that  
2 courts defer to administrative agency interpretations  
3 of ambiguous language in statute where they authorize  
4 -- that they authorize to administer. In instances  
5 where agencies construe statutes against Indian  
6 interest, Chevron deference, and the Indian canons  
7 dictate opposite results for a review in court.

8 Under Chevron, a court must defer to an agency's  
9 interpretation only if it is based on a permissible  
10 construction of the statute. An agency  
11 interpretation that does not take into account an  
12 applicable canon of construction, fails this test and  
13 is not entitled to deference. Where a statute is  
14 enacted for the benefit of the Indians are at issue,  
15 an agency must apply the Indian canon in order for  
16 its interpretation to be permission and entitled to  
17 deference. And agency may have discretion to  
18 disregard the Indian canon where it is construing how  
19 a statute of general applicability affects Indians.  
20 In no event, however, does the Chevron doctrine  
21 displace the Indian canon. Rather, as a sound  
22 analysis under Chevron -- a sound analysis under  
23 Chevron requires that the agency correctly apply the  
24 Indian Canon. Alaska Native Settlement Acts --  
25 Settlement of Land Claims left intact Alaska Native

1 jurisdiction over the lands they retained. Prior to  
2 ANCSA Alaska Native tribes exercised civil regulatory  
3 jurisdiction over their lands, and in federal Indian  
4 law, Indian rights are reserved unless congress  
5 explicitly terminate them. Congress made no  
6 statement abrogating Indian country in ANCSA.

7 Further, ANCSA had been enacted during the self-  
8 determination period after the termination policy era  
9 change, during which the federal government  
10 recognized the importance of tribal government and  
11 other institutions without abating federal  
12 responsibilities to tribes or rescinding tribal  
13 rights under federal law. Congress' 1987 amendments  
14 to ANCSA were explicit in not making law on the  
15 Indian country issue. Section 17 of the amendments  
16 provides, in 17(a), no provision of this Act, meaning  
17 the Alaska Native Claims Settlement Act, amendments  
18 of 1987, shall be construed to validate or invalidate  
19 or in any way affect any assertion that Indian  
20 country, as defined in 18 USC 1151, or any other  
21 authority, exists or does not exist within the  
22 boundaries of the State of Alaska.

23 In 1993 came the Sansonetti solicitor's opinion  
24 that expressed the view ANCSA had abrogated Indian  
25 country. And the '93 opinion was an -- is an

1 unauthorized, unpublished, and informal agency  
2 interpretation. The opinion, therefore, lacks the  
3 weight of law, is not binding on the courts, and is  
4 no claim to Chevron deference. It's a matter of  
5 federal Indian law because ANCSA is a statute enacted  
6 for the benefit of Indians and contains ambiguous  
7 language with regard to Indian country. Courts must  
8 interpret it with the aid of the Indian canons.  
9 According to the federal Indian laws, canons of  
10 construction number 1, laws enacted for the benefit  
11 of Indians are construed liberally in favor of the  
12 Indians; number 2, drafting language is interpreted  
13 as the Indians would have understood it; and number  
14 3, ambiguities cannot diminish existing Indian rights  
15 because congress must do so explicitly. And I'll  
16 return to this -- this question of policy on the  
17 explicit diminishment requirement.

18       These canons have developed over many years of  
19 interactions between and your Americans and offers  
20 clarity, stability and harmony in an otherwise  
21 confusing maze if we follow the law. A doctrine of  
22 statutory interpretation in some areas is viewed to  
23 challenge the application of Indian canons. The  
24 doctrine requires the courts defer to agency  
25 interpretations of ambiguous language that they were



1 authorized to administer. Federal administrative  
2 agencies must often interpret statutes affecting  
3 Indians. We grant you this.

4 In instances where agencies have construed vague  
5 statutory language against Indian interest, not as  
6 Indians would have understood it, or as abrogating  
7 reserved rights, Chevron deference and the Indian  
8 canons dictate different outcomes.

