

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
OFFICE OF ASSISTANT SECRETARY
POLICY AND ECONOMIC DEVELOPMENT

TRIBAL CONSULTATION

HELD AT:

The DoubleTree by Hilton, Portland
1000 NE Multnomah
Portland, Oregon

January 25, 2018

9:00 a.m.

Reported by: Rosemary Tanzer, RPR, OR CSR

1 MR. TAHSUDA: Good morning. Thanks
2 everybody for coming, and I think we would like to
3 start off with a prayer. So if there is an elder
4 here attending that would like to offer a prayer for
5 us, I would love to offer that to you. Nobody?

6 Brian has offered to step into the breach.

7 MR. CLADOOSBY: First of all I want to
8 thank Bryan and John for coming out to the Pacific
9 Northwest. Good timing. We have our 18-I conference
10 going on right here, so -- well attended by a lot of
11 leaders. Pray in your own way.

12 Greater God, Heavenly Father, we just thank
13 you for this beautiful day. We thank you for the
14 leadership that you have chosen. We thank you for
15 the leadership that the people have chosen that are
16 here in this room to speak on behalf of their
17 nations. Lord, I thank you for John and Bryan who
18 you also chosen to work with this new administration,
19 Lord. And we pray for this administration and their
20 leadership and we pray that their hearts and their
21 minds will forever be towards Indian country and they
22 would be the trustee that we would hope that they
23 would be. It's a relationship that we didn't ask for
24 but it's one that we inherited and we need to make
25 the best of it, Lord. Sometimes we're not always

1 going to agree, but let's agree to disagree and keep
2 talking. Bless our time together, bless our
3 conversations and bless our families as we are away
4 from them. In Jesus' name we pray, Amen.

5 MR. TAHSUDA: Thank you, Brian.

6 So start off with brief introductions. I
7 know a lot of you folks here. Bryan does as well.
8 But at least for formality sake, my name is John
9 Tahsuda and I am the Principal Deputy Assistant
10 Secretary for the Department of Interior and I am
11 currently the acting assistant secretary until the
12 senate gets its act together.

13 It's always good to have someone else to
14 blame. Right?

15 And with me is Bryan Rice. Bryan is our
16 director of the Bureau of Indian Affairs. And like
17 me, Bryan has been in Indian country for many years,
18 and it's been great working with him for the few
19 months that we've both been on board and I'm really
20 looking forward to the next few years. And his
21 experience and background has already been
22 invaluable. So it's a little bit of a treat. He
23 wasn't originally going to be able to make it out
24 here with me, but we shook things up. And believe it
25 or not, the whole shutdown mess actually worked out

1 better in the sense that we were able to coordinate
2 our schedules and both be out here at the same time.

3 I would like to do also some -- just a
4 brief, I guess, direction in how we try to like to
5 proceed in the most orderly fashion. So I have a
6 list of speakers, and those of you who have come in
7 and have not gotten on the list, please sign in.
8 This is a consultation and so this is a
9 government-to-government interaction. And so I would
10 like to, at the very least, give the priority to
11 tribal leaders here who represent the nations. And
12 so if you have signed in, we'll try to proceed
13 through your discussions. And if there is time left
14 over at the end for other folks who are not
15 representatives or leaders of their tribe, happy to
16 open the mic up for them. But again, this is a
17 consultation. I want to make sure that the tribal
18 leaders get their opportunity to speak on behalf of
19 their nations.

20 I have a list of what -- I will work my way
21 through it. If you hadn't signed on to the list when
22 you came into the door, please do that. I think Liz
23 has a paper with open spots on it that she can bring
24 it up during the break or whatever. And then when
25 you do come up to speak, we have a court reporter.

1 And so for ease of record if you can please clearly
2 state your name and the tribe that you lead, that
3 would be good. I'd appreciate that. So I think
4 probably that's all we need to do. Don't need to be
5 too formal.

6 And I wanted to also give us kind of a lead
7 in where we are and why we're here today, so -- and
8 also probably dispel a few myths, maybe. This
9 process began before I started at the Department, but
10 it reflects many years of comments, interactions,
11 comments of tribal leaders, comments from other
12 people from congress to local community people, et
13 cetera. And as the federal government, we have a
14 responsibility to listen to everybody. Obviously we
15 have a special relationship with the tribes, but in
16 trying to do the best job that we can do on behalf of
17 the federal government and our interactions with the
18 tribes, we wanted to try to take a stab at asking the
19 questions of whether the processes that we use can be
20 improved. And we're doing that in several areas,
21 this is only one of them, but I think it's a pretty
22 important area.

23 So we started off this process by proposing
24 some ideas that would have been amendments to the
25 regulations at Part 151 of the regulations, and

1 specifically the off-reservation provisions in there.
2 And so there was a lot of discussion about maybe we
3 were predetermining things or maybe there was -- we
4 were moving forward too fast. So taking those
5 comments into consideration, we did several
6 discussions, especially NCAI last year and in the
7 fall. We took a step back and said, okay, let's move
8 the discussion a little further back and say, okay,
9 here are some questions that we have received. And
10 again, these come from a variety of sources but
11 primarily from tribal leaders from over the years.
12 So we sent out a new schedule for consultation and a
13 series of questions about what are some of the issues
14 -- these questions are sort of intended to
15 incapsulate comments -- requests for changing the way
16 the Department does stuff, a whole range of things,
17 but trying to capture them into a relatively concise
18 set of questions. If we can work through those
19 questions, maybe we come out on the backend with some
20 ideas on how we can improve the process.

21 So that -- I want you to -- I want to make
22 clear that this is not a predetermined process, but
23 this is an attempt to get the best information we
24 can. There is probably one predetermined assumption
25 in this, and that is there is a better way that we

1 can do what we do, processing land-into-trust
2 applications, and particularly off-reservation
3 applications. Because at the end of the day, they
4 have an impact on the on-reservation applications as
5 well as the difficulties they run into because they
6 are off-reservation.

7 So I guess, like I said, the only sort of
8 predetermined assumption we have at this point is
9 that maybe we could change the regulations and make
10 it work better, more efficiently, more effectively
11 for the tribes so we can do our jobs better on behalf
12 of you.

13 So hopefully you received the New Tribal
14 Leader Letter that has the questions in those. And
15 if possible I would like to keep -- at least get
16 discussion on those questions. If you have other
17 points you want to raise, of course you're welcome to
18 raise those. And -- but I really -- it would be
19 helpful to our process if we can have some discussion
20 focus on those questions as well.

21 The last thing is, we have a good-sized
22 group here. I appreciate and am thankful for the
23 turnout. So we do have some time limitations that we
24 have to fit this into. So I know that many tribes
25 have unique history, unique circumstances in which

1 they operate and which impact how you interact with
2 us and the decisions we make on your behalf. But to
3 the extent that that will take a longer discussion, I
4 would greatly appreciate if we can put that into
5 written comments. Everything here is being taken
6 down by the reporter, but we also accept -- are
7 accepting written comments. So if you have a more
8 extensive background or history to the particular
9 history, facts or circumstances of your tribe, if you
10 could submit those in writing and maybe just give us
11 a very brief overview of that today, that would
12 probably be -- also be helpful on time management.

13 So I think that's all I wanted to cover to
14 begin with. Do you have anything to add?

15 MR. RICE: No.

16 MR. TAHSUDA: Great. I think I have a
17 request to let Chairman Forsman give kind of an
18 opening; is that right?

19 MR. FORSMAN: Yes, sir.

20 MR. TAHSUDA: Thank you, sir.

21 MR. FORSMAN: I would like to -- I'm the
22 first one so I have to get this right.

23 Thank you. My name is Leonard Forsman,
24 F-O-R-S-M-A-N. I'm chairman of the Suquamish tribe,
25 S-U-Q-U-A-M-I-S-H, in Central Puget Sound and

1 recently elected as the President of the Affiliated
2 Tribes of the Northwest Indians. And whether you
3 planned it or not, welcome to ATNI. Our work here is
4 passing resolutions down below, so I'll try to keep
5 my comments brief so I can get back to my other
6 duties. And you'll hear a lot of great testimony
7 from our members of ATNI. And we have some folks
8 from outside of ATNI who I have noticed as well. So
9 I'll keep these fairly general, because they'll be
10 able to get into specifics.

11 So of course we have serious concerns about
12 the proposed regulations. And we really are
13 interested in -- not that -- we really appreciate,
14 John, your commitment, but we would like to have a
15 confirmed Assistant Secretary of Indian Affairs. I'm
16 sure you would agree with us there. So that we can
17 have a true government-to-government consultation in
18 that respect.

19 But as chairman of the Suquamish Tribe and
20 ATNI president and NCAI vice president for the
21 northwest region, I would like to offer the following
22 comments. First, land restoration is critically
23 important to the northwest tribes. The draft
24 regulation is making an assumption that tribes
25 generally have adequate land bases and our

1 off-reservation trust acquisition is limited. This
2 is not an accurate assumption in the northwest. A
3 lot of our reservations are smaller, so they're a
4 very small part of our original ceded areas. And
5 they're often poorly located and away from urban
6 areas and preferable lands. So that requires tribes
7 to, often times, acquire off-reservation parcels for
8 economic development and also for traditional and
9 cultural needs.

10 Most of the tribes here have
11 off-reservation treaty rights to fishing, hunting and
12 gathering. And we are strongly committed to habitat
13 restoration. So a big part of that effort is to put
14 lands into a trust in order to protect them. This is
15 an enormous benefit to the tribes but also to the
16 Department of Interior and the states in general.
17 And we believe the draft regulations would be
18 extremely harmful to these efforts.

19 A number of tribes have scattered trust
20 lands and no reservation established. So
21 off-reservation acquisitions are extremely important
22 to them for re-establishing their heritage and their
23 culture and their political sovereignty.

24 There is one tribe in the northwest that
25 has had to acquire a large portion of land just to

1 have an area where they can hunt unmolested. So
2 there is an option oftentimes where tribes that have
3 the resources can do that. So it's important that we
4 make this process as easy as possible.

5 Our reservation is very small. There is a
6 lot of -- we had 36 acres in 1904, and now we've been
7 re-acquiring lands, both on and off reservation to
8 restore our land base. So oftentimes we have to go
9 off-reservation to acquire the parcels that are
10 available because a lot of our reservation has been
11 occupied by nonnatives. We're actually a minority on
12 our reservation. We're outnumbered about ten to one,
13 but that's a whole other story that we can get to
14 another time.

15 The tribes are doing great things
16 off-reservation, investing in economic, depressed
17 areas. And we are very committed to being a big part
18 of our economic development on and off reservation in
19 our communities.

20 The tribes are not asking for the, quote,
21 benefit of an expedited denial process for
22 land-into-trust acquisitions. We want to make sure
23 that the Department doesn't try to justify these
24 changes by claiming that -- establishing a new
25 two-step process. To quickly turn down trust land

1 applications will spare the tribe the time and
2 expense of completing the trust process. So we don't
3 need this favor to make it quicker for you to deny
4 us.

5 Any attempt to include gaming concerns with
6 the broader land and trust process should be strongly
7 opposed because game regulatory act governs these
8 narrow circumstances. And the Department of Interior
9 has a trust responsibility to tribes, not local
10 governments. We feel empowering local governments is
11 dangerous and I think sometimes assumes that the
12 tribes aren't acting in the best interest of their
13 communities. And we have a good relationship with
14 the county, but that was not always there and -- in
15 Suquamish, for example. A lot of the tribes have
16 very difficult relationships but it's still being
17 flushed out, and oftentimes it's not based on the
18 facts of their own respective histories. And so
19 involving the local governments that often are
20 opposed to the government/government relationship, is
21 difficult for tribes to have to deal with people who
22 won't even recognize them as a government and are
23 really anti-treaty and anti-treaty rights or
24 executive order rights, et cetera.

25 So these animosities can present

1 insurmountable obstacles in reaching cooperative
2 agreements. And the proposed regulatory changes are
3 necessary and warranted. And proposed changes is 25
4 CFR Part 151 are a solution in search for a problem.
5 We suggest the need and wisdom of pursuing this
6 endeavor at a time when so many other basic
7 travesties go unmet and unaddressed.

8 In an environment where we do not have a
9 confirmed assistant secretary, we believe that the
10 Department at the time -- Departmental time, energy
11 and resources can be best directed to other far more
12 important efforts than pursuing these provisions.

13 So that concludes my testimony as president
14 of ATNI. I do have testimony as chairman of
15 Suquamish Tribe, but I yield to the other folks on
16 the list and maybe I can come back later on and
17 provide the tribal comments.

18 MR. TAHSUDA: Of course. So I think up
19 next I have Mr. Reibach from the Confederated Tribes
20 of Grand Ronde.

21 MR. REIBACH: I'll put this up a little bit
22 if you don't mind so I don't have to slouch.

23 Good morning. My name is Jan Reibach and
24 I'm the lands manager for the Confederated Tribes of
25 Grand Ronde. That's G-R-A-N-D-R-O-N-D-E. I would

1 like to welcome the DUI, the BIA, and all our tribal
2 representatives from other tribes here to our
3 homelands, to our ceded lands. Historically the
4 lands that we're on right now were inhabited by the
5 bands of the Chinook people who were part of the
6 Willamette Valley treaty of 1855. Personal note, my
7 great grandfather signed that treaty. So we're very
8 connected to the land.

9 I would just like to say further that to
10 all of our tribal family that are here and our
11 relations, this is very important and it's an honor
12 to be here with you today on this subject. Thank you
13 for all for coming and thank you for coming.

14 So Grand Ronde by treaty, we ceded over
15 14 million acres to the federal government. And as a
16 terminated and restored tribe, the fee-to-trust
17 process is integral in rebuilding the tribal land
18 base that was lost. When our land base grows, our
19 community rebuilds as well, and then our people have
20 an opportunity to flourish and heal and recover.

21 As a result of the diminishment and
22 termination, Grand Ronde was reduced to only a few
23 acre cemetery until it was restored. Through both
24 legislation and fee-to-trust conversions, we have
25 been able to regain over 11,000 acres. Because

1 terminated and restored tribes may not have exterior
2 reservation boundaries, the off-reservation
3 fee-to-trust regulations often apply to land
4 acquisitions of original homelands. Many of our
5 fee-to-trust acquisitions within exterior boundaries
6 of our original reservations, approximately
7 60,000-acre area, were considered off-reservation and
8 processed through the slower, more expensive
9 off-reservation regulations.

10 This issue has really impacted our tribe.
11 It impacted us so greatly that we sought a
12 legislative solution that took many years to achieve
13 and is a partial fix. However, many applications to
14 restore homelands are still processed as
15 off-reservation.

16 We will be presenting -- Grand Ronde will
17 be presenting -- submitting more detailed written
18 comments, but I just have a few that we wanted to
19 share with you today.

20 First, the Bureau is requesting input as to
21 what they should consider in developing the criteria
22 and regulations for off-reservation trust
23 regulations. However, they have already proposed the
24 revised regulations. It would be more appropriate
25 for the Bureau to seek that input through

1 consultation with tribes as the initial step, then
2 develop draft regulations after considering our input
3 to begin with.

4 Second, it is well-known that the
5 fee-to-trust process is a lengthy multi-step process
6 that can take many years to complete. The addition
7 of any more steps or stages would not provide more
8 efficiency, would not streamline, definitely would
9 not help tribes reach their goal. It would only add
10 to that time and expense associated with trust
11 conversion. Therefore we do not support a two-stage
12 process which will only create additional delays.

13 Lastly, we strongly object to the
14 reinsertion of the 30-day appeal process. This is
15 completely unnecessary and creates additional
16 uncertainty and is another delay in the conversion.

17 In closing I would just like to reiterate
18 that the restoration of tribal homelands is a core
19 aspect of tribal sovereignty and cultural identity.

20 Recently through an off-reservation
21 acquisition in the tribes' homelands and with the
22 cooperation of the local and federal government
23 agencies, Grand Ronde was able to celebrate the
24 return of a property with very significant cultural
25 and natural resources as well as historic

1 significance. This is a property that is not for
2 economic development. It's not for gaming, keeping
3 it in its natural state within our homelands that an
4 actual city donated to the tribe in working with
5 them. Now this property will be protected for
6 generations to come. Grand Ronde is hopeful to
7 have -- I actually recant that. I was talking about
8 another property that went into trust. Grand Ronde
9 is hopeful to have that same success with an
10 application that is currently the off-reservation
11 fee-to-trust. This is the one that the city actually
12 donated to the tribe, so it's currently pending.
13 It's very culturally and historically significant.
14 It's in our homelands. And was donated by a county
15 government for the explicit purpose of restoring into
16 tribal ownership through the fee-to-trust conversion.
17 So this is a property that's not for gaming. It's
18 for just very, very simple use, culturally,
19 historically significant, natural resource-type
20 property.

21 Unfortunately that application has been
22 held up in Washington D.C. for months now, and we are
23 uncertain when we will receive a decision. We have
24 inquired several times in the northwest regional
25 office. They've checked back in D.C. but we have not

1 received any answers.

2 So we just ask that the Department of
3 Interior remain focused on its current trust
4 responsibility and the objective of restoring tribal
5 homelands as it considers its regulation.

6 Here we say on these lands when we're done,
7 we say (Native tongue spoken). So (Native tongue
8 spoken) for your time. That means many thanks.
9 Thank you.

10 MR. TAHSUDA: Next up I have Will Micklin.

11 MR. MICKLIN: Will Micklin, M-I-C-K-L-I-N,
12 the second vice president, Central Council, Tlingit
13 and Haida tribes of Alaska. And I'm here on behalf
14 of President Richard J. Peterson and the executive
15 council. With me is Desiree Duncan -- Desiree is
16 here, our realty officer who is -- has the contract
17 delegated authority to process realty activities on
18 behalf of the BIA regional office in Anchorage. So I
19 just want to make an overview statement, address a
20 couple of questions that you referred to as those --
21 among those posed to tribes for the proposed changes
22 to regulation and then ask Desiree to make a few
23 specific comments based on her expertise in practice
24 on behalf of Central Council of the tribes in the
25 region on the implementation of these regulations.

1 So Central Council submitted a fee-to-trust
2 application beginning in 2008. And we struggled
3 through the contention with the administration that
4 the moratorium on fee-to-trust applications and
5 acquisitions in Alaska imposed by the Part 151, that
6 wonderful provision, that accepted that these
7 activities in the state of Alaska was inappropriate
8 and unlawful. We finally prevailed by litigation in
9 the Achiak case and had a completed application
10 submitted to Anchorage in October of this last year.
11 And Desiree will speak directly to those specific
12 applications in the context of these proposed
13 regulatory changes by the Department.

14 I'd just like to say that of the questions
15 posed to us in one through four really go to the
16 question of the purpose and intent and the goals of
17 the Indian Organization Act of 1934. And those were
18 to develop tribal lands and resources for the benefit
19 of tribes. And as you see in the testimony submitted
20 from the National Congress of American Indians and by
21 the ATNI as well as the comments that we'll be
22 providing, specifically from Central Council, those
23 purposes and goals were well-documented in testimony
24 at the time in 1934 as well as in practice since that
25 time with over 65 percent of tribal Indian lands lost

1 between the Dawes Act in 1887 and the IRA in 1934.
2 The effort was to restore these lands. And
3 significantly less than five percent of the lands
4 lost have been restored since the enactment of the
5 IRA in 1934.

6 So really the purpose and goals of the
7 regulation, which is the responsibility of the
8 Department to carry out under the statutory authority
9 of the IRA, is really to acquire lands for the
10 benefit of tribes. And we are most concerned by the
11 imposition of waiting and interest on behalf of local
12 government, state and local government. That is, in
13 our view, inappropriate. The considerations of
14 jurisdiction for state and local government where
15 they have no jurisdiction on tribal lands and the
16 consideration of the impacts and the benefits for
17 state and local government are extremely concerning
18 for us. The purpose and goal and the task of the
19 Department is to evaluate the benefit for tribes.
20 Tribes are not working for state and local
21 government. We do not -- they don't impose their
22 jurisdiction on us and we ought not to contravene
23 hundreds of years of federal Indian law and federal
24 Indian policy by assuming in regulation the rights
25 and privileges that are statutory authority for state

1 and local government that does not currently exist.

2 So we also are concerned by the imposition
3 of additional requirements on tribes for business
4 plans. I'm really -- it's hard to think of other
5 entities, whether they're governments or they're
6 commercial enterprises, that are required to divulge
7 their proprietary business information, their
8 business plans and models for anyone to see given
9 that these applications, once submitted, oftentimes
10 take years in the process. So the utility of
11 business plans that are years old, it is certainly
12 questionable. The impropriety of divulging
13 proprietary business information by a tribe for
14 others to take advantage of and to diminish the value
15 of these proposed uses for the tribe really flies in
16 the face of the purpose and intent of these
17 regulations and carrying out the goals of the IRA.
18 We were to ask that additional requirements for
19 business plans be carefully considered given the
20 injury to tribal interests that occur by divulging
21 this information.

22 And we are also concerned that these
23 changes don't seek to reduce the timeline and the
24 cost burden for tribes. The bifurcation of the
25 process really presents an opportunity, as Chairman

1 Forsman indicated, for the Department to say no to
2 applications and then repeat the process during the
3 second phase, which includes NEPA. And it's very
4 difficult to progress through the first tier of the
5 two-tier process without -- without assuming
6 conclusions that really need be determined in the
7 NEPA study that is vested in the second tier.

8 We see this paralegal in the U.S. Forest
9 Service, where their permitting process for renewable
10 energy use of public lands has the same bifurcated
11 process. And the result, since 2011 when the U.S.
12 Forest Service indicated that their policy goal is to
13 encourage development of renewable energy enterprises
14 on public lands where appropriate is zero megawatts
15 in production on Forest Service lands.

16 They also impute NEPA conclusions in the
17 first tier of the bifurcated process, and then in an
18 off chance that you make it through to the second
19 tier they conduct the NEPA process which really
20 should be part of the single consolidated process.
21 So there is ample evidence that this bifurcated
22 process would work to thwart the interest of tribes
23 in their efforts.

24 So we are -- we have specific
25 recommendations for improving the process. We think

1 that this ought not to be a year's long process. We
2 are well acquainted with applications that have been
3 sitting in the Department for years and years. We
4 are well aware that it became very politicized in the
5 early part of this century, beginning in 2000. And
6 with the whole Abramoff issue, where there was a
7 section with the congressional record, in essence,
8 for sale to advocates where congressional members
9 railed against fee-to-trust applications by tribes
10 because of imputed gaming interest. And we think
11 it's a real mistake to mix part 292 with Part 151.
12 It's difficult enough to have any project that's a
13 nongaming project not be accused of a cumulative
14 benefit that would encourage a later gaming
15 enterprise by mixing the two. Today we can say no,
16 that is suited to the part 292 process instead of
17 Part 151, which is not gaming. But to now mix these
18 and provide the opportunity for a greater -- a more
19 weighted assertion that it could lead to gaming or
20 possibly could be gaming is a real mistake and we
21 think it is actually provided -- prohibited by
22 provision Agren (phonetic) in 2719 C.

23 So those are my general comments, and I
24 would like Desiree to speak specifically to a couple
25 of issues that Central Council has with its

1 applications.

2 MS. DUNCAN: Thank you. Thank you, vice
3 president, and thank you for having this
4 consultation. I really appreciate it. First of all
5 I would like to invite you guys to come to Alaska and
6 have a consultation up there so the Alaskan tribes
7 can come. It's fortunate that I was able to come and
8 be here today.

9 Central Council has four pending
10 applications with the Department of Interior. One of
11 the applications is currently in D.C. for a decision.
12 It was submitted in October of 2017 to the D.C.
13 office and we haven't heard anything on the status of
14 that application. It is a very small lot in the
15 general Indian village, about 1,000 square feet, and
16 basically used for parking. And so we would like to
17 know what the status is of that application. And
18 also our pending applications that we have, if these
19 regulations are adopted are they going to be required
20 to be resubmitted in accordance with those
21 regulations? We think they should be able to be
22 grandfathered in. So as Will stated, we have a
23 number of concerns. We'll be submitting written
24 comments to you. We believe that the two-step
25 process, that's another layer that is unnecessary.

1 So thank you very much.

2 MR. TAHSUDA: Ms. Gina Beckwith, Port
3 Gamble.

4 MS. BECKWITH: Gosh, everyone is being so
5 nice to you guys. Good morning, my name is Gina
6 Beckwith. I'm a member of the Port Gamble S'Klallam
7 Tribe and I'm also legal counsel. I'm here with
8 delegated authority of the Port Gamble S'Klallam
9 Tribal Council. Our vice chairperson was here, but
10 unfortunately he had to leave due to illness.

11 The Port Gamble S'Klallam Tribe is located
12 on the northern tip of the Kitsap Peninsula in
13 Western Washington. We have about 1200 tribal
14 members. We are signatory to the Point No Point
15 Treaty of 1855 wherein the federal government
16 obligated itself both in treaty relationships and a
17 trust obligation. We are a major employer in Kitsap
18 county. Even though we only have 1200 enrolled
19 members, we employ over 450 people. The majority of
20 those people are nonIndians. So we are an important
21 part of the economic development in Kitsap County.
22 Along with Joe Spar (phonetic) we are the two staff
23 that are primarily responsible for processing land
24 acquisitions and placing them into trust. And to
25 date we have been able to place over 470 acres of

1 land into trust.

2 I recently spoke to a group of students at
3 Evergreen State College. And one of the students
4 asked me why it was so important to place land into
5 trust. And as an enrolled member who lives on my
6 reservation, works for my tribe and raised my
7 daughters there, I thought, you know, I have the
8 opportunity to place land that will live -- that will
9 be there forever in perpetuity for my kids, and some
10 day grandkids, and hopefully some day
11 great-grandkids. So I think about it in that way as
12 my personal obligation to work for my tribe and serve
13 my people like this. It's very personal to me.

14 I can't overstate the importance of
15 acquiring land and placing it into trust. It helps
16 us rebuild our homelands and for sovereignty and
17 self-governance. No one can regulate and take care
18 of S'Klallam people like we can. The county can't,
19 the state can't, the federal government can't. We
20 know our people best and we provide the best services
21 for them. And placing land into trust is a critical
22 part of that. It helps spur economic development,
23 provide critical services, essential government
24 services like housing and natural resource protection
25 and Children and Family Services, and protect our

1 cultural identity.

2 Our reservation has always been 100 percent
3 trust land status, and I think that's very unique.
4 We are one of the reservations that are fortunate in
5 that way. I think it's an inherit part of our
6 cultural identity. We don't have land disputes with
7 our neighbors or with each other. That trust helps
8 perpetuate us in our cultural identity as a people.

9 We've used the acquisitions to develop
10 affordable housing for our people, economic
11 development. And we built and developed our tribal
12 government complex that provides space for council,
13 administration, tribal court and health and social
14 services programs. We recently built a hotel and
15 acquired a second convenience store and revitalized a
16 well and renown botanical garden. Our projects serve
17 our people and overall stimulate the economy. But we
18 are only beginning. We have so much work to do. We
19 have over 100 people on our waiting list for housing.
20 We need more land and infrastructure to provide
21 critical services for our people. The tribe has a
22 growing need for health and human services. Every
23 single one of our administration buildings is
24 overcrowded. And we want to continue to build our
25 economy to be more self-sufficient. The tribe relies

1 on trust land for all of these issues.

2 We didn't take part in answering the
3 questions. We didn't want to be led down that road.
4 For us the process has worked. We do not want to see
5 any changes. If we were to ask you to do anything,
6 it would be to allocate more resources and staff to
7 our local agencies to continue to help us provide
8 services.

9 I agree with everybody else on not
10 separating out gaming acquisitions that's just in the
11 Indian Gaming Regulatory Act. And we will submit
12 further comments in writing, so you can expect those
13 as well.

14 I think that's it. I want to leave it at
15 that. Thank you.

16 MR. TAHSUDA: Thank you very much.

17 Vice Chairman Philip Harju.

18 MR. HARJU: Chairman Iyall is here, so I'll
19 defer to him and let him speak first.

20 MR. IYALL: Good morning. Chair of the
21 Cowlitz Tribe. And with me here, of course, is vice
22 chairman Philip Harju and our council, Heather
23 Siverson (phonetic) as well. I guess first up
24 concern --

25 MR. TAHSUDA: Mr. Chair, can you restate

1 your name clearly for the record.

2 MR. IYALL: Yes. And first concern is
3 probably very similar to what we faced in --

4 MR. CLADOOSBY: Chairman, they want you to
5 spell your name.

6 MR. IYALL: Okay. Excuse me. It is
7 difficult. It's original Cowlitz spelled -- you want
8 the Scottish --

9 MR. TAHSUDA: I'm not sure. I didn't hear
10 your name clearly and I'm not sure the court reporter
11 did, but just to make sure. That's all.

12 MR. IYALL: It's I-Y-A-L-L.

13 MR. TAHSUDA: Thank you.

14 MR. IYALL: Thank you. I apologize.

15 Yeah, the first concern we faced going in,
16 with the new administration coming in previously, was
17 the lack of an assistant secretary of the Interior
18 for BIA, when Larry Echohawk assumed that position.
19 It took nearly six months to get that position
20 filled. And here we are now well beyond that, and so
21 I think it's very important to -- for the
22 administration to put that person forward because we
23 work very closely on a personal relationship basis
24 with our agencies and it's much better and easier to
25 put a face on that agency and to be able to

1 communicate on a routine basis. And that continued
2 throughout the process. And we're just hopeful that
3 the administration will do that soon.

4 We feel there is really no justification
5 for treating off-reservation so harshly. We're
6 limited to our newly designated reservation of
7 156 acres. There is lands adjacent to us that would
8 allow great enhancement of economic development,
9 economic diversification, housing, a whole list of
10 needs that other tribes could provide on their
11 reservation. And so -- but even that being said,
12 there is a great need to enhance the process to make
13 it less restrictive rather than more restrictive.
14 And there is yet to be an answer for Carcierri.
15 That's been -- since 2008, that's been a burden on
16 the tribes and used by other tribes and local
17 jurisdictions as a sword and to -- and a weapon
18 against the tribes. So I think that's important that
19 the administration take a hard look at a solution
20 there that could be worked out equitably between the
21 tribes as well as the local communities.

22 And the Department should just rely on the
23 log, just the plain language of IRA. These
24 regulations have strayed so far from that. It's hard
25 to recognize that. Just get back to the basic

1 authority of the assistant secretary, the Department
2 of Interior, to provide guides with restoration of
3 their lands.

4 So I appreciate your time. But one last
5 final comment I would like before I yield the floor
6 to Phil Harju, it's very expensive, a very expensive
7 process. Twelve years in process. Litigation that
8 took us all the way to the Supreme Court. And here
9 there is additional regulations coming on that's just
10 going to generate greater and greater burden and
11 expenses on tribes that have limited opportunity at
12 this point in time. Thank you.

13 MR. TAHSUDA: Thank you Chairman.

14 MR. HARJU: (Native language.) My name is
15 Philip Harju. I'm vice chairman, general council for
16 the Cowlitz Indian Tribe. And that's H-A-R-J-U.
17 That is not a Native American. My father's parents
18 were Finish immigrants. So Harju is a Finish name.
19 My mother Cowlitz.

20 MR. TAHSUDA: I don't know about those
21 Finish people.

22 MR. HARJU: Just too few. It's an honor to
23 be here and represent my tribe. And we've had a very
24 powerful week here with ATNI, with the tribal leaders
25 from all over the northwest and federal and other

1 officials here. So I do want to start off by, again,
2 saying that for the Cowlitz, if you talk about land
3 in trust, the Cowlitz were in treaty negotiations in
4 1855. It took us 161 years to get land into trust
5 officially until the Supreme Court last year denied
6 the cert petition. So I think that's one of the
7 longer fee-to-trust applications probably in history.

8 The official fee-to-trust application for
9 the tribe after we received federal recognition and
10 acknowledgment actually took I believe -- my
11 calculation is from 2002 to -- it was 14 years of
12 actual -- that was before the Interior Department.
13 And as the chairman said, we were fortunate to have
14 some very good lawyers and we didn't quit, but it was
15 an expensive time-consuming process.

16 I used to go to these meetings and we used
17 to say, since we were Federally recognized, we used
18 to tell the federal officials how many elders had
19 passed away without ever seeing a reservation. We
20 stopped doing that because it was too hurtful. Those
21 numbers kept going up of people that never saw
22 Cowlitz with a reservation or trust property or allow
23 the Cowlitz to provide economic development for their
24 people, so we stopped doing that.

25 I want to start -- just my remarks -- and I

1 know -- I guess there seems to be a new thing for the
2 federal government. I went to a consultation with
3 the Department of Justice down in Palm Springs, and
4 they wanted us to answer questions that they come up
5 with and now you have ten questions. I don't think
6 that's how consultation works. I think you are here
7 to listen to what the tribes have to say. You can
8 express what you want to do, but asking the tribes
9 questions is not consultation.

10 And I also want to draw a distinction
11 between what a lot of people I think around the
12 country and in local governments believe that minimal
13 due process requires just notice and an opportunity
14 to be heard. That might be minimal due process. But
15 consultation with Federally recognized Indian
16 tribes -- I also like to stress there is a word in
17 that presidential thing before the consultation and
18 that word is meaningful. So meaningful consultation
19 would be that you would talk to the tribes ahead of
20 time before drafts came out or before we had any of
21 these type of important decisions or questions to the
22 tribe.