9 Where congress enacted ANCSA, it was aware of  
10 the doctrine of inherent tribal sovereignty and the  
11 definition of Indian country, yet congress did not  
12 state that ANCSA extinguished Indian country or  
13 inherent tribal sovereignty, and my quote from the  
14 1987 amendments makes that explicit. With the  
15 Sansonetti opinion in '93, the State of Alaska, in  
16 its petition for certiorari to the supreme court, the  
17 State argued the solicitor's opinion merited -- this  
18 is the Sansonetti opinion -- merited considerable  
19 deference, because it came from the federal agency  
20 charged with implementing ANCSA in 43 USC 1624. And  
21 indeed, with overseeing all Indian affairs, and they  
22 cited 25 USC section 2. However, these statutes do  
23 not authorize the Department of Interior to make  
24 binding law on Indian country through the issuance of  
25 a informal solicitor's opinion. The cited portion of

1 ANCSA, 43 USC 1624, does not -- does confer upon the  
2 secretary certain interpretive authority. The exact  
3 and complete language, which was absent from the  
4 state's petition, is, and I quote, the secretary is  
5 authorized to issue and publish in the federal  
6 register, pursuant to sub-chapter 2 of chapter 5 of  
7 title 5, such regulations as may be necessary to  
8 carry out the purpose of this chapter.

9       Sub-chapter 2 of chapter 5 of title 5 is the  
10 administrative procedure act, which provides for rule  
11 making, making subject to a notice and comment period  
12 of which publication in the federal register is a  
13 crucial part. In short, through ANCSA congress  
14 authorized the secretary to promulgate regulations  
15 through the formal APA process. If the secretary had  
16 followed the ANCSA and APA, affected tribes and  
17 individuals would have had an opportunity to read the  
18 proposed findings on Indian country in the federal  
19 register and participate in the notice and comment  
20 procedure. ANCSA did not delegate to the secretary  
21 authority to make law by issuing informal agency  
22 opinions in circumvention of procedural safeguards of  
23 the APA.

24       Because the secretary did not subject his  
25 solicitor's opinion, the Sansonetti opinion of 1993,

1 top the APA rule making procedure, it remains an  
2 opinion, non-binding on the public or the courts.

3 If ANCSA had intended -- if congress had  
4 intended ANCSA to extinguish Indian country in  
5 Alaska, it would have expressly done so. In fact,  
6 the following statement from the house committee of  
7 interior and insular affairs in the 1987 ANCSA  
8 amendment emphasizes that congress intended to limit  
9 ANCSA to settling the issue at hand, land claims, and  
10 that ANCSA did not extinguish Indian country or  
11 divest Alaska Native tribes of their inherent tribal  
12 sovereignty.

13 The quote, ANCSA was an Indian land claim  
14 settlement act. It was not, at the time, the intent  
15 of congress to deal in any way with the issue of  
16 governmental authority of villages in Alaska. If  
17 village entities had tribal governing powers under  
18 existing law prior to the passage of ANCSA, ANCSA did  
19 not affect them. It is the intent of the committee  
20 that this is an issue which should be left to the  
21 courts in interpreting applicable law.

22 Congress' 1987 amendments to ANCSA were explicit  
23 on not making law on the Indian country issue.  
24 Section 17 amendment provides: no provision of this  
25 act shall be construed to violate or invalidate or in

1 any way affect any assertion that Indian country  
2 exists or does not exist within the boundaries of the  
3 State of Alaska. I repeat -- I repeated that quote.

4       According to the United States Supreme Court,  
5 any Indian right that is not expressly extinguished  
6 by a treaty or federal statute is reserved to Indian  
7 tribes. Under this reserve rights doctrine, since  
8 ANCSA did not expressly extinguish Indian country,  
9 Alaska Natives retained their inherent tribal rights  
10 and self-governance rights. In addition, all  
11 statutes affecting Indian rights are to be liberally  
12 construed under the Indian canons. Since ANCSA falls  
13 into the category of federal statutes enacted for the  
14 benefit of Indians, it too must be liberally  
15 construed and interpreted so that any doubt about  
16 whether it extinguished Indian country must be  
17 resolved in the favor of Alaska Natives.

18       In short, the intent of congress to extinguish  
19 Indian country must be reflected by language that is  
20 clear and plain. Since Indian country and tribal  
21 sovereignty were not extinguished by ANCSA or any  
22 subsequent language, they continue to exist.

23       The Sansonetti opinion completely ignored the  
24 federal Indian law canons requiring the statutes pass  
25 for the benefits of Indians to be liberally construed

1 in Indians' favor and that divestiture of Indian  
2 rights must be plainly stated by congress.