23 So I also want to echo the fact, with all
24 due respect, that these consultations should wait
25 until there is a senate-confirmed assistant secretary

1 of Indian affairs who can actually do consultations
2 directly with the tribes. Again, with all due
3 respect, I think that's how the Interior Department
4 is set up. I think that's how the tribes -- I think
5 that's how the public wants is that these
6 senate-confirmed and in place. That's their
7 constitutional and lawful job to do those type of
8 consultations with the tribes.

9 Again as I said, we only have -- the
10 Cowlitz only have 156 acres. And I want to briefly
11 talk about what I think is the poison pill in all of
12 this is the MOUs with local governments. We fought
13 with some local governments for many years. And
14 there are two counties in our state named after the
15 Lewis and Clark expedition. Our fight was not with
16 the county named after Meriwether Lewis. So I'll
17 leave it at that.

18 So they -- in doing those, if you ask us to
19 do MOUs, they refuse to negotiate with us. Some of
20 their lawyers didn't think that the tribe was
21 Federally recognized. They did not allow a county
22 agency to negotiate with the tribe for fire, police,
23 all the things that you'd want done if you're taking
24 land into trust and providing for public safety and
25 everything. They prevented it. So we would never

1 have gotten land into trust under your current
2 regulations because the county -- they had a veto
3 basically. So I want to say, I think land into trust
4 is a federal responsibility. I want to say that
5 three times. Land into trust for Native Americans is
6 a federal responsibility. Do not give local
7 governments a veto over the federal responsibility.
8 Please trust the elected governments from the
9 sovereign nations in this country that are providing
10 for their people. They've been here for a long time,
11 time in memorial. So they have governments. They
12 have to make decisions. There are economic
13 decisions, there are legal decisions, there are
14 practical decisions that have to be made. And land
15 is -- next to our people is probably our most
16 important resource for tribes.

17 So again, I think that this process should
18 start over at the appropriate time. Please do not
19 make the regulations harder for the tribes. And like
20 I said, this current administration is supposed to be
21 cutting out regulations and getting things
22 streamlined out of Washington D.C. More regulations
23 mean more court cases means longer delays. And
24 frankly, it gives some federal agencies the excuse to
25 say, we have to wait until the courts tell us what

1 this new regulation means.

2 So there are laws in that -- many of those
3 cases have been litigated all the way to the Supreme
4 Court. And we have definite answers there. You
5 change the regulations. We're going to start the
6 whole legal process over again and delay land into
7 trust for the tribes. So the IRA is not perfect but
8 we have some fairly good case law on many of these
9 issues, so don't change it. In you want to expedite
10 the process, get rid of some of the regulations. We
11 have to do full environmental impact statements. We
12 have all these other notices, a 30-day wait period is
13 just going to complicate this whole process. So if
14 we're going to have consultation on these issues,
15 make it meaningful, listen to the tribes, and do not
16 give -- do not advocate a federal responsibility to a
17 local government. And my final part is please do not
18 confuse the vital land into trust regulations and
19 laws that Congress has given to the Interior
20 Department with gaming. There is clearly a
21 difference between those. There are specific gaming
22 regulations, and do not confuse those with the
23 important land into trust that all of the tribes
24 need. Our tribe is going to need -- we have historic
25 sites that we would like to protect. We have health,

1 housing and other needs that we're going to need land
2 for and we don't need the delays or additional
3 regulations and additional long court waits. So I
4 thank you for coming to the great northwest and
5 listening to the tribal leaders.

6 MR. TAHSUDA: Thank you, vice chairman.
7 Chairwoman Carol Evans of Spokane.

8 MS. EVANS: I'm short and I'm sick. So
9 these cold rooms have gotten me so I sound mean, so I
10 will be mean. No.

11 (Native language.) My name is Somosa
12 (phonetic) given to me by my late grandmother, Cecila
13 Peone Abrahamson. And my English name is Carol
14 Evans. That's C-A-R-O-L, E-V-A-N-S. It's pretty
15 easy and also not -- doesn't -- probably is a branch
16 or something like that. My husband is Blackfeet, so
17 he brings the Evans to the Spokane tribe.

18 So I want to first thank you for taking the
19 time to hear us and be here, and I always encourage
20 consultation. I encourage you to listen with your
21 hearts and realize that we have a lot of important
22 tribal leaders and tribal representatives here to
23 speak on issues that are so very important to them
24 and the people they represent. And so it's important
25 that you do listen to us and that you listen. Like

1 Phil mentioned, I believe consultation is provided in
2 a means where it's free and the information is given
3 to us. We get to comment before you establish the
4 regs and it's informed and we provide you consent, so
5 it's free, prior and informed consent. So I
6 definitely support that in all consultation.

7 So I want to hit on a couple of things. We
8 do support land into trust applications. I think
9 it's important. All the tribes have ceded a lot of
10 land. In our case the Spokane tribe ceded over three
11 million acres. We never had a treaty. Governor
12 Stevens kept promising to come back in 1855, and for
13 whatever reason, never did come back and we never did
14 have a treaty. So our land, our historical
15 homelands, are established through the Indian Courts
16 Claims Commission in 1946, which clearly identifies
17 adjudicated historical homelands of about three
18 million acres. So that's what I want to talk a
19 little bit about.

20 The Spokane tribe, like Phil stated, does
21 not support giving a lot of power to the outside
22 entities, the cities, the counties, the states in
23 objecting to our land into trust applications. We
24 believe that we need to be able to have the
25 opportunity to acquire some of the land that is in

1 our historical homelands to help our people, to
2 govern, to provide services. Because we have so many
3 services that we need to provide to our tribal
4 members. We have high unemployment. We have a lot
5 of social issues that follow from historical trauma.
6 And like the one lady stated before me, we just have
7 a lot to do for our tribes. We have a long way to
8 go. It took us a long way to get to where we were,
9 being suppressed and put on the reservations on these
10 reservations that never provided us with the
11 opportunity to move forward, rather provided us
12 hoping that we would go away. But we're here. We've
13 been here forever. We are here and we will be here
14 into the future.

15 So what I wanted to state, Spokane tribe
16 believes that the off-reservation fee-to-trust
17 applications that -- the current regulations and the
18 proposed regulations don't allow for resident tribes
19 the opportunity to comment and object to nonresident
20 tribes coming in to your historical homelands and
21 making applications for fee-to-trust. They do not
22 allow that and we believe they need to allow that.
23 Because we're a perfect example of a tribe where a
24 nonresident tribe came in, was allowed to put land
25 into trust, and then consequently built a casino on

1 that land and then later get that land declared as a
2 reservation. On our historical homelands, on the
3 land where we fought our last war, the Plains War,
4 they were allowed to do that without consideration of
5 the Spokane tribes' objection to that. And so I
6 wanted to make that clear, that that has harmed our
7 tribe. That has devastated our economies. And then
8 when we turned around and submitted a 2719
9 application, that same tribe objected and that same
10 tribe, to this day, even though we opened the doors
11 and -- finally opened the doors to our Spokane tribe
12 casino, they have filed a lawsuit against the
13 government along with the county commissions.

14 So that's why we -- we strongly believe
15 that the outside government should not be given a lot
16 of power because they took these lands from us.
17 These three million acres they took from us. They
18 have more power over saying whether we should be able
19 to turn land into trust.

20 The other thing that -- the other point
21 that I want to make for the Spokane tribe is that we
22 don't believe that the gaming regs and the
23 land-into-trust regs should be mixed. I think we
24 have a regulation established through gaming. If
25 tribes want to game they go through the 2719 process

1 putting that -- establishing that, and so we don't
2 want those -- I wanted to state that we too support
3 not allowing that in the existing regs.

4 So we will submit written comments by the
5 deadline. I think it's in February. And we'll
6 provide, like you stated in the first -- in the
7 beginning, to allow us to talk more about our history
8 and our specifics. In that we will provide written
9 comments. So I thank you for listening to me and I
10 can tell you at least have heard me when I opened.
11 (Native tongue).

12 MR. TAHSUDA: Thank you, chairwoman.

13 Chairman Thomas Wooten, Samish.

14 MR. WOOTEN: (Native tongue). Good
15 morning. My name is Tom Wooten. I'm the chairman of
16 the Samish Indian Nation. And thank you for being
17 here with us and thank you all the tribes that are
18 here. It's obviously a concern of our nation as well
19 as everyone here.

20 Again, we were hoping that this was going
21 to be a consultation. We've submitted written
22 testimony answering the questions that the Bureau
23 provided on January 19, so I'd refer to that for my
24 comments. I want to make it brief.

25 Basically everything that I've heard today

1 we concur with -- almost everything. It's a real
2 concern for our tribe. Much like some of the tribes
3 here, we've had trust applications pending since
4 2008. So there is some issues that we would like to
5 see fixed, but the questions that the Bureau
6 submitted don't really address those. So as this
7 process moves forward, we hope that there is more
8 consultation, actual genuine consultation, so that we
9 know what is in store for all of us. So that's
10 really all I had to say. I want to thank Chairman
11 Forsman for representing the Northwest Tribes and
12 kind of laying out the groundwork for all of our
13 concerns. (Native tongue).

14 MR. TAHSUDA: Thank you, Chairman. Is
15 there somebody from Swinomish that wants to talk?

16 MR. CLADOOSBY: Brian Cladoosby, B-R-I-A-N,
17 C-L-A-D-O-O-S-B-Y Swinomish Tribe, S-W-I-N-O-M-I-S-H.

18 First of all, in my opinion of a
19 consultation, John and Bryan, we come and have a
20 dialogue. I don't just sit here and talk to you. We
21 have a dialogue. That's what part of consultation
22 is. So you can speak into the microphone. For the
23 record, are you my trustee?

24 MR. TAHSUDA: Yes.

25 MR. RICE: Yes.

1 MR. CLADOOSBY: Very good. Very good. I
2 don't need to sit here and preach to you about the
3 IRA, but in your opinion, what was the main tenant of
4 the IRA in 1934?

5 MR. TAHSUDA: The main tenant of the IRA
6 was to stop the switchover of trust land to nontrust
7 status and to provide a basis for tribal governments
8 to reorganize themselves in a more western fashion
9 and to restore lands to tribes and provide an
10 opportunity for tribal groups who were not fairly
11 recognized to organize as a tribe and receive
12 recognition.

13 MR. CLADOOSBY: Thank you, John. See,
14 that's consultation. You answered number one for us.
15 That was the first question that you put on here,
16 what should be the objective of the land-into-trust
17 program. And you answered it with "the IRA says."
18 We went from 138 million acres of land into trust in
19 1887 to 48 million acres in 1934. And today only
20 eight million acres going on 100 years, 84 years
21 since this passed. And there has been various
22 reasons why only eight million has been recovered,
23 and that was the main tenant of the Indian
24 Reorganization Act. There has been, number one, the
25 tribes didn't have the resources to buy the land back

1 when it was up for sale. That was probably the
2 biggest stumbling block in the last 80-plus years,
3 that we just didn't have those resources. We didn't
4 have no economic -- no Marshal Plan ever was created.
5 And you know, when you look at on-reservation,
6 land-into-trust, I will give you a horror story.
7 This will feed right into your other questions. In
8 1971 our elders wanted to create an economic
9 development project at Swinomish by creating a 1200
10 slip marina. From 1970 to 1977 we had to jump
11 through all the hoops, all the rules, all the
12 regulations, everything that was put in front of us
13 plus we had to fight the county that was there.

14 In 1997, the Corps of Engineers finally
15 approved us to build a 1200 slip marina at Swinomish.
16 We put that fee-to-trust application in on
17 reservation in 1997. And the local county
18 government, who is very anti-Indian, and this answers
19 your question, and I think Mr. Chairman Iyall spoke
20 to it also, about the hardships that you put on
21 tribes when you allow anti-Indian elected officials
22 off reservation who do not want to cooperate with us
23 have a say.

24 Now this was a 400-acre on-reservation
25 application. For ten years -- so the agency approved

1 it, the area approved it, headquarters approved it,
2 and they appealed it all the way to the IBIA. Ten
3 years later the IBIA ruled in our favor, like every
4 other level. But in ten years, from 1997 to 2007,
5 when that marina was finally approved and that
6 fee-to-trust was finally put into place, the project
7 went from 35 to \$60 million. It was not feasible,
8 and our partners stayed around that long. But when
9 we finally got that, it was not feasible. That's the
10 horror story of allowing outside governments to come
11 in and have a say on on-reservation applications.
12 I've been preaching this message for years. And I
13 will share you a story of one of my tribal members
14 who married a Chinese national, very beautiful lady,
15 beautiful couple. He had a couple of kids before
16 that marriage. He had land at Swimomish. He didn't
17 have a will. When he died, she got his trust
18 property. And you know how quick it took them to
19 change that from trust to fee? At a snap of a
20 finger. This is the horror story. Because this
21 county is appealing every fee-to-trust of ours on
22 reservation, when that lady -- and she's already
23 willed this to the kids -- but when they have to go
24 through that fee-to-trust process, you know the
25 nightmare they're going to have to go through because

1 this is on reservation. And on-reservation
2 application should have the same exact rules as a
3 trust-to-fee application. It should happen
4 overnight. It should be a no-brainer. 1934 was
5 created to allow us to reestablish our reservations,
6 not to give the local elected officials the
7 opportunity to fight us on it. And so that's a very
8 serious concern when you let these elected nonIndian,
9 anti-Indian -- and we have some of the biggest
10 national anti-Indian fighters living on our
11 reservation right now that belong to these national
12 organizations, CERA and others, whose number-one goal
13 is to fight tribes at all costs. So that has to be
14 taken into consideration.

15 Now, I need to hear from you how the Bureau
16 deals with Supreme Court cases when they're handed
17 down. What is your job, when you have a Supreme
18 Court case, handed down and it favors the tribes?
19 And I will use the Nebraska V Parker as an example,
20 the reservation diminishment case. Is the Bureau
21 beholden to these cases that come down through the
22 Supreme Court?

23 MR. TAHSUDA: Of course.

24 MR. CLADOOSBY: Of course. Good, good.

25 And then the Muskogee case, you're familiar with that

1 one, where the Tenth Circuit ruled that their
2 reservation was never disestablished. And the
3 Nebraska versus Parker, they ruled that only Congress
4 has the authority to diminish a reservation. And I
5 can tell you right now, there are tribes in this room
6 and there are tribes across the nation who have,
7 through courts, through executive orders and other
8 means other than Congress, have had their
9 reservations diminished. And you need to reach out
10 to those tribes, some how, some way, to get an idea.
11 How many of you have lost lands other than through a
12 congressional action? And I think you would be
13 surprised. And when -- you know, when you're able to
14 do that and find that out, I think you'll be
15 surprised by the number of tribes that have lost land
16 through that area.

17 And so once again, in closing, I agree with
18 the MLU process. There is counties out there that
19 will not work with their tribes. There are horror
20 stories where they will not sit down in a room. They
21 have a history. That is the relationship is broken
22 and sometimes it's nuked because of the things that
23 the county has done to these tribes, and it makes it
24 virtually impossible. So when you try to say that a
25 tribe has -- you will put more weight on a tribe that

1 has MLU as the local government, I don't agree with
2 that. Because in my situation it would be very very
3 hard for me probably to sit down with these county
4 commissioners and come up with some kind of
5 agreement.

6 Your rules also talk about off-reservation
7 acquisitions and your rules say that they will be
8 considered for economic development since the
9 majority of our lands are not in areas where there
10 is -- it's conducive for economic development. So
11 you have to seriously consider those situations also.

12 So in closing, President Trump handed you a
13 directive. He told you for every new regulation you
14 want to implement, how many do you have to eliminate?

15 MR. TAHSUDA: One.

16 MR. CLADOOSBY: No. It wasn't a
17 one-for-one. I'm sorry, John. For every one new
18 regulation you implement against a tribe you have to
19 eliminate three. And we in this room have a lot of
20 regulations that BIA have on us, and we consider this
21 a new regulation. So we will get you some examples
22 of the three that you can eliminate and we'll put
23 that in our record.

24 MR. TAHSUDA: That will be great. I
25 appreciate it.

1 MR. CLADOOSBY: Thank you once again. I
2 appreciate your time, and God bless you too and keep
3 up the good work.

4 MR. TAHSUDA: Thank you, Chairman.
5 Chairman, go ahead.

6 MR. PICKERNELL: Good morning Director
7 Rice, Acting Assistant Secretary Tahsuda. Thank you
8 for the time this morning. My name is Harry
9 Pickernell. I'm the chairman of the Confederated
10 Tribes of the Chehalis reservation.

11 In Sacramento and at Mystic Lake I
12 explained the Chehalis' concern about the possibility
13 of changes to Part 151 and also responded to the ten
14 questions identified by the BIA. Now I would like to
15 focus on a few issues that I have seen from the
16 consultation so far. At the end of the Sacramento
17 consultation, Mr. Tahsuda discussed the Department's
18 prospective on the rationale for talking about MLUs
19 with local governments. There are two problems with
20 that perspective. Tribes have the ability now to do
21 MLUs without making it a condition of a fee-to-trust
22 process. Good government relationships can be
23 addressed by a sovereign tribe without free
24 condition. Two: However, bad relationships from
25 nonIndian local governments or nonIndian groups would

1 only be encouraged by such precondition to delay
2 what's a vulnerable, valuable, financial resources of
3 tribes by holding tribes hostage and requiring a
4 financial payment to agree to not contest the BIA
5 fee-to-trust process.

6 A prime example of this conflict that the
7 MLU concept can foster is the case of Chehalis V
8 Thurston County. There, a single county official,
9 the county assessor, dragged the tribe and county
10 through years of litigation on the tribe's
11 enterprise, the Great Wolf Lodge, an indoor water
12 park. The county even went so far as to threaten to
13 foreclose the building on the land into trust for the
14 water park if the tribe didn't pay its taxes.

15 The tribe sued and won a victory for all
16 tribes by getting the Ninth Circuit Court of Appeals
17 to agree that buildings and other improvements on
18 trust land were part of the trust land and not
19 taxable.

20 What would have happened if Part 151 regs
21 had not required an MLU? The county would have
22 extorted money from the tribe or the land would never
23 have gone into trust. This is unacceptable and a
24 violation of the fiduciary duty, the trust
25 responsibility of the Department, and the United

1 States.

2 One more example. Right now the city of
3 Oakville has filed an appeal to the Interior Board of
4 Indian appeals of the Department's decision to take a
5 five-acre parcel within the city into trust. That
6 property will be used by the tribe for housing for
7 its members. The claim by the city is that it will
8 lose real estate tax revenue. The amount of revenue
9 that will be lost is slightly more than \$350. Why
10 would the Department allow a city like Oakville to
11 extort a sovereign government just because a tribe
12 would have to meet a precondition to the fee-to-trust
13 processes by entering into an MLU.

14 I would like to address the question of the
15 consultation. I don't want to disrespect or insult
16 you, but where is the decision-maker for any
17 regulation and for this and the other consultations?
18 Where is the Secretary of Interior or at least the
19 assistant secretary for the Indian Affairs? How can
20 the secretary understand the significance of any new
21 regulation without hearing the tribes, without being
22 present? Does a cold transcript really convey the
23 overwhelming concern that you have heard in
24 Sacramento and Mystic Lake and here in Portland? Has
25 this responsibility been delegated to you or will you

1 just fill as secretary?

2 Finally, where is the consultation? Where
3 is the discussion between sovereigns? This
4 consultation process is just, say what you want,
5 tribes, and maybe the Department will hear some of
6 it. Consultation requires discussion between and
7 among the parties to be meaningful. There are six
8 consultations. When is the Department going to
9 express their views other than propose a new rule,
10 which brings us back to start this process all over
11 again?

12 Thank you for your time. Thank you.

13 MR. TAHSUDA: Thank you, Chairman.

14 Chairman Marchand, Colville Tribe.

15 MR. MARCHAND: Thank for this opportunity.

16 My name is Michael Marchand, M-A-R-C-H-A-N-D. I'm
17 chairman for the Colville Confederated Tribes, which
18 is composed of 12 tribes. Originally we lived in the
19 multistate area, they were the international tribe
20 interest of British Columbia also.

21 In general I'm opposed to more regulations,
22 as is our president. I think that's the only thing
23 we agree on. Just because of our history it's no
24 secret, the United States has never really fully
25 supported the Bureau of Indian Affairs in terms of

1 budgets and staffing and the -- for example, well
2 just in my background -- my background is in
3 education, economics, urban planning. I have a PhD
4 in forestry. And most of my life I've been involved
5 in national resources and economic development. And
6 I'm currently the economic development committee
7 chairman for this organization, so it's kind of my
8 life's business. But if I have a good idea and a
9 sack of money in my pocket, I can go to most
10 jurisdictions, most cities in the United States, I
11 can be in business in a matter of days, maybe weeks.
12 I'm sure everyone in this room would agree if I had
13 the same idea and sack of money in Indian country, we
14 could be talking about years or maybe never. And I'm
15 not blaming you personally. I have a lot of
16 relatives and friends from the Bureau. They are hard
17 workers. They've worked a lot. But they're not
18 budgeted. They're not supported by this country.
19 And just having more regulations, in my mind that's
20 going to be more time. And time really is money in
21 business. Every day you delay a project to
22 completion, you're adding poverty, you're adding to
23 the unemployment, you're adding to the tribes' lack
24 of resources, lack of revenues, lack of ability to
25 make a living for itself. So every day it's

1 literally money in the business world. And
2 businesses goes through cycles. If you don't catch
3 the wave right, that business opportunity could be
4 gone. And a lot of these businesses might go through
5 a five-year cycle, even less. If you're not at the
6 front door, you're not going to be in that business
7 cycle. So that's the important thing.

8 And also in the case of my tribe, we have a
9 large area of interest historically and culturally.
10 We have a lot of off-reservation cultural sites that
11 are important to us, sacred sites. Sacred sites
12 concerning the creation stories, for example. We
13 have off-reservation cemetery sites. Often these
14 lands get desecrated or destroyed. Sometimes we get
15 consulted. Sometimes we don't know about it until
16 after it happens. It depends.

17 In the case of -- I'll just give one
18 example of -- we were promised by treaty a
19 reservation in the current town of Leavenworth,
20 Washington. It was supposed to be a fishery
21 reservation for Port Wenatchee (sic) people. We were
22 promised a six-by-six mile reservation. Due to the
23 Bureau ineptness or corruption, I'm not sure, or
24 both, that never happened. Presently there is a
25 nonIndian town site there where a fishery is supposed

1 to be. There is supposed to be allotments there.
2 There is supposed to be a fishing site. None of that
3 happened. And so we have a cemetery there --
4 actually multiple cemeteries there.

5 One of the cemeteries, the local
6 townspeople literally took the headstones out of the
7 cemetery. They're lining their driveway with --
8 they're paving their driveways with them. How can
9 people do that? They do.

10 We have another site called Pinnacles that
11 have to do with the salmon coming up the Columbia
12 basin. Another sacred site, a different
13 jurisdiction, built a power line right through the
14 middle of it. And these things happen, I won't say
15 daily, but they happen pretty often. And sometimes
16 if we catch them and get them ahead of time, it's
17 much easier. Of course, once something is in the
18 ground it's much more difficult. It doesn't mean
19 we're going to give up.

20 I was at Standing Rock this summer and
21 meeting with some of the elders there. They're
22 pointing out some of their sites, Cannonball River
23 and the cemetery on the hill. And a couple of weeks
24 later I saw heavy equipment mowing right through the
25 middle of the cemetery. It was just pointed out to

1 me a couple of weeks before. Those things are
2 important to Indian people. Our ancestors are very
3 important to us.

4 And so the other big issue in the Northwest
5 is the Columbia River. It starts in Canada and
6 zigzags its way down. It cuts right through Portland
7 and goes out to the ocean. That was an important
8 resource to the tribe. It's where we lived. Due to
9 federal policy, it's now a series of dams, one dam
10 after another. So what used to be a free-flowing
11 river where we lived, it's now a series of lakes.
12 Those lakes can be a mile wide, two miles wide. They
13 provide a big barrier to crossing. The reservations
14 in eastern Washington, those people think of a dry
15 area kind of like Albuquerque. But we're literally
16 surrounded by water. There was no sign of
17 reservation. The dams are built. We have Grand
18 Coulee Dam, we have Chief Joseph Dam, Wells Dam. I
19 think those are three of the biggest power producers
20 in the world in that area, and they all impact my
21 tribe. They provide regional benefits of billions of
22 dollars, probably millions of jobs. But we just got
23 screwed. We don't get nothing relative to what the
24 region gets.

25 So we've lost hundreds of miles of

1 shoreline, hundreds of miles of bottom land which is
2 fertile lands. We're isolated. We have the
3 Inchelium community in the upper part of the
4 reservation. There is no bridges there. We can only
5 get across it by ferry boat. It's the one Bureau of
6 Indian Affairs' ferry boat. We're thankful for that
7 ferry boat. But it's small and it makes it
8 impossible to do any kind of a significant economic
9 development because it can't handle traffic. Boats
10 are limited. We can't have industries there. We
11 can't have -- really have tourism there. There is
12 not enough capacity on the ferry boats. If those
13 dams are built today, I suspect they would be
14 building bridges and different things to mitigate
15 that. And so that's a common story throughout the
16 length of the Columbia River.

17 On the Canadian side of my tribe they have
18 different policies, similar but there is differences.
19 One difference that I kind of like is if the
20 government comes in and has a need for tribal
21 property, like I say, for a road or exit or something
22 like that, they'll give that tribe alternative lands
23 to compensate for what they took. And if we did that
24 in the Northwest, we're talking about a lot of land.

25 And a more modern example, a lot of that

1 happened in the 1940s and 50s and 60s. The Wells dam
2 was built in 1964. In more recent times we were
3 looking at marina development at Colville. We were
4 looking at marina sites. We spent a ton of money on
5 a marina site right at Coulee Dam. Then 9/11 came
6 up, the terrorist incident. Because of that, they
7 found pictures of Coulee Dam in a cave, one of the
8 Mosamas (phonetic) caves. They shut the dam down.
9 So all our effort and planning and things went up,
10 the dam shut down. There is guards day and night,
11 which probably makes sense. But we lost the
12 opportunity to develop casinos, marinas, hundreds of
13 jobs. Millions of dollars of income cut off by
14 federal policy. To me, we should be compensated for
15 that site somewhere else.

16 I think I would add to your interpretation
17 of the IRA that I think the economic development, the
18 Department of IRA, the things like Section 17
19 corporations, farming, government, lobbying. So I
20 think that's been federal policy probably since the
21 Constitution, but especially being in your position.

22 So I guess that's most of what I wanted to
23 say, but we'll have more comments later. Thank you.

24 MR. TAHSUDA: Thank you, Chairman.

25 Chairman Gowdy of the Yakama Nation.

1 MR. GOWDY: English name is JoDe Gowdy,
2 spelled J-O-D-E, last name G-O-U-D-Y. (Native
3 tongue.)

4 I want to say good morning to the
5 representatives here, Mr. Assistant Secretary, acting
6 role, Mr. Director.

7 As the chair of the Yakama Nation, first
8 and foremost I need to acknowledge this as not formal
9 consultation on behalf of the Yakama Nation. I think
10 that both offices of which you guys hold know there
11 is a long-standing policy that the Yakama Nation
12 implements with regard to formal
13 government-to-government consultation. And I hope
14 and appreciate that those steps be taken specific to
15 this topic and others into the future, and that is
16 not a matter of discretion. I know and understand
17 the limitations of resources and manpower that each
18 of you, in your respective offices and capacities,
19 are put forth. But nonetheless, that's an adherence
20 to law which has its foundations with regard to the
21 interpretations of the reserve rights for articles of
22 our treaty and the minutes and the negotiations
23 between the representations of the United States
24 federal government and the Yakama Nation.

25 So I just want to express that and open by

1 saying: Listen, today we are presenting you with the
2 important critique of a history of the present
3 moment. Listen, we are here to notify you we reject
4 the U.S. government's use of ultimate dominion and
5 claimed right of domination based upon so-called
6 discovery by Christian people of lands of natives who
7 were falsely identified as heathens. Listen, the
8 language of domination is found in the U.S. Supreme
9 Court ruling Johnson versus Machintosh, which has
10 never been overruled and is still considered valid
11 law in the United States. Listen, we reject the
12 Johnson versus Macintosh doctrine as a political and
13 legal framework for treating and dealing with our
14 nations, the original nations of this continent.
15 Listen, we are here today to remind you of a proper
16 basis for our relationship, truly nation to nation
17 with true self determination, not domination.

18 And I wish to express that because the
19 foundational core of the foundational will of today's
20 discussion is founded upon some of these historical
21 acts and atrocities that were imposed and implemented
22 against our native nations throughout time. But as
23 the previous tribal leaders and representatives from
24 the various nations have brought forth, we agree with
25 many of the sentiments and assertions that have been

1 made including, as was expressed, not to preach to
2 the choir, specific to the 1934 Indian Reorganization
3 Act, which was essentially a policy as a reaction to
4 a termination era in which the collective native
5 nations lost about 90 million acres of land specific
6 to decisions that were part of the historical acts
7 throughout time, and as was indicated, just about
8 eight million acres since that time period, which has
9 been re-established unto the native nations, many of
10 which are here in this room today and many of which
11 that you'll be hearing from in other listening
12 sessions throughout the country.

13 So when we receive the Dear Tribal Letter,
14 Dear Tribal Leader Letter, it was a little confusing
15 with regard to the assertions that have been made
16 from this administration and some of the
17 representations, as you heard, from previous tribal
18 leaders with regard to the unregulated, I guess you
19 can say, advocacy. But nonetheless, when I heard the
20 opening comments from you, Mr. Tahsuda, it kind of
21 confused me because I said, okay, so who are these
22 tribal leaders and representatives throughout time
23 that engaged into some type of advocacy to put forth
24 these type of regulations. Because every tribal
25 leader that I've spoken with from every nation that I

1 engage with in these type of discussions
2 whole-heartily disagrees with these regulations. So
3 I'm struggling to identify those tribal leaders
4 throughout time that provided comment or provided an
5 advocacy to assert these additional and
6 above-and-beyond regulations that are being suggested
7 throughout this CFR 151 11 and 12.

8 A specific reference -- I'm thinking about
9 a letter that came from representative Rob Bishop, a
10 republican out of Utah, who questioned my acting
11 officials that the BIA approved at least two casinos
12 shortly before and after Donald Trump was sworn into
13 office. That letter was dated February 17, 2017.
14 And I understand that there has been some questions
15 from various leadership representations, including
16 the House and the Senate and various representatives
17 throughout the country who I think are listening to
18 their constituents with regard to the advocacy of
19 native nations trying to seek economic development in
20 the form of either casino and our other pursuits and
21 the proponent of trying to seek lands that
22 historically were ours and then protecting those
23 lands.

24 Nonetheless it's been somewhat of a
25 fearmongering that's been established at a very high

1 level, and those discussions, those assertions and
2 the reaction to that we kind of ironically see the
3 timing of these Dear Tribal Leader Letters coming
4 after these significant dialogue of various levels
5 within the area of Washington D.C. But the question
6 is, is why does the Trump administration wish to ease
7 the regulatory burdens and support corporations in
8 the name of economic growth and job creation but go
9 out of its way to manufacture unnecessary regulatory
10 obstacles to the economic development of tribal
11 nations and communities. That's a question. You
12 heard it from others. But what is going on here?
13 That's confusing to us.

14 And once again, as we look at some of the
15 dialogue from representations, including Mr. Jim
16 Cason, our acting deputy secretary, as he stated that
17 they were taking a step back from the land-into-trust
18 process as he was testifying before a committee. And
19 taking off-reservation lands into trust made post
20 complications for the Department of Interior and for
21 state and local governments. And the House Committee
22 on Natural Resources oversight committee hearing, the
23 question was posed as to whether or not the state and
24 our local jurisdictions should have, essentially, a
25 veto process, to which Mr. Cason said in the

1 affirmative, yes. That's confusing to us as a
2 representative of the Department of Interior, who by
3 law, first and foremost the U.S. Constitution,
4 Article Six, clause two and clause three; secondarily
5 the various treaties and the various other executive
6 orders throughout time and the specific treaty
7 between the Yakama Nation of 1855, 12 Stat. 951 has
8 very specific reserved obligations and promises that
9 are not a matter of discretion but are a matter of
10 adherence to law. And that becomes a little
11 struggling with regard to the interpretation of why
12 these proposed additional regulations, information
13 about unemployment rates amongst our people. That's
14 a little confusing. The assessment of economic
15 benefits of the potential acquisition to the people,
16 an explanation of why the tribal nations need the
17 land, evidence of cooperative efforts with nearby and
18 local governments, the enhanced requirements for
19 tribal nations to address state and local interests,
20 including comment on potential conflicts for land
21 use, potential impacts on regulatory jurisdiction,
22 and then the addition -- or the advocacy for the
23 addition with the gaming component, a plan specifying
24 the anticipated economic benefits to the nations once
25 again, the information on economic benefits to

1 nonnative local committee from gaming projects, an
2 analysis of what impact off-reservation gaming
3 projects might have on the unemployment rates of the
4 tribal reservation, identification of on-reservation
5 benefits from the proposed gaming project including
6 any of the revenue and how it will be used for the
7 creation of on-reservation economic opportunities.
8 So the advocacies were very confused as to why this
9 information becomes relevant and not pertinent to the
10 pursuit of fee-to-trust advocacies for our lands,
11 which have many purposes throughout time. The Yakama
12 Nation specifically has a six-year process that's
13 been invoked specific to a piece of land that's down
14 on the Columbia River. We're still awaiting the
15 response collectively to that application. We have
16 many more that we will be pursuing into the future
17 for housing, for development, for resources in and
18 amongst our ceded territories down along the
19 Nch'i-Wana, the Columbia River, and various other
20 areas of our nation. And when we ceded one-third of
21 the state -- of Washington state on behalf of the
22 negotiations between Governor Stevens and General
23 Palmer, the assertions of promises that were
24 established in 12 Stat. 951 backed up by the U.S.
25 Constitution, Article Six, Clause two and Clause

1 Three become very valid. And what we're looking for
2 is the justification with regard to utilizing
3 historical and statutorial arguments and CFR
4 arguments, and how do they surpass and undermine and
5 supersede those very strong constitutional and
6 article -- treaty articles arguments that are in
7 place.