3 In the Venetie case, Justice Thomas came close  
4 to announcing an exact opposite of the prevailing  
5 view of the canon of Indian rights as affirmed in  
6 Supreme Court decision that are reserved unless  
7 congress explicitly states otherwise, when he wrote  
8 in the opinion, and I'm quoting, the federal set-  
9 aside requirement that also reflects the fact that  
10 because congress has plenary power over Indians --  
11 Indian affairs, some explicit action by congress or  
12 the executive acting under delegated authority must  
13 be taken to create or recognize Indian country.  
14 Under this theory, which is unique to Justice Thomas,  
15 Indians seem to have no rights unless congress  
16 creates them. This is completely opposite to  
17 inherent rights for tribal authority that preexisted  
18 both contact and federal statute.

19 I heard from principal deputy's assistant  
20 secretary Tahsuda in Juneau during our listening  
21 sessions, views that seemed more in alignment with  
22 Justice Thomas, that there need be enumerated  
23 authority for tribal powers. Which again, is in --  
24 completely a diametrically opposed to the reserved  
25 rights doctrine, which is the prevailing view. And I

1 would be concerned that a -- our trustee, who is a  
2 principal among our trustees, would have a view that  
3 would be counter to the prevailing federal Indian  
4 doctrine of reserved rights.

5       Prior to the adoption of ANCSA, even prior to  
6 purchase of Alaska by the United States, Native  
7 Alaskans had inherent tribal authority -- tribal  
8 sovereignty, as well as Indian title to the territory  
9 we had long possessed, used and occupied as our  
10 ancestral land.

11       So, I will sum up by saying that the fee to  
12 trust moratorium in the previously unilaterally  
13 imposed by the department, divided Alaska Natives.  
14 That is it withdrawn, we are thankful that it is.  
15 However, you need to understand that in dealing with  
16 that moratorium, which took many years of assertive,  
17 aggressive advocacy on our behalf, we got to that  
18 point by significant division amongst our peoples.  
19 There were those that supported fee to trust  
20 applications; there were those that opposed fee to  
21 trust applications. There was a long history leading  
22 up to the enactment of ANCSA where there was concern  
23 about the development of a reservation system within  
24 the State of Alaska that some opposed, and other  
25 supported. We took much personal injury and division

1 in coming to consensus that Alaska tribes support fee  
2 to trust for tribes in Alaska, because of the many  
3 benefits that have been testified to today by the  
4 tribal leaders present and certainly on the behalf of  
5 those many that for many reasons could not be here  
6 today. We resolved our differences and the -- with  
7 the litigation that was mooted because of the  
8 withdrawal of the exception and the M-opinion by past  
9 solicitor Tompkins, we felt we were in a position to  
10 move forward. Craig Tribal, under the leadership of  
11 President Cook, succeeded in the fee to trust  
12 application and we are here today, through no fault  
13 of our own, and I must personally say is a --  
14 mystified as to the rationale why clear expressions  
15 of substantive law in uniform alignment with the  
16 federal Indian policy and doctrines, reserve rights  
17 -- right doctrines underline the -- both Indian  
18 country and the fee to trust process under section 5  
19 of the IRA which is indisputably still present within  
20 the amendment, the 1936 amendment for Alaska tribes,  
21 how this could be disregarded to the point where the  
22 secretary would not exercise his discretion to convey  
23 lands in trust for our benefit.

24 I -- I am hoping that with the -- our expression  
25 today, that you will surrender to our consensus

1 opinion and go back to your offices and immediately  
2 begin processing these fee to trust applications.  
3 I'm not confident of that, but it would certainly be,  
4 I think, a reasonable response to the expressions of,  
5 and the pleadings that you've heard throughout the  
6 tribal consultation period. I do recommend that when  
7 -- if and when indeed you get to that point, it would  
8 be most helpful is you examine the April 2017  
9 guidance on fee to trust applications and recognize  
10 that because there are not reservations in Alaska,  
11 meaning existing trust land, with the exception of  
12 the Metlakatla reservation, the formal Big R  
13 reservation, and trust parcels held by various  
14 communities, a few in Southeast, and now with the  
15 Craig Tribal trust parcel, that these not -- these  
16 applications, like the KIC application submitted  
17 today, not be treated as off-reservation and sent to  
18 central office. As principal deputy assistant  
19 secretary Tahsuda said, all processes for  
20 applications are proceeding without interruption to  
21 the point of signature, there is simply not the  
22 signature as the final approval being applied to the  
23 application. I would suggest that that process could  
24 be most efficient if conducted within the Alaska  
25 regional office with our regional director. Tlingit-