8 So for us, it's a pretty confusing process
9 that's going on here. But there is additional
10 things, the application of the communicable distance
11 standard that's being proposed within the
12 regulations, the 30-day policy, based upon that,
13 which essentially is 30 days for these outside
14 jurisdictions to essentially bring forth their formal
15 dispute, which has been referenced, the surrounding
16 communities, local jurisdictions, counties and other
17 entities, and just about probably every scenario.
18 There is representation from leadership bodies that
19 outright are disrespectful, that are borderline if
20 not outright racist, specific to the advocacies and
21 the continued pursuits of how we address the
22 well-being of our peoples, and to offer them an
23 opportunity. Pursuant to that then I want to see the
24 treaties that are established amongst those city
25 jurisdictions and those county jurisdictions and the

1 framework and law that the Department of Interior is
2 adhering to the -- specific to the articles of those
3 treaties amongst the cities and local jurisdictions,
4 such as counties, because I don't think they exist.
5 And I'm going to be asking why ours are not being
6 adhered to.

7 So our advocacy with regard to this rule
8 change does nothing to help tribal nations. In fact
9 it's the opposite. It makes it more burdensome and
10 the process even more burdensome. The proposed rule
11 change as a land use approval process for landing the
12 trust process that efficiently -- effectively allows
13 the federal government to intrude on the tribal
14 nation's civil regulatory authority and withholding
15 land acquisitions from trust status until the tribal
16 nations propose a use for the federal government to
17 sign off. Even if the application is signed off on
18 DOI, the 30-day waiting period essentially will keep
19 the land out of trust until litigation toles (sic)
20 and all the while subjecting tribal nations with the
21 otherwise approved application to tax liability
22 during the entire phase of the litigation, much as
23 you've heard from other tribal representatives of
24 nations.

25 Because of the added time, energy and cost

1 created by increasing the federal regulatory burden
2 on the land-into-trust process, the proposed rule
3 change does nothing but discourage tribal nations
4 from going through the process altogether, and that's
5 a fact. That's a fact. I don't know if anybody else
6 is clapping or jumping up and down with regard to
7 these proposed rule changes because I haven't seen
8 it. I haven't heard it. If you do identify a tribal
9 leader into our nation who is advocating for these
10 things, can you please let me know who they are so I
11 can go talk to them and maybe they can minister on to
12 me as to why this is such a great benefit for us
13 collectively.

14 And so how does this increased federal
15 regulatory burden coexist with DOI's trust fiduciary
16 duty and the recognition that tribal nations have
17 limited resources? How does this increased federal
18 regulatory burden coexist with the Trump
19 administration's alleged mission on easing the
20 regulatory burden to advance economic development and
21 growth? How does this increased regulatory burden
22 coexist with the Trump administration's alleged
23 mission of local self-determination? These are our
24 questions. We strongly oppose the revisions to the
25 part 51. We are asking and demanding that the

1 Department of Interior immediately withdraw and cease
2 any efforts to amend the land-into-trust regulations.
3 We're also asking that the letter dated April 6th of
4 2017 on the notice to the BIA regional directors
5 centralizing all decision-making for off-reservation
6 land acquisitions and allow regional staff to begin
7 processing off-reservation land acquisitions under
8 the current part 51 regulations.

9 So we're asking for the rescinding of the
10 letter, the Dear Tribal Leader Letter, that came
11 forth essentially bypassing the regional
12 discretionary duties and responsibilities that are in
13 the essence and the fulfillment of the 1934 Indian
14 Reorganization Act.

15 So I don't want to take much more of your
16 time. I appreciate the opportunity to offer our
17 comments. And we're hoping that as we continue and
18 in your capacities, true consultation will come forth
19 on behalf of the Yakama Nation. I hope that the
20 advocacies from our fellow nations and their
21 adherence or their definition of what true
22 consultation means will as well be adhered to. And
23 so I thank you both for your time today.

24 MR. TAHSUDA: Thank you, Chairman.
25 Chairman Burke.

1 MR. BURKE: Good morning. My name is Gary
2 Burke, G-A-R-Y, B-U-R-K-E. Indian name is Tuklukay,
3 T-U-K-L-U-K-A-Y. I'm with the Confederate Tribes on
4 the board of trustees, chairman. A few remarks I
5 have for you, so I thank you for your time.

6 Good morning. My name is Gary Burke. I'm
7 the chairman of the board of trustees, the governing
8 body of the Confederated Tribes of the Umatilla
9 Indian Reservation. We appreciate the opportunity to
10 provide comments to the Department on their draft
11 revisions to the fee-to-trust regulations governing
12 off-reservations lands. Let me begin by providing
13 you with some context for our comments.

14 Like many tribes here today, the Umatilla
15 Tribe entered a treaty with the U.S. in which we gave
16 up 6.4 million acres of our aboriginal land in
17 exchange for a reservation homeland of 250,000 acres.

18 (Reporter requests clarification.)

19 MR. BURKE: Like many tribes here in the
20 Umatilla Indian reservation, entered a treaty with
21 the U.S. in which we gave up 6.4 million acres of our
22 aboriginal land in exchange for a reservation
23 homeland of 250,000 acres, which is to say we ceded
24 96 percent of our aboriginal territory. Congress
25 later opened up for some portions of our reservation

1 for nonIndian settlement which reduced our
2 reservation land base to 158,000 acres. I relate
3 this history to point out that the federal government
4 has been primarily responsible for the loss of our
5 reservation homeland, which we have exclusive rights
6 to.

7 The Umatilla Tribe has partnered with
8 federal agencies, states and tribes to restore salmon
9 runs and to acquire managed lands where hunting and
10 gathering can occur. For example, our tribe acquired
11 2700 acres in Oregon and 11,300 acres in Washington
12 with Bonneville Power Administration funds to comply
13 with BPA's obligations under the federal agencies and
14 the laws to mitigate wildlife impact caused by the
15 Columbia River hydro-systems.

16 These lands are held under a permanent
17 conservation easement to protect wildlife and their
18 habitat. Those lands need the protection and
19 benefits of trust status.

20 The Umatilla Tribe knows about the trust --
21 fee-to-trust process because we use it frequently.
22 Since 2011 we have successfully submitted
23 59 fee-to-trust applications that have transferred
24 8,545 acres from fee-to-trust. Of these
25 applications, four were reservation lands totaling

1 3,219 acres. Our staff is working on several more
2 applications, which include off-resignation lands.

3 The success we have experienced with the
4 fee-to-trust process is due in large part to the work
5 we have done with the BIA Umatilla agency and
6 Portland regional office. In 2009, we negotiated a
7 fee-to-trust to protect (sic) with our BIA agency
8 office to facilitate our accomplishments.

9 The fee-to-trust process takes long and is
10 too expensive. Based on our experience, the average
11 cost for a fee-to-trust application is \$25,000 for
12 the title, survey, environmental measures,
13 assessments, land description report and public
14 notice. That cost goes up to an average of \$35,000
15 if any environmental issues are found. We have paid
16 \$95,000 for a single application. Since the federal
17 government facilitated the loss of so much of our
18 land base, it should not put the return of those
19 lands to trust status out of finance that's out of
20 reach.

21 With this background, I offer the following
22 comments on the draft amendments to the fee-to-trust
23 regulations on off-reservation lands.

24 The Interior Department failed to consult
25 with the tribes in developing the consultation draft.

1 We have seen the justification changing the
2 fee-to-trust regulations from the Department. Until
3 we do, and until meaningful consultation occurs, our
4 position is that the regulation should remain intact.

5 We object to the Department's transfer of
6 off-reservation fee-to-trust applications from the
7 BIA regional offices in Washington D.C. This change
8 promises to further delay decisions on
9 off-reservation applications and removes the
10 decision-making from the regional directors familiar
11 with the needs from the tribal applicant to
12 Washington officials who will not have the level of
13 local knowledge. We urge that this decision be
14 rescinded.

15 For the first time, the consultation draft
16 interjects tribal gathering (sic) -- tribal gaming
17 into Part 151 fee-to-trust regulations. This change
18 is unnecessary and a bad idea. The regulations in
19 part 292 addresses the fee-to-trust issues for gaming
20 purposes. We see no reason to address the gaming
21 issues in Part 151 regulations.

22 The Umatilla Tribe has approximately
23 78,000 acres lie outside are diminished in the 1855
24 treaty boundary. These parcels should be subject to
25 the same fee-to-trust requirements and process as an

1 reservation parcel.

2 The fee-to-trust applications for
3 off-reservation lands should expressly provide
4 preferred treatment for land within the tribe's
5 aboriginal territories recognized by treaty; lands to
6 be used by the tribe for exercise of treaty reserved
7 fishing, hunting and gathering rights; the lands
8 acquired and managed by the tribe applicant to carry
9 out federal functions mandated by federal law such as
10 mitigation, impacts fish and wildlife, caused by the
11 Columbia River hydro-system.

12 Finally we would like to urge the
13 Department to authorize the regional and agency
14 offices to engage tribes to develop protocols so that
15 the fee-to-trust process can be more efficient and
16 cost-effective.

17 We look forward to continuing our dialogue
18 with the Department of Interior to improve the
19 fee-to-trust process on off-reservation lands. Thank
20 you for this opportunity. Confederated Tribes of
21 Umatilla also has a treaty, statute 945, ratified to
22 put claim to date. All of these natural resources
23 which tribes use are cultural and tradition. Each
24 tribe has that cultural and tradition that a lot of
25 this is going to affect, so thank you.

1 MR. TAHSUDA: Thank you, Chairman.

2 So we take a short break. I think I can
3 certainly use one. Maybe like ten minutes.

4 (Break in proceedings.)

5 MR. TAHSUDA: Thank you. We're ready to
6 get going again. I have next on my list Shannon
7 Wheeler, treasurer -- Council Treasurer for Nez
8 Perce.

9 MR. WHEELER: Thank you Mr. Tahsuda and
10 Mr. Rice. (Native tongue.) My name is Shannon
11 Wheeler. I'm a member of the Nez Perce Tribe. I'm
12 here to submit just a few overviews of what's
13 happening here. We will be submitting more detailed
14 comments in the future, written comments in the
15 future, for this proposed action.

16 One of the main things that I would like to
17 actually say in the beginning is that the Nez Perce
18 Tribe originally had 17 million acres in the original
19 treaty of 1855. Our UNA grounds covered actually
20 more than that. But now our reservation is reduced
21 to 770,000 acres. So we've given up a lot in this
22 process. And any time -- it seems like the reason we
23 lost our land was because gold was discovered and,
24 you know, the gold rush was on and we was reduced.
25 But, you know, some of the things that -- we don't

1 have any off-reservation casinos, but that's similar
2 to what's going on today, is the tribe sees an
3 opportunity to go back to their ceded lands, and
4 that's actually like a gold discovery. But then for
5 us to get back out there again, back out into our
6 ceded lands, we're having issues in this long process
7 of getting to that point.

8 But as was stated before, there was -- I
9 would like to echo some of my sentiments towards --
10 some of the comments that were made were pretty
11 spot-on, you know. Chairman Gowdy of the Yakama
12 Nation hit it right on the head I thought.

13 But you know, kind of getting into some of
14 your questions that you guys were asking, your
15 question number one and what should the objective of
16 the land-into-trust program be and then what should
17 the Department be working to accomplish. And really
18 you guys should be here to assist the tribes into
19 getting property into trust and not being a
20 gatekeeper. You know, help us facilitate the
21 sometimes complicated process.

22 Another one of your questions -- I don't
23 want to go over and be redundant here, but 5B,
24 whether the application is getting -- excuse me,
25 whether the application is for gaming purposes as

1 distinguished from other nongaming economic
2 development. And inquiring about the tribes' use of
3 the land, once acquired is -- we feel that's
4 intrusive and this should not be a part of the
5 criteria and should be under the sole purview of the
6 tribal government. Also one of your questions you
7 had are, what are the advantages and disadvantages of
8 operating on land that is in trust. Of course that
9 would be to prohibit state intrusion into tribal
10 affairs and to clarify jurisdictional issues. Tribes
11 need to be free from state regulations and
12 requirements.

13 Also one of the questions that you had, how
14 should the Department recognize the balance and
15 concerns of state and local jurisdictions, that
16 weight should -- the Department give the public
17 comments. Restoring federal lands is a federal
18 responsibility. So state and local interest should
19 not trump or veto a tribal application. While a
20 tribe may need to alter their application or address
21 a concern of a state or local government, the other
22 government should not be allowed to stop the
23 fee-to-trust process. Public comment should be
24 considered but not given -- but should be given less
25 weight. There is already a process in place for

1 another government or a citizen opposed the
2 application.

3 And then the MOU question that you guys
4 have, we're definitely no. An MOU should not be a
5 requirement. An MOU could enhance the application
6 but it should be the tribe's decision whether to
7 enter into an MOU or not. Local politics are not
8 diverse across the country. And to make it a blanket
9 requirement across the country, we feel that
10 shouldn't happen that way.

11 So just a few of the questions that you
12 guys had on your Dear Leader Letter, and I have
13 another councilman with me that would like to make a
14 few comments as well. Like I said, we will be giving
15 more detailed written comments. And under our treaty
16 of 1855, 12 Stat. 957, treaty with the Nez Perces.
17 Like I said, a lot of the things that Chairman Gowdy
18 with the Yakama Nation said are our sentiments as
19 well. Thank you.

20 MR. TAHSUDA: Thank you.

21 MR. ELLENWOOD: (Native tongue). Quinton
22 Ellenwood, Q-U-I-N-T-O-N, E-L-L-E-N-W-O-O-D. I'm
23 here to give a few words on behalf of my people here,
24 my born inherent right that has been secured with the
25 treaty of 1855, 12 Stat. 957, as my colleague has

1 addressed. And it's really heartbreaking and hurtful
2 to me, and to the rest of my people, and the
3 generations to come that are going to have to fight
4 just as hard, tooth and nail, and pay these big --
5 pay these big fees to return back to the original
6 owners of this land. We've -- just from a Nez Perce
7 perspective, we've demonstrated and we've acquired
8 two huge national rewards for the recovery of
9 national resources, one with our Wolf recovery
10 project and one with our Coho project. And we're
11 excellent stewards of the land along with the rest of
12 these tribes that are here.

13 And I can't agree with the local
14 governments having input on the trust -- fee-to-trust
15 process. Each tribe in here is very, very unique and
16 you can't treat us all the same, which brings me to
17 my -- you mentioned that this was a consultation.
18 According to the Nez Perce Tribe, consultation is --
19 within government to government is with six board
20 members that is elected by the Nez Perce Tribe. It's
21 in our constitution bylaws and our policies. So I
22 have to echo with what my colleague said,
23 Mr. Wheeler, and with my other (Native tongue), the
24 Yakama Nations that this true consultation, that the
25 Stevens Treaty tribe is what the governing body

1 coming to our homelands. So I would like to
2 reiterate that. And we will be submitting more
3 comments before the end of next month.

4 MR. TAHSUDA: Thank you.

5 Mr. Sheldon.

6 MR. SHELDON: Good morning. And my name is
7 Mel Sheldon. I'm the council member at Tulalip
8 Tribes and vice president of ATNI.

9 Is it on?

10 There we go. So I have probably the most
11 important question that I want to ask the audience.
12 Are there any New England Patriot fans here? You
13 dare raise your hand?

14 But, one, thank you very much for this
15 opportunity to speak with you. And I want to tell
16 you that thank you for being our trustees. Tulalip
17 definitely has some serious concerns. I don't know
18 that I'm going to bring anything new to the table.
19 There has been some very eloquent statements and
20 shared concerns about the draft that's being
21 proposed. It seems like it's working. I'm not sure
22 if we're ready for a radical makeover like I see on
23 TV, how they do that stuff. We're sharing right now.
24 So I'll get to one or two areas where Tulalip is very
25 concerned.

1 As you know, we're a small reservation.
2 We're 22,000 acres. And at one time after the -- we
3 were down to 5,000 acres. All the land went out in
4 the general allotment act. Over time we worked hard
5 to acquire close to 62 percent, 65 percent back into
6 the reservation. And it's a checkerboard
7 reservation, so fee simple as well as trust land
8 going on there. And most all the desirable land in
9 residential areas as well as some commercial are
10 owned by nontribals. So it's really tough. We have
11 such a limited area where we can develop and build
12 and overcome this challenge. Over the years, like I
13 said, we purchased a number of parcels on the
14 reservation and off-reservation. And our goal is to
15 use these lands for community projects and economic
16 development, nongaming. And as I shared that maybe
17 we have close to 5,000 tribal members. Now that's
18 going to explode at some time. As most
19 mathematicians would say, the population is going to
20 grow really big. The challenges we face to meet our
21 tribal membership needs, close to 12,000 nontribal.

22 So an example of the challenge we face --
23 and by the way, thank you very much for helping
24 support us in our tax case. As you know, Tulalip is
25 suing the county and the state to recover taxes from

1 the Quil Ceda Village arena, which generates close to
2 \$15 million of taxes a year, but nothing comes back
3 to the res to help, so we appreciate that help.
4 However, when we can't work a deal out with the
5 county -- and that's part of this draft is we'll work
6 with people. They're not going to work with us very
7 well because we're taking their tax revenue or they
8 think we are. But we just want what's due to us, so
9 it creates a challenge.

10 The other part that I would like to share
11 is -- and Chairman Cladoosby, I spent some time up in
12 his homeland there. And the feelings of having to
13 work not only with the municipality, whether it be
14 city or county, is pretty tough at times. And also
15 what we experienced at Tulalip on working with the
16 county -- trying to work with them on a simple word
17 modification in the codes. It was the master
18 builders who came in and stressed their disinterest
19 or their anger or their frustration, or whatever it
20 was, and it was more of an interracial tone that they
21 expressed themselves.

22 So now not only do we have a municipality
23 and a county, trying to deal with them, but the whole
24 broad of citizens that don't like Indian people, they
25 don't understand us, they don't care what we're

1 trying to do. Tulalip is a large economic engine on
2 the north end of Swinomish County. Like many tribes,
3 we are economic engines now. But overcoming the
4 hurdles of racism and discrimination. So just wanted
5 to highlight those two areas as you go forward and
6 thank those that spoke before me. And we will submit
7 more detailed concerns at a later date. Thank you
8 for your time.

9 MR. TAHSUDA: Thank you, Council.

10 Next up I have councilman Michael Ross with
11 Snoqualmie.

12 MR. ROSS: (Native tongue). My Christian
13 name is Michael Ross, Snoqualmie Tribe,
14 S-N-O-Q-U-A-L-M-I-E, a council member of the
15 Snoqualmie Tribe, a federally recognized tribe that
16 has lived in the Snoqualmie River Valley since time
17 immemorial. Under the 1855 Point Elliot Treaty, our
18 tribe ceded vast tracts of our ancestral land based
19 in part on a promise from the United States that they
20 would set aside some of our homeland for our tribe.
21 Today less than one percent of our homelands have
22 been restored to the tribe. This loss of our
23 homelands is directly attributed to the actions of
24 the United States. I'm here to respectfully ask our
25 trustee to live up to its original promise and

1 continue to restore our homelands.

2 We oppose any changes to the fee-to-trust
3 regulations that make it more difficult to place land
4 into trust for our current and future generations.
5 As trustee, the Department should promote placing
6 land into trust for tribes. The Bureau's mission
7 statement is to enhance the quality of life, to
8 promote economic opportunity, and to carry out the
9 responsibilities to protect and improve the trust
10 assets of American Indians, Indian tribes and Alaskan
11 natives.

12 The Department's draft revisions and steps
13 change the land-into-trust process are antithetical
14 to the BIA's mission statement. Today our trustee
15 proposes to make already strenuous regulations more
16 difficult, impeding the health and welfare of every
17 tribe and their tribal members. Restoring tribal
18 homelands is not a fast process. We currently have a
19 fee-to-trust application that's been pending with the
20 Department for nearly three years. We ask you today
21 not to make our application more difficult or time
22 consuming. To do so would be another failure of the
23 United States' trust responsibility.

24 Although the process could always be more
25 quickly and efficient, the regulation under Part 151

1 does work. The prior Republican administration made
2 this very point, explaining that the existing
3 regulations addressed the concerns of the state and
4 local governments for both on-reservation and
5 off-reservation acquisitions.

6 In fact the Snoqualmie Tribe's pending
7 on-reservation application was challenged by our
8 neighbor, the city of Snoqualmie, not because our
9 application would harm the city in any meaningful
10 way, but because it disagrees with our existence as a
11 tribe. The Department's proposals to change the
12 process emboldens the city's opposition and we expect
13 the Department to rule on our application definitely
14 to stop these attempts to misuse and abuse the
15 comment period that Part 151 already provides the
16 state and local governments. I'm asking you, as our
17 trustee, to abandon this rule-making. And rather
18 than changing the rules midstream, the Department
19 should be utilizing its time and resources to improve
20 tribal self-governance, strengthen social services,
21 law enforcement, Indian education, housing, energy
22 development, and streamlining the NEPA process to
23 restore tribal homelands. And further, Secretarial
24 Order 3317 and the Department's consultation policy
25 requires open and transparent communication. The

1 consultation needs to begin with an explanation of
2 why. The Department is pursuing these regulations on
3 whose behalf. Can you please explain to us who is
4 asking for these ruling makings and why, because
5 meaningful and adequate consultation cannot begin
6 until after this question is answered.

7 The Department's October 4th letter stated
8 that the proposal will reduce the burden on tribal
9 applicants, but then proposes longer processes,
10 additional hurdles and delay after it makes a
11 favorable decision. The draft revision does nothing
12 to promote the restoration of tribal homelands. It
13 punishes once landless tribes and helps only those
14 that oppose this Department.

15 We respectfully ask that Secretary Zinke
16 show that tribal sovereignty means something by
17 listening to my Tribe, NCIA, and all the other Tribal
18 Nations that request a nation-to-nation. That the
19 Department immediately withdraw and cease any efforts
20 to amend the land-into-trust regulations.

21 Thank you again for being here today. I
22 hope our future meetings will be focused on how to
23 facilitate jobs in Indian Country, better provide
24 education to our children, promote native language
25 and address the crumbling infrastructure across

1 Indian country.

2 MR. TAHSUDA: Thank you, Councilman.
3 Brenda Meade, chairman of the Coquille -- chairwoman.
4 I'm sorry.

5 MS. MEADE: (Native tongue) Greetings,
6 friends. My name is Brenda Meade and I'm the
7 chairman of the Coquille Indian Tribe.

8 I almost deferred my time today because
9 there are so many great tribal leaders that have
10 spoke today, but I just wanted to mention a few
11 things for our Coquille, for us, the people that have
12 lived in southern Oregon and on the Southern Oregon
13 Coast since time began. And we have realized that
14 all tribes here are different. Hearing from these
15 great leaders, I do see all of the amazing things
16 that we agree on though, so it's been good to hear
17 from all of them today.

18 I was hoping to hear from some of the
19 tribes that recommended these changes so I could
20 understand more of why you all are moving in this
21 direction but I'll keep listening today.

22 I do want to point out, we are all
23 different. We are a restored tribe. Prior to our
24 restoration, however, virtually every significant
25 interaction that we had with the federal government

1 led to the loss of more lands, waters, and rights as
2 a sovereign government. We have unratified treaties.
3 We had experienced assimilation programs that were
4 very effective on Coquille people.

5 Federal termination in particular was a
6 disaster to our tribe. It thrust our membership into
7 poverty and forced them to move to other locations.
8 When Congress adopted our Restoration Act in 1999, us
9 being the last tribe in Oregon to be restored, and
10 after Indian Gaming Regulatory Act was approved. It
11 included language that would remedy these multiple
12 past wrongs by permitting us to place land into trust
13 within five counties of southwestern Oregon. If we
14 could find the ability to purchase those lands, we
15 would have a process.

16 We struggle to provide our tribal members'
17 needs. In part because they are located over a large
18 region. The ability to place land into trust where
19 most of our membership is located is key to our
20 recovery from federal termination and for our
21 self-determination. Holding lands in trust is one of
22 the most important ways that we exercise our tribal
23 sovereignty. Any restrictions on our fee-to-trust
24 rights will be an insult both to Senator Mark
25 Hatfield and to our tribal members, who made

1 countless sacrifices to ensure our eventual federal
2 recognition happened.

3 We are in the middle of a fee-to-trust
4 process right now. I think we're in our sixth year
5 of this process. I do agree that changes need to be
6 made. If nothing else, timelines and expectations of
7 when the process is going to move forward would be
8 appreciated. It is a long process but it is the
9 process that we have, and we appreciate that there is
10 a process and that there is not a closed door when we
11 come to the table because we are different.

12 I think it's important, too, to recognize
13 that President Trump this month signed a bill into
14 law, the Western Oregon Tribal Fairness Act that also
15 upholds the support of giving tribes land, especially
16 to the restored tribes of Western Oregon that have
17 lost so much.

18 I think about the words that we all hear,
19 as tribal leaders, from the federal government. The
20 words that come as, we strive to uphold tribal
21 sovereignty and the trust responsibility to
22 indigenous people. They encourage and support
23 self-sufficiency and self-governance,
24 self-determination. They recognize that each tribe
25 has its own sovereign nation and that we're all very

1 different. These proposed changes do not address or
2 uphold any of these words or promises that Coquille
3 have been made and we do not support these changes.

4 We will be also offering some written notes
5 as well, but thank you for your time.

6 MR. TAHSUDA: Thank you, Chairwoman.

7 Luke Duncan, Ute Tribe.

8 MR. DUNCAN: Luke Duncan from the Ute
9 Indian Tribe, Fort Duchesne, Utah, chairman. And I
10 represent the White River Band of Utes on that
11 council.

12 First of all, I would like to say good
13 morning to you, John and Bryan, the secretary, for
14 allowing us this time to speak. And I would like to
15 say good morning to brothers and sisters that are all
16 here. We're all concerned to be here. It's a very
17 important issue to us. And I've heard some good
18 comments today. A lot of those comments were on my
19 sheet. And I don't want to stand here and go through
20 all of that again. But for the record I agree that
21 everything that's been put up that said they oppose
22 MOU, they oppose that, the changing of the IRA
23 process, I disagree and I do not want that changed.

24 I believe as tribes -- the trust
25 responsibility is with the government. And I don't

1 believe I've ever heard of a trust responsibility to
2 the states or the counties. Where I come from, we've
3 had a lot of battles and we're still battling now
4 with the counties and with the states. And we battle
5 with them all the time. They're not connected to
6 whatever the tribe wants to do. Everything that we
7 do, they're against it.

8 A few years ago -- years past there was a
9 termination act that took lands away from the
10 reservation. The group that was terminated took that
11 land that was part of our reservation. And since
12 that time they sold portions of the land, and
13 eventually the land was all for sale and the tribe
14 bought that back. That is our own homeland.
15 However, we turned it over to the Interior people for
16 approving the trust. It has never been done. We're
17 still waiting. Still waiting to have that done. But
18 in the meantime, we're all paying taxes on those
19 lands. We all are. And that's really not -- that's
20 really hard on us, economic-wise it is. So that's
21 one issue I would like to bring up. Also the fact
22 that you all know -- a lot of you know that we're
23 fighting -- we're fighting the states right now.
24 We're fighting counties. And one big fight is that
25 monumented land down in Utah. We're fighting that.

1 And the bishop -- Congressman Bishop, they're all
2 upfront on it, the governor and our county people.
3 We have tracks of land that are being addressed right
4 now that have always been tribal lands. Now they've
5 hit Washington where they want to take that land and
6 they're saying it doesn't belong to us. And we're
7 going to be meeting with you on that next week in
8 D.C.

9 So anyway, I just want to say that it's a
10 very very important issue for all of us. That's our
11 homeland, especially lands that we're fighting back
12 home that hold our histories, all that beautiful land
13 where some of the tribes still have ceremonies there.
14 They want to take it away with a stroke of a pen and
15 that's not right. We have a history too. And one
16 thing you can't forget, we are the first Americans.
17 All of this is ours. And what we're fighting over is
18 what little that we have left. That has been the
19 battle of our Indian people since the fight on the
20 frontiers. We are fighting to hold onto the lands
21 that we have now. It's been a battle -- uphill
22 battle all of these years and we're still involved
23 with it. This is another fine example.

24 And as was stated earlier, I would like to
25 also know who -- what tribal leaders wanted this

1 meeting and who wanted to have these changed, the IRA
2 process. And I know that the process has taken a
3 little longer. It has. But I would rather go
4 through that process than have an MOU with the state
5 or with the counties. I'm totally against that, and
6 it won't work where I come from. Lands in the
7 past -- the acts of the governments have tried on
8 us -- as guinea pig acts, actually, tried on us. The
9 Termination Act was one of them. Also the Allotment
10 Act was another one, the Goss Act, that's another
11 one. And that's caused a lot of problems for us on
12 our reservation. We have checker-boarded reservation
13 now. Who had jurisdiction over there and over on
14 that land. It's a constant fight for us. It seems
15 like every month -- every week we're in a battle with
16 them.

17 So I, for the record, would say no. I do
18 not want MOU with them. I think the process should
19 stay the way it is. And I believe that -- I hope
20 that our comments that are made here today are taken
21 in a good way where you represent the tribes and say,
22 no, the tribes don't want it. And I hope it leads to
23 that. I hope that you listen to us and not go to
24 D.C. and have it ignored. And we're all here for a
25 reason today, because we care about our homelands.

1 We care about our people. We care about our way of
2 life. And there are ceremonies that we have on those
3 lands. It means nothing to them. It means
4 everything to us. It's a survival to us and we must
5 remember that. Our people are there. Our people are
6 guiding it and we can't lose this battle. We can't.

7 So I want to say that I hope you listen to
8 us in a good way and fight for us. And fight for us
9 as Native American people, as Indian tribes across
10 this country. That is one fight that -- we cannot
11 have this changed process, that's my opinion, at
12 least not where I come from. It's a constant battle.
13 And I'm sure that most of you know what I'm talking
14 about.

15 But I want to thank you for the time and I
16 want to thank my brothers and sisters here for
17 allowing me to speak here in Portland, beautiful
18 country and -- beautiful country. And I want to say
19 that it is totally a good feeling to see this land.
20 And I want to say thank you to all of you for
21 allowing myself and my tribe to speak here, but -- I
22 want to say thank you. And I do have a written
23 comment and I will give it to the secretary. Thank
24 you.

25 MR. TAHSUDA: Thank you. We have your

1 comments here.

2 Next on my list I have councilman Willy
3 Frank from Nisqually.

4 MS. OBI: I'll do some adjusting here. I'm
5 not that tall.

6 MR. TAHSUDA: You can break out into song
7 if you want.

8 MS. OBI: No thank you. Councilman Frank
9 had to leave so I'm standing in. My name is Darla
10 Obi, that is D-A-R-L-A, last name spelling is Obi, O
11 as in Ocean, B as in boy, I as in iris. And I have
12 the honor today as serving the Nisqually Tribe as a
13 self-governance coordinator. I would like to thank
14 the Department of the Interior and Acting Assistant
15 Secretary Tahsuda for traveling to the Northwest to
16 hear tribal leaders' concerns. My hope is that you
17 take away what you hear today to heart.

18 Although no process is perfect, the current
19 fee-to-trust regulations work for Indian country.
20 The Part 151 regulations have restored hundreds and
21 thousands of acres of tribal homelands to trust
22 status. Indian Country did not ask for this
23 rule-making or the changes that the Department is
24 seeking. The Nisqually Tribe fears that this effort
25 could potentially result in further obstacles to

1 obtaining land for our tribal citizens, growing our
2 economy and providing a future for our people.

3 The most troubling aspect of this
4 initiative, as outlined in the discussion draft
5 released last fall, is that the Department seems to
6 draw new distinctions between on-reservation and
7 off-reservation acquisitions.

8 The Nisqually Tribe opposes any proposal
9 that would impose new burdens on off-reservation
10 acquisitions. The current fee-to-trust regulations
11 already acknowledge a distinction between
12 on-reservation and off-reservation acquisitions. The
13 regulations create two separate processes for each
14 category of land acquisition and these processes
15 work.

16 The current Part 151 regulations already
17 require the Department to take place greater scrutiny
18 on off-reservation applications. The regulations
19 require that as the distance between the tribes'
20 reservation and the land to be acquired increases,
21 the Secretary shall give greater scrutiny to the
22 tribes' justification of anticipated benefits from
23 the acquisition. And the Secretary will also give
24 greater weight to the concerns of the state and the
25 local community where the land is located. This

1 structure works well for both the local communities
2 and Tribal Nations. It should not be changed. The
3 Department's current efforts cannot ignore the
4 geographic realities of Indian Country. The
5 Nisqually Tribe's historical land base does not stop
6 at the boundaries of our reservation.