1 Haida, who took over the realty office with the 1994  
2 amendments, the first tribe to do that for an entire  
3 region, stands ready to assist in that -- in that  
4 process. We have expertise that could expedite this  
5 process. I understand that there is limitation on  
6 resources and capacity in many regional offices. The  
7 Alaska regional office not being an exception to  
8 that. We stand ready to provide those collaborative  
9 resources to move these applications to the point of  
10 final signature, and we would implore that you make  
11 that change, return these applications to the Alaska  
12 regional office and we move this to the point of  
13 signature so that those signatures can be applied as  
14 quickly as possible. With the long line of  
15 applications now awaiting signature, the Tlingit-  
16 Haida's one app -- the first -- our first application  
17 submitted in 2009. We have other that are either  
18 ready for signature or soon to be ready for  
19 signature. We are certainly hopeful that KIC will  
20 not be far behind ours for that final signature, and  
21 it would be a reasonable response to ready your pen,  
22 Mr. Regional Director, for approval of those  
23 applications, all the way to today's application. So  
24 thank you.

25 THE REPORTER: Excuse me, Mr. Fish. It appears

1 that you're going to go beyond 3:00 with comments.

2 And if that's the case, I need to download this

3 information on the computer. So if you could

4 possibly take about a five-minute break?

5 UNIDENTIFIED VOICE: How much longer

6 (indiscernible)?

7 THE REPORTER: I'm showing that there is six

8 minutes left.

9 UNIDENTIFIED VOICES: (Indiscernible).

10 MR. FISH: (Indiscernible) be available

11 (indiscernible) as well, but we can go ahead and take

12 yours and then take a five-minute break, find out

13 where we're at after that. Is that okay with

14 everybody?

15 UNIDENTIFIED VOICE: Yeah.

16 MR. NEWMAN: All right. So being very aware of

17 the time, just again, for the record, my name is Matt

18 Newman, staff attorney at Native American Rights

19 Fund. And when it comes to land into trust, I -- I

20 was one of the attorneys on the Akiachak litigation.

21 And so today, you know, I want to cut right to the

22 issue. Your first three questions that you have

23 posed to tribal leaders have to deal with the

24 authority of the department, or the secretary in

25 particular, to take land into trust. And I'm not

1 going to answer those questions today, because what I  
2 want to report to you is that those three questions  
3 have been answered. They were answered by the  
4 federal district court in the Akiachak opinion. They  
5 were answered in the 2014 rule making that your  
6 department undertook, where public hearings and  
7 tribal consultations took place throughout the State  
8 of Alaska. Hundreds of public comments were  
9 collected, hundreds more written comments from  
10 tribes, ANCSA corporations, the State of Alaska and  
11 other interested parties were lodged. So, with these  
12 questions, we're really in a situation here where how  
13 much more information does the department need? Are  
14 you unsatisfied with the answer that you got in 2014?  
15 Why are we rehashing these issues again?

16 And that goes into as well, the process for  
17 taking land into trust. One of your questions asks  
18 whether or not Part 151 is appropriate. And I would  
19 sure hope the department thinks it's appropriate.  
20 Because the first time that that question was asked,  
21 your answer to the United States District Court for  
22 the District of Columbia was that the 151 regulations  
23 were the appropriate process for Alaska. The tribes  
24 disagreed with you at the time, and you won. You've  
25 represented to the federal courts, you have

1 represented to the public that these regulations can  
2 work in Alaska. And in fact, you proved it by taking  
3 land into trust for Craig Tribal Association.

4 So, it really -- all of this goes to begging the  
5 question; why are we here? Why are we re-litigating  
6 a settled issue? Why are we reopening these old  
7 wounds that are just now, as many of the speakers  
8 before me told you, just now starting to heal. This  
9 is not a good use of the department's time. It is  
10 not a good use of the tribal leaders' time. So many  
11 other issues of importance to tribes were brought to  
12 your attention earlier today, yet we are here re-  
13 litigating cases of the past. It is inappropriate,  
14 it's unnecessary, and I would urge the department to  
15 reinstate the former Tompkins opinion so that we can  
16 continue processing applications by tribes to put  
17 their lands into trust in Alaska. Thank you.