7 On our sacred lands, traditional fishing
8 areas and trade routes traversed throughout the Puget
9 Sound area. Placing additional burdens on
10 off-reservation acquisitions diminishes and ignores
11 the Nisqually Tribe's connection to our homeland.

12 In addition many tribes -- many nations
13 have to look for off-reservation land because there
14 is no more land left on the reservation. The
15 Nisqually reservation was initially 1200 acres and
16 was enlarged to 4700 acres in 1856. The reservation
17 straddled both sides of the Nisqually River.
18 Unfortunately 101 years ago in 1917, the United
19 States Army moved onto the Nisqually reservation and
20 ordered the tribe to evacuate back across the
21 Nisqually River. Pierce County later condemned
22 3300 acres of Nisqually reservation and transferred
23 it to the army to expand what would now become what
24 we know today as Joint Base Lewis-McChord. This
25 illegal condemnation stole 71 percent of our

1 reservation lands. The army now uses the land as a
2 firing range and we can clearly, loudly hear the
3 blasts and shells of our former homeland. The loss
4 of so much land forced the entire tribe to crowd onto
5 the remaining one-quarter of the reservation. The
6 land that we lost cannot be reacquired and there is
7 very little land available on the remaining
8 reservation. The tribe is forced by a necessity to
9 look off-reservation for new land. The Nisqually
10 Tribe is a good neighbor to the communities where we
11 acquire these lands. We routinely have MOUs and
12 agreements to ensure that the local communities'
13 concerns are addressed while still being able to gain
14 the land that we need for our homes, our businesses
15 our economic development, our habitat restoration.

16 The current regulations offer a great
17 framework for this interaction. Unfortunately the
18 Department's discussion draft contained a requirement
19 for MOUs for off-reservation acquisitions. This
20 could create a pocket veto for local communities that
21 would allow them to extract disproportionate
22 concession from the Tribal Nations before an
23 off-reservation acquisition could proceed. The
24 Nisqually Tribe opposes mandatory MOUs for
25 off-reservation acquisitions.

1 In conclusion the Nisqually Tribe does not
2 support changes to the Part 151 regulations that
3 would create new burdens to trust acquisitions,
4 especially off-reservation acquisitions.

5 If the Department is serious about making
6 fee-to-trust process more efficient, we have two
7 suggestions that could take it outside of this
8 rule-making effort.

9 The first one being the Department could
10 return decisional authority for nongaming
11 off-reservation acquisitions to the regional offices.
12 The central office does not have the capacity to
13 handle these applications efficiently.

14 Secondly, the Department could abandon its
15 30-day self-stay policy for fee-to-trust acquisitions
16 in the wake of the Patchak case, P-A-T-C-H-A-K. The
17 30-day self-stay is no longer necessary. Land should
18 be placed immediately into trust following approval
19 of an application.

20 Again, thank you for your opportunity to
21 express the Nisqually Tribe's views on the
22 Department's efforts to change the Part 151
23 regulations. The tribe will submit formal written
24 comments addressing the ten questions that were
25 proposed by the Department. Thank you.

1 MR. TAHSUDA: Thank you, Ms. Obi.

2 So next up I have Ray Pierre, vice chair
3 council.

4 MR. PIERRE: (Native tongue.) Hello, good
5 morning, good day. My name is Ray Pierre, R-A-Y,
6 P-I-E-R-R-E. Some French guy back in the day
7 couldn't say Pay-el, so they changed it to Pierre.

8 I would like to, first off, thank
9 Mr. Tahsuda and Mr. Rice for the opportunity to share
10 my tribe's views and the Department's desire to
11 change the Part 151 regulations.

12 As a preliminary matter, this proposal is
13 premature because the administration still does not
14 have a senate-confirmed assistant secretary for
15 Indian Affairs. This position is the highest level
16 senate-confirmed political appointee dedicated solely
17 to tribal policy. If the Trump administration wishes
18 to change regulations that have such a fundamental
19 impact on Indian Country, it should wait until the
20 senate has confirmed an assistant secretary for
21 Indian Affairs.

22 The Department's discussion draft would
23 detrimentally impact the Kalispel Tribe because the
24 draft seeks to place additional burdens and
25 restrictions on off-reservation land acquisitions.

1 The discussion draft does not take into account that
2 tribal nations were never bound by their reservation
3 boundaries. The traditional homeland of the Kalispel
4 stretches from Paradise, Montana down the Clark Fork
5 River, around Pend Oreille Lake and Northern Idaho,
6 down the Pend Oreille River, up Priest River to
7 Priest Lake and northwestward, across northeastern
8 Washington to the mouth of the Salmo River just over
9 the international boarder in British Columbia.

10 On March 23rd, 1914 President Woodrow
11 Wilson established Kalispel Indian reservation. The
12 reservation confined our people to just 4600 acres
13 along the Pend Oreille River, Pend Oreille County
14 Washington. This is a mere fraction of our original
15 territory, 99 percent of which is off the
16 reservation.

17 The reservation is approximately one mile
18 wide and ten miles long and is located, except for
19 240 acres, on the east bank of the Pend Oreille
20 River. In 1924 the federal government allotted the
21 entire reservation to Kalispel tribal citizens.
22 Unlike other tribal nations, we received small
23 40-acre allotments located mainly on steep hillsides
24 and flood plain. Our reservation is beautiful but
25 small. It's made up of -- primarily of steep

1 hillsides and floodplains that are totally unsuitable
2 for development. The reservation is hemmed in by the
3 Pend Oreille River on one side and surrounded by
4 federal lands on the other. The Kalispel Tribe has
5 run out of lands on our reservation that we can
6 develop. This forced our tribal government to live
7 off-reservation to provide for the needs of our
8 tribal citizens.

9 The Kalispel Tribe relied on the Indian
10 Reorganization Act and the Part 151 regulations to
11 acquire real estate in Airway Heights, Washington.
12 We then received a reservation proclamation for the
13 land, and it now serves as the foundation for our
14 continued economic development.

15 The Kalispel Tribe has a deep appreciation
16 and respect for the off-reservation acquisition
17 authority created by the Indian Reorganization Act
18 and implemented under Part 151. These regulations
19 created the opportunity for disadvantaged tribes,
20 like the Kalispel, to provide for their people.
21 Without the Part 151 regulations we would not have
22 been able to acquire trust land and Airway Heights.
23 Our Airway Heights reservation has allowed the tribe
24 to begin addressing the profound socioeconomic
25 disparities and disadvantages which undermine the

1 strength of our tribal government and the health of
2 our people during the many decades in which we were
3 forced to live on a remote reservation where there
4 was no potable water, where nothing of substance
5 could be built without ruined by annual flooding.

6 In short, the Part 151 regulations have
7 worked for our tribe and the Department should not
8 try and fix something that is broken. Any change
9 comes at a risk of making it harder for Tribal
10 Nations to acquire desperately needed land
11 off-reservation.

12 Again, I would like to thank you guys for
13 your time, thank the rest of the tribal leaders, and
14 I agree with Chairman Wood (sic). We agree with
15 almost everything that was said today (Native
16 tongue).

17 MR. TAHSUDA: Thank you, vice chairman.

18 Next up I have Chairwoman Pigsley from
19 Siletz.

20 MS. PIGSLEY: Hello and welcome to
21 Portland. My name is Delores Pigsley and I'm the
22 chairman for the Confederated Tribes of Siletz for
23 over 30 years. So this process isn't new. It's new
24 to every administration just about. And because we
25 were a terminated tribe and a restored tribe, we were

1 restored with very little land, they were mountain
2 tops, and it was 3600 acres. We once had a 1.1
3 million acre reservation. So taking land into trust
4 has been one of our top priorities, and it's been a
5 difficult process, a very expensive process. And we
6 have learned to work with whatever we're given, but
7 as administration changes, we're always given some
8 new boundary or some new issue that we have to deal
9 with. And at one time we had pending applications.
10 They were pending over eight years, fee-to-trust
11 applications. And what that caused us to do was to
12 update all those environmental impact statements. It
13 cost us a lot of money. And we're a small tribe. We
14 have 5,000 members. And I think right now we have
15 about 16,000 acres of land, not all of it is in
16 trust. But the process is important, and I don't
17 know why there has to be changes, that expressed by a
18 lot of people. And it would be interesting to know
19 what tribes are in favor of doing this.

20 The land that is taken in trust for us has
21 mainly been used for housing and economic
22 development. And it's been difficult. It's been
23 expensive. We live on the coast, by the ocean. And
24 all the land that we purchased to use for housing or
25 economic development is ocean view, lake view or

1 river view, so the price is triple what you would pay
2 anywhere else.

3 We feel that it's the trust responsibility
4 of the Bureau of Indian Affairs to assist tribes and
5 to help tribes and remove the obstacles that keep us
6 from being a sovereign government and practicing our
7 sovereignty and assisting us with providing programs
8 for our members. And so I don't know where the
9 new -- if the new regulations get us there or put
10 more obstacles in place.

11 We've worked very hard over the years with
12 our local governments, cities and Siletz, Lincoln
13 City, the county commissioners, and have developed a
14 good relationship over the years. And so those
15 relationships are important but I don't think they
16 should be part of the process. I think the Bureau
17 has to look at what tribes want to do, what they want
18 to be and what they want for their people. And they
19 need to be our trustee and do the best thing for
20 tribes. Thank you.

21 Oh, and the other thing I was going to
22 mention, I think those applications should be
23 processed in the Portland regional office for us.
24 Sending them back to Washington is like sending them
25 back in a big black hole. When we're back there and

1 we're visiting and we're wanting to know what the
2 status is, in the past it's been very difficult to
3 find a body who can tell us and give us that
4 information. And we've been very successful here in
5 the Portland area in getting that information and the
6 office keeping us updated on where we are in that
7 process. So I thank you for coming to Portland.

8 MR. TAHSUDA: Thank you, Chairwoman. I
9 have -- that's all I have for tribal leaders. I have
10 a couple of folks -- additional folks from Colville
11 if you still want to speak, Norma Sanchez and Rodney
12 Cawston.

13 MS. SANCHEZ: Good morning -- or afternoon.
14 I don't know what time it is. I don't wear a watch.
15 My name is Norma Sanchez. I'm from the Colville
16 Tribe, and I didn't want to speak to you guys on the
17 political side of it. So I'm going to take my shoes
18 off and I'm going to talk to you about four
19 generations behind and the seven generations I look
20 at for the future for the indigenous people. And I'm
21 not speaking on behalf of my tribe. I'm a council
22 member of the Colville Tribe and I hold the
23 government committee chair. I'm speaking to you as
24 an indigenous country.

25 The resignation in here is stated almost

1 equally in every single tribe that spoke because we
2 all feel the same about our land. We all are better
3 stewards, I feel, in our lands than the federal
4 government, the state government or the local
5 government. Our bind to the land and the water and
6 the animals around us supported our ancestors, so I'm
7 going to speak to you for my grandmother. I'm a
8 Wenatchi (Native tongue) Moses Columbia member. My
9 grandmother was born on Moore Creek. We, as Tribal
10 People, don't even have access to this part of our
11 homeland. My grandmother and her brothers and her
12 mother and her father were all medicine people. We
13 honor the Chinook dance. We gather our medicines.
14 Our waters and our medicines are collected for these
15 regions. And we are outsiders. When we would go up
16 there, even today and 50 years ago, we are not
17 welcome. So I would like you today to not look at
18 this people and this discussion as what this is about
19 politically but think of it from your heart because
20 that's where I'm going to talk to you from. And what
21 would your ancestors want? I assume that you took
22 your position thinking that you could help or make a
23 change. That's why I took my shoes off and that's
24 why I took my position. I took it to make a change
25 for our Indian Country on behalf of our people.

1 You know when we talk about our homelands
2 that were taken from us and allotments that were
3 taken out of trust, if we want to change these rules,
4 expedite them. They're being changed in the opposite
5 direction. Give them back as fast as they were taken
6 away, in same thing, in the same process, the
7 regulations on this process is ridiculous. The
8 suppression to our people has gone on long enough.

9 Back in the day all you needed was a
10 handshake and an X. Regulate us that way. Shake our
11 hand and say, here is your land back, because the
12 promises aren't being honored. The fiduciary
13 responsibility from the programs aren't honored, and
14 you look at us when we want to grow economically and
15 the suppression there, and we're asked to work with
16 our local governments.

17 When we want to succeed on our own to
18 develop and we try to move forward, we're looked
19 upon, on the federal government and your commander
20 and chief level, as a drain on the financial society
21 as Indian Country. And at the same time we're asked
22 to suppress even more, suppress them even more, don't
23 allow them to grow, don't allow them to compete with
24 us in our corporate ideas. Keep them bound. My
25 tribe in itself in a rural region, we can't grow

1 economically. Our homeland territories are viable
2 land. Their populations are huge. The
3 infrastructure there is huge and we're not even
4 allowed to approach and to even ask for it back. And
5 to then bind our hands again to even try to take it
6 back, buy it back, and then the fee-to-trust process.
7 And what is the purpose for the region there? Give
8 us the same opportunity that they gave us when they
9 took it. Were we given that same opportunity to say
10 what is your purpose for our land. Because that's
11 what you're asking for us here today. So as a tribal
12 person, indigenous person, remember who we are and
13 where we come from. We're fighting for lands that
14 our parents were born on, our grandparents were born
15 on, our ancestors were killed for. And there is no
16 compensation there and you can't fix that. But we're
17 looking today in Indian Country to move forward.
18 We're trying to be good neighbors. Read the media.
19 There is nothing there, out there, positive whenever
20 an Indian tribe or anybody in any state tries to move
21 forward. It's always hit with negativity. There
22 they are again, asking for a handout. Well, allow us
23 to stop asking and let us support and sustain our own
24 people. Allow us to build our own infrastructure.
25 Our tribe alone has cities within it that

1 can't even take care of the sites that are within our
2 boundaries that are left to dilapidate. And the
3 people who live there pay taxes, but they're still on
4 the wrong side of the river. So these are some
5 concessions that you need to look for. You know, the
6 local government and the legal cost for us to have to
7 sustain that ourselves, for you to ask us to work
8 with the local government is -- always end up in
9 court. If you guys don't want to assist us, then
10 stop binding our hands. Honor your obligations.
11 Right now we are priority one in IHS. We, ourselves,
12 support 100 percent, pay our medical insurance for
13 our members who work for us, because that obligation
14 isn't honored right now. You know, so when we're
15 asking to develop and grow economically to sustain
16 ourselves, maybe -- look at it the opposite way.
17 Expedite these things, because we're not asking for
18 something that wasn't already ours. We're asking for
19 something back to expedite the process, because
20 you're making us buy back what we already had given
21 up. And that -- we have checkerboard all over our
22 reservation. Myself personally. My grandmother, her
23 oldest brother lived across the road from me. Every
24 member of my neighbors up and down the river or the
25 creek that I live are nonmembers fee property in the

1 heart of our reservation. And I would really like
2 you guys to not send us back to the Washington D.C.
3 Bring it back to our own local BIA agency. Who knows
4 us better than we do. Who knows our issues more than
5 we do. The suppression needs to stop. And when I
6 read this, and I just thought this is another way to
7 suppress Indian Country. And if your commander --
8 and not my chief, but your chief, if your commander
9 and chief wasn't in gaming and there wasn't other
10 issues out there, would we be standing here today
11 having this discussion.

12 Hopefully when I'm gone and my great great
13 grandchildren are here, maybe some day we won't have
14 to be in court to hunt, fish and gather my medicines
15 that I need in my own homeland of my grandmother.
16 That's all I wanted to say today. I didn't want to
17 address this because it's really a discussion on your
18 side, listening session on my side. And just send us
19 a notification when we're going to have an action
20 session. I would like to attend that. Thank you.

21 MR. TAHSUDA: Thank you, councilwoman.
22 Mr. Cawston.

23 MR. CAWSTON: (Native tongue). So I want
24 to thank all of you for coming here today to hear all
25 of our comments. And I want to really express how

1 important it is for you to listen to each one of us
2 here and bring this message back. There are so many
3 times when tribes are asked to provide comment on
4 laws and regulations. And even though we'll spill
5 our hearts out, we'll see that the regulation or the
6 laws go forward anyway. So I hope this isn't a
7 futile effort for all of us to come here today and to
8 express, you know, how we feel about this for a
9 fee-to-trust conversion.

10 For my tribe, I'm the natural resources
11 chair for the Natural Resources Committee. And we
12 deal with land issues all the time, both on the
13 reservation and off-reservation.

14 The Colville Confederated Tribes is a
15 confederation of 12 tribes, and those tribes, you
16 know, are -- extend all the way down into Oregon and
17 all the way up into Canada. And it's just so being
18 that my mother is from the Chief Joseph band of Nez
19 Perce, and my mother's homeland is in Oregon. And my
20 father is Lakes and Okanogan, and most of his
21 homelands is the northern part of Washington state
22 and into Canada.