18 MR. FISH: Five-minute break. Do we have any  
19 more?

20 UNIDENTIFIED VOICE: How many minutes do you  
21 have left?

22 MR. FISH: We'll take a break and  
23 (Indiscernible).

24 MS. APPEL: (Indiscernible) anyone wants to make  
25 a comment, we'll get to that. So five minutes.

1 (Off record)

2 MR. FISH: All right. Thank you, everybody.

3 Take a seat. All right. I think we're going to open  
4 the floor up for some, you know, some final thoughts.

5 (Indiscernible) say anything that (indiscernible)  
6 relevant to the consultation here. So, go ahead.

7 MS. PATA: Thank you. Jacqueline Pata, second  
8 vice president of the Tlingit-Haida Tribes Central  
9 Council. I also am the executive director of  
10 National Congress of American Indians, and I also sit  
11 on the Sealaska board. And I don't typically wear  
12 all those three hats at one time, but I only -- but I  
13 wanted to make sure that it was on the record that  
14 -- that National Congress of American Indians has  
15 supported and continues to support Alaska land into  
16 trust for tribes. We have resolutions of support.  
17 Tribes across the country have rectified --  
18 recognized that the challenges of Alaskan tribes to  
19 deal with issues of violence against women, other  
20 kind of protections in play -- protections to be able  
21 to deal with some of the challenges of subsistence,  
22 some of the challenges of climate change, tribes have  
23 come together. And so it's not uncommon that the  
24 large delegation of Alaskans that show up at NCAI  
25 have gotten -- received the support of tribes across

1 the country.

2       Clearly because, as we look to Indian self-  
3 determination and the definition of ISDA, it  
4 recognizes Alaska Native tribes and also recognizes  
5 the importance of making sure that we have -- tribes  
6 are treated fairly across the country, and that  
7 tribes across the country have the same  
8 opportunities.

9       I also wanted to mention that Sealaska, a  
10 regional corporation here in Southeast Alaska, also  
11 supports land into trust for tribes.

12       And so, even when you hear conversations about  
13 challenges of subsurface rights or how to deal with,  
14 you know, various complexities of land ownership and  
15 -- and collaboration with the tribes, Sealaska, from  
16 the very onset, had made it very clear that we  
17 support tribes. Inasmuch, in fact, that even the  
18 historical sites that Sealaska has received under the  
19 entitlements, that they received, they have partnered  
20 with tribes and have developed MOUs and are looking  
21 forward to having an ongoing relationship, even so  
22 that they -- those lands may, as deemed fit to be  
23 transferred to the tribes.

24       And I bring that to your -- bring that up,  
25 because I think that when I talk about Alaska Native

1 lands, and the history of Alaska Native lands, and I  
2 won't -- this will not be lands claims or a  
3 discussion; we're not going to re-litigate that. But  
4 I think it's important to recognize that Alaska is  
5 rich with lots of riches. And our natural resources  
6 are abundant. And Alaska Natives, at the time of  
7 these provisions, ANCSA, IRA, other kinds of legal  
8 provisions, Alaska Natives were a high percentage of  
9 the population within the State of Alaska. And the  
10 political climate was, and continues to be, of  
11 concern about how do we deal with the Alaska Native  
12 issue. And -- and I think we've heard that even from  
13 the Lower-48. And particularly in Southeast Alaska  
14 where the forest industry was strong and the industry  
15 had a lot of influence in what was happening with  
16 decisions that were being made. But even in those  
17 times there was a recognition of protections of  
18 Alaska Native lands. And so, even during those times  
19 we had access to -- although limited, and that's why  
20 we're dealing with the veterans' allotment issue --  
21 but through allotments. There was recognition even  
22 in ANCSA for protections, a need for protections.  
23 And so, the undeveloped lands are -- were kept from  
24 alienation. And even when we went back to congress  
25 again for the 1991 amendments, those amendments were

1 to continue to allow those protections to be in place  
2 from alienation. Because it was felt not any  
3 differently than in the Lower-48, and I would like to  
4 say that congress recognized the need for there to be  
5 Native land holdings that were protected from -- from  
6 issues such as taxation and loss.

7       And as I said in Juneau, one of the saddest  
8 stories to me is the story of those village  
9 corporations, and even within our own region, many  
10 village corporations felt compelled to be able to  
11 take their limited land resources and to share them  
12 with their shareholders so that they could have home  
13 sites, and we had no vehicle. Now, I want to make  
14 this very clear, because as I said earlier, I was the  
15 director of the housing authority at the time, and I  
16 had those conversations with the tribes. I went to  
17 the villages and I asked them to appeal back to the  
18 administration, to make sure that we -- to make sure  
19 that we could not take those lands and transfer them  
20 over. Because we could transfer lands over, but to  
21 transfer them over so the purposes of protections  
22 under land into trust. Because we knew when we were  
23 developing those subdivisions that we knew that we  
24 would be susceptible to losing some of those very  
25 critical lands that were taken and protected and



1 given to Alaska Natives under the ANCSA settlements.

2 And we were unable to do that.

3       And so I think about not only the loss of land  
4 to Indian country, but what a -- what a liability  
5 from the administration, created basically, by  
6 allowing an administrative rule to prevail, rather  
7 than looking legally to the statutes that applied.  
8 How many home sites, waterfronts would we have been  
9 able to protect? Should we have not had an  
10 administrative rule that chose to not recognize us as  
11 other tribes in the same -- in the Lower-48, to not  
12 give us the same opportunities for self-  
13 determination, and to not be able to protect us in  
14 the way that other tribes have. And to me, that's  
15 the saddest story of this whole conversation.

16       And yet, in 2014, as we went through and we had  
17 conversation after conversation, testimony after  
18 testimony, and I won't go into detail because I think  
19 that Will Micklin did a good job, and also Matt did a  
20 great job at reflecting on those, the record is rich  
21 with information and data. And I wonder, with all of  
22 this conversation, with all of the support across the  
23 country, with tribes coming, Alaska Native  
24 communities coming together in ways that is sometimes  
25 difficult for us to do, to have these conversations,

1 with the ability of you to implement 151 to be able  
2 to address the anomalies of Alaska, just like you do  
3 in Oklahoma or someplace else, why; why is it that  
4 we're here today? What is -- what are you looking  
5 for, and what is next?

6 We heard yesterday from John Tahsuda, who said  
7 that this process would create a delay of at least a  
8 year. Six months to do the consultations and to  
9 review, and another six months to review before we  
10 could possibly have anything. We have waited far too  
11 long and we have lost far too much. And I'm not sure  
12 that six months, a year from now, or another 10 years  
13 from now, as whether or not we're going to come to a  
14 different place. I'm not sure what you're looking  
15 for. I'm not sure what you're seeking. I'm not sure  
16 if -- if all the answers are there. Is there  
17 something that you're -- and -- because if there is  
18 something that you're looking for that you can't  
19 find, we would love to help you find it. If there is  
20 something more that you need in testimony,  
21 specifically, tell us; we will try to address it. If  
22 we need to do a time line and we need to do a  
23 historical perspective, let us know. We know that  
24 from one administration to the next administration  
25 you want to tuck in and to be able to make sure that,

1 you know, you're -- you're -- the due diligence was -  
2 - was taken. But the records are the -- the  
3 government is the government. Our relationship with  
4 the government, you have those records, and if  
5 something is missing in those records, we'd be glad  
6 to help provide that.

7 So, I guess as the last speaker of today, or  
8 perhaps maybe the last speaker of the day, I want to  
9 leave you with that question; what is next? After  
10 these consultations, what's the next step? What can  
11 we expect? We talk about transparency, we talk about  
12 consultation, which is both of us having a dialog  
13 with each other. Consultation is not a listening  
14 session where you listen to us. Where can we help?  
15 What do you need? How do we get off the dime? How  
16 do we move forward? How do we be the efficient  
17 government that this administration wants to be? How  
18 do we make change happen? Thank you.

19 (Indiscernible).

20 UNIDENTIFIED VOICE: This is the ANCSA  
21 department.

22 MR. FISH: Well, thank you all for coming today.  
23 I assure you, we've heard you. We're taking your  
24 sentiments back with us. Again, I regret that  
25 Mr. Tahsuda or Mr. -- or Ms. Sweeney could not be

1 here today. But we're certainly going to take your  
2 comments with us as we go, and we appreciate you  
3 (indiscernible) here.

4 (Off record)

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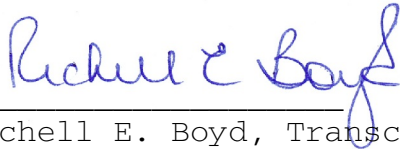
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I, Richell E. Boyd, hereby certify that the foregoing pages numbered 2 through 134 are a true, accurate, and complete transcription of proceedings, transcribed by me from a copy of the electronic sound recording to the best of my knowledge and ability.

8/9/18  
Date

  
\_\_\_\_\_  
Richell E. Boyd, Transcriber