23 And throughout all of this country, you
24 know, our people, those are our homelands. Our
25 people still want to go back. They still have a huge

1 desire. And they often do go back to gather and to
2 protect our cultural resources.

3 I've had others, since I've been on
4 council, come to me and share with me that they know
5 of known gravesites out on that landscape, but they
6 don't want to tell anybody about that because they
7 have a huge fear of archeologists or anybody who
8 might want to come and disturb those graves and some
9 of the cultural resources.

10 The Colville Confederated Tribes
11 reservation is in Okanogan and Ferry County, and
12 those counties in Washington state are probably the
13 most economically disadvantaged counties in the
14 state. So for economic development within our
15 reservation, it just doesn't always work. So one of
16 our objectives in the council that we've discussed is
17 really looking at fee-to-trust conversions off our
18 reservation because there are no lucrative areas in
19 our traditional homelands. And many of our people,
20 today about 50 percent of our membership, actually
21 resides off-reservation. And many of those are --
22 members reside in those larger metropolitan areas.
23 So if we can bring economic activity off the
24 reservation, including gaming, then we're providing
25 jobs for our people. But not only for our people but

1 for the nonIndian people as well because most tribes,
2 you know, are some of the largest employers in their
3 counties or in their districts.

4 But, you know, land has such a huge meaning
5 to us, not only land but aquatic land as well.
6 Because one of the things that we're working very
7 hard on is to have fish passage back to our
8 reservation or salmon passage. At one time our
9 people -- it was about 70 percent of our diet to be
10 able to enjoy and have this resource. And so we're
11 at that threshold of looking at acquiring lands off
12 the reservation, especially in areas that are really
13 important to us, that we can restore salmon habitat
14 and bring that cultural way of life back to our
15 people. That is so critically important to us.

16 And it seems like we're against time here
17 as well because many of the land management agencies
18 that have public lands, it's those public lands
19 that -- where tribes can go on and access those
20 cultural resources that are important to them,
21 whether you're a large land-based tribe or a small
22 land-based tribe. Yet a lot of these land-based
23 agencies, they buy, sell and exchange land all the
24 time, many times without the tribes knowing about
25 this. And so we're losing a lot of those sites that

1 are really important to us that are cultural sites,
2 our sacred sites. And we have very little recourse
3 to keep those lands in public status.

4 And so, you know, that is another reason
5 that it's very important for us to look at those
6 fee-to-trust conversions. And you know, our -- a lot
7 of our traditional food and things grow
8 off-reservation and they don't grow on the
9 reservation where we reside.

10 I just wanted to share with you a story of
11 one of our elders from back home. She told me this
12 last season she was out digging Camas roots at a
13 place where she had dug roots for most of her life,
14 in a very open, unfenced area. Well, the private
15 landowners came forward and they pulled out a rifle
16 or a pistol and asked her to leave the property. So
17 we're losing those sites. Many of these sites, our
18 elders, they've been there since time immemorial.
19 It's getting harder and harder for us to gather those
20 foods and medicines and weaving materials that our
21 people -- that they highly desire to pass that
22 cultural knowledge down to our future generations.

23 And also working with local governments or
24 state governments, that is very -- can be very
25 problematic. All of us here express that we've all

1 experienced that. It seems like prejudice is at its
2 worst where there -- you know, near reservations
3 where there are large populations of native people.
4 We have to deal with this. It's just a reality to
5 us. And so to ask us to work with those
6 municipalities or other governments, I think that's
7 just going to make the process longer.

8 And also as many have already expressed,
9 it's the federal government's trust responsibility to
10 us as Indian people, and it should remain as a
11 federal process. And I really think that we need to
12 look at the existing laws and regulations to see
13 where we can actually find ways -- where we can
14 improve that instead of making new regulations. If
15 we could have these approved at the local regional
16 level, that could be, as my predecessor council
17 person said here, those who know us the best here in
18 the Pacific Northwest.

19 So I just want to thank you for your time
20 and allowing me to share a few words.

21 MR. TAHSUDA: Thank you, councilman.

22 (Reporter requests clarification.)

23 MR. CAWSTON: Rodney, R-O-D-N-E-Y, Cawston,
24 C-A-W-S-T-O-N.

25 MR. TAHSUDA: We still have about half an

1 hour here, so if anybody else wants to comment. Or I
2 can respond to some of the things that have been
3 raised today as well.

4 MR. CUSHMAN: My name is Joe Cushman,
5 C-U-S-H-M-A-N. I'm the planning director for the
6 Nisqually Indian Tribe. You've heard some great
7 comments earlier from tribal representative Darla
8 Obi. I'm going to add some comments more on the
9 staff level.

10 I've been doing off-reservation
11 fee-to-trust for the Nisqually Tribe for the past 44
12 years. Our first off-reservation acquisition was in
13 1975. On day one we signed a purchase and sale
14 agreement. On day seven that deed was recorded at
15 the title place in Portland. It took us seven days
16 to complete an off-reservation fee-to-trust. That
17 land was used for a tribal center and a health
18 clinic. Nobody could argue that it was not a good
19 use. And today it would probably take us seven
20 years. So something is wrong with the process, and I
21 don't think what you're proposing is going to fix it.

22 In the past 40 years we've done about 30
23 fee-to-trust. About ten of them are off-reservation.
24 They're mostly commercial. They're for small
25 convenience stores and other economic activities, and

1 they are critical to our economic diversification
2 effort. We need to keep going on that.

3 I think the basic message is that the
4 current process works. We've made it work since
5 1975. It worked this year. Don't change it because
6 if it ain't broke, don't fix it basically is the
7 message I'm reading today.

8 We work hard on local relationships and
9 partnerships. We have MOAs with the counties and the
10 cities when we do the fee-to-trust. But it is key
11 that those not be made mandatory because that will
12 take away our leverage. We work these relationships
13 hard and we work them on a daily and weekly basis,
14 but please don't put into the regulations that they
15 have cathedral (sic) power. It will undermine
16 everything that we're doing. I can't stress that
17 enough.

18 It's ironic local governments are calling
19 us every week, hey, we've got a piece of property,
20 how about a fee-to-trust, how about a convenience
21 store, how about we do a joint venture. And we say
22 we'd love to do it. We've got the plan, we've got
23 the financing, but we don't have the backing of the
24 BIA central office because it's all up in the air.
25 It's very frustrating. The problem is not at the

1 local governments. It's not at the tribal
2 governments. It's not at the agency or the regional
3 office. It's not at the state. It's at the BIA and
4 the central office. It's bizarre.

5 I guess again, the message is what we're
6 doing works. If it isn't broke, don't fix it. The
7 151 regulations have been proven at the best of
8 times, so please leave them alone. Thank you.

9 MR. WHEAT: Good afternoon. My name is
10 Scott Wheat. I'm an attorney with Wheat Law Offices.
11 I represent the Confederated Tribes of Coos, Lower
12 Umpqua and Siuslaw Indians. I also represent the
13 Spokane Tribe of Indians. As you may recall,
14 Chairwoman Evans provided brief remarks today on
15 behalf of the Spokane tribe.

16 Unfortunately Confederated Tribes elected
17 officials were unable to attend today so they asked
18 that I address these comments to you all on their
19 behalf. And also I'd like to note for the record
20 that these comments are also on behalf of the Spokane
21 Tribe. My two tribal clients are of one view on this
22 one issue I want to talk about.

23 I know it's been a long morning and a lot
24 of testimony. I'm really going to try to not cover
25 ground that's already been covered other than to say

1 humbly and respectfully I very much appreciated
2 hearing the views of elected tribal officials this
3 morning. And as Chairwoman Evans noted, there is
4 going to be a lot of agreement between my two tribal
5 clients on various concerns that have been raised
6 today. We will memorialize those positions in
7 written comments that we'll submit by the deadline.

8 I want to make sure you got my name.
9 Mine's an easy one, just like the grain, W-H-E-A-T.

10 So for me, as somebody who is in my third
11 decade of representing tribes, and as an enrolled
12 member of Choctaw Nation of Oklahoma, and myself, it
13 was drummed into my head at a very early age that in
14 Indian Country, history matters. It really does
15 matter. It really does matter where you come from.
16 When we see each other at powwows, we say, hey, where
17 are you from. We don't mean where are you living
18 today. What we mean when we say that is, where are
19 your people from. Because our connections to our
20 homelands is what makes us indigenous. That matters.
21 It matters to Indian Country and it should matter to
22 the United States government.

23 Sadly, however, if you look at the existing
24 rights, there is no expressed provision on
25 on-reservation acquisitions for tribes to submit

1 comments. All kinds of opportunity for states,
2 counties, cities, local units of government, to
3 provide comments. But as my client, the Spokane
4 Tribe, has been reminded of in litigation, regardless
5 of whether Spokane is the resident tribe, certain
6 tribes and its attorneys take the position that we
7 are not entitled to even comment on their
8 fee-to-trust applications for lands within my tribes
9 undisputed, exclusive, aboriginal territory. Let me
10 repeat that. That we don't even, as the resident
11 tribe, you all should not even consider what we have
12 to say.

13 Now, we sharply dispute that interpretation
14 of the existing CFRs, but we do want to take this
15 opportunity here to say that if we're going to open
16 this up, something that is broke and does need to be
17 fixed, it's resident tribes should have a say. We
18 should have a seat at the table. It should be
19 crystal clear in the CFRs that we have that right.
20 If the federal government is going to listen to every
21 other unit of government, there should be some
22 concern about what the resident tribe has to say. We
23 shouldn't be in a position where we object to a
24 foreign tribe exercising governmental jurisdiction in
25 our territory using the United States as a proxy. I

1 have come here today to deliver the message that that
2 needs to stop. We should be heard.

3 Unfortunately what my Spokane client has
4 witnessed, instead of gratitude or being able to come
5 into another tribe's territory and reap economic
6 benefits, our fee-to-trust applications get opposed,
7 our gaming applications get opposed.

8 So if the concern here is to make sure that
9 constituent and stakeholders have a say in these
10 off-reservation fee-to-trust processes, let's start
11 first with Indian Country. Let's make it clear that
12 Indian Country -- the resident tribe should have a
13 say. If my client can demonstrate to you by a
14 preponderance of the evidence that this is our
15 territory, we should have a say over whether another
16 tribe should come in and exercise governmental
17 jurisdiction in our homelands.

18 So we very much look forward to working
19 with Bryan and John, moving forward, and making sure
20 that this issue is addressed and properly addressed
21 in this round of regulatory changes. So thank you
22 for the opportunity to address you this afternoon and
23 look forward to working with you both in the future
24 on these important issues.

25 MR. TAHSUDA: Thank you, Scott. Anybody

1 else? Open mic. Great.

2 So I know that maybe some of you don't
3 think this is a formal consultation, but I will
4 proceed as if it is. And I know that the tribes
5 often like to have some dialogue and that these
6 consultations not be purely a listening session, and
7 I would agree with that. I think a consultation does
8 not -- or you can have a listening session without
9 having a consultation.

10 I wanted to offer a couple of thoughts, and
11 I'm happy to engage in a little bit of dialogue on
12 these if you want. So I am -- I guess I'm not sure
13 how to say more clearly -- actually, I'm not
14 speaking -- can you guys hear me okay? There seems
15 to be some, I think, maybe some misunderstandings on
16 the issue of the MOUs. Let me be clear, there has
17 never been part of the proposal a requirement that
18 there be an MOU. It's not mandated. It doesn't give
19 a veto to anybody. This arises from, in part -- I
20 should say there is probably two things that give
21 rise to this. And one is that we -- for
22 off-reservation applications, we have to make some
23 considerations on impacts to local governments, et
24 cetera. It's required by our regulations, and that's
25 an issue that helps us get to a decision that is

1 defensible in federal court in case there is
2 litigation over that.

3 So one way to determine impacts to local
4 governments and positive benefits to a tribe, et
5 cetera, is to say if there is an agreement between
6 the tribe and a local jurisdiction about how to
7 handle certain impacts, then pretty clearly things
8 that are captured in an MOU have an agreement on the
9 impacts and how they're dealt with. And we, the
10 Department, don't have to really delve much further
11 into that and do our own assessment because the two
12 interested parties -- the two truly interested
13 parties have come to an agreement on that.

14 So again, for us, that's, I would say, a
15 more easily defensible position. It also doesn't let
16 the Department insert its views into what those
17 impacts and how they should be addressed are.
18 They're addressed by the two most interested parties.
19 So that's one facet of the idea of the MOU.

20 Now the other part, and this is not a new
21 discussion. So a couple years ago anyway, there was
22 an active effort by the National Congress of American
23 Indians. And the Congress, particularly the Senate
24 Committee on Indian Affairs, to propose legislation
25 which would amend how the fee-to-trust is conducted,

1 and particularly how off-reservation fee-to-trust is
2 conducted. One of the ideas that came out of that,
3 my understanding, had broad support, had support from
4 NCI, had support from a lot of local counties, et
5 cetera, had support from Congress, was the idea
6 that -- and again, no mandate, but MOUs could be
7 achieved between local governments and the tribes
8 that had to facilitate the acquisition process and
9 the Department's fee-to-trust process. It could
10 facilitate that, help it happen faster and reduce the
11 level of litigation. So that's not a new idea. It's
12 been out there for a while. I think there are real
13 considerations that it can address.

14 And again, it's never been part of our
15 thought process that this would be a veto. And the
16 flip side is I think it's perfectly acceptable and an
17 indication of what considerations have been taken
18 whenever a tribe could put in their application that
19 there were discussions about an MOU but the parties
20 could not come to that. Right? And that's also an
21 indication of where the different parties stand
22 whenever they want to make comment or oppose an
23 application. So that part of the, again, the
24 question to put out there of whether to go into the
25 regulations is intended to facilitate this part of

1 the discussion.

2 In my personal experience, and before I
3 came to Washington D.C., I represented some tribes in
4 different parts of the country. And some of the more
5 successful opportunities those tribes had to take
6 land into trust to establish businesses or housing
7 developments, et cetera, were when they were able to
8 achieve agreements with the local governments, and it
9 both sort of short-term facilitated the actual
10 project going on. But in my personal -- this is
11 anecdotal, but in my personal experience it often led
12 to facilitating longer-term relationships between
13 those communities, communities that had often been at
14 odds. And I understand that there is a lot of bad
15 history with a lot of local communities and tribes
16 over the years. But in acknowledging the fact that
17 they're not going away. We're not going away or the
18 tribe's are not going away, maybe there is a way to
19 facilitate these relationships.

20 I don't want to put too much emphasis on
21 attorneys, but sometimes having some parameters
22 around how the relationship is going to be conducted
23 can be helpful as well and reduce future friction.

24 Anyway, that's a long-winded way to say,
25 this is part of the thinking process behind this idea

1 of MOUs. So I don't know if anybody has -- wants to
2 respond or has a thought.

3 Sir?

4 MR. CHESNIN: Harry Chesnin, attorney for
5 the Chehalis Tribe. I think the problem is that when
6 you work with governments that will work with tribes,
7 you get an MOU. But when the United States puts the
8 MOU into the regulation, those governments that don't
9 want to work with tribes see it as the veto. So
10 government to government has always worked for tribes
11 with local entities that have been willing to, A,
12 talk to them, many which haven't in the past, or work
13 with them. But it's the imprimatur that the United
14 States government now puts it into the regulation
15 that encourages the anti-tribal, anti-Indian folks to
16 think, whether you believe it or not, but to think
17 they have a veto, to think they have a hostage
18 situation. And that's I think where the concern is.

19 When you can get an MOU, the tribes always
20 tell you about it. Where they can't get an MOU,
21 the -- it's going to be the other folks who don't
22 want the tribes to do it that raise the issue.

23 UNKNOWN SPEAKER: I was going to respond.

24 MR. TAHSUDA: -- John, just because I put
25 him on the spot.

1 UNKNOWN SPEAKER: Yeah, put me on the spot
2 a little bit.

3 On Senator Barrasso's bill, I think tribes
4 really appreciated that Senator Barrasso put forward
5 an effort to solve the Carcieri Fix problem and he
6 did his best to try to pull together a solution with
7 that legislation. And a part of that was this idea
8 if the tribes could get an MOU, it would go a little
9 bit faster. At least my perception from tribes is
10 that that kind of died for a lack of a second. The
11 tribes weren't too excited about that. And I heard a
12 lot from tribal leaders that -- not so much that it
13 was a veto, but kind of a defacto, like, if you don't
14 have an MOU then it's probably not going to go
15 anywhere. Once you add that to the checklist, the
16 tribe is like, well, here is an application with no
17 MOU. Your application just sits there forever.

18 So I think that was a reason that there was
19 not very much enthusiasm for keeping that Barrasso
20 bill moving forward. Maybe one of the reasons was
21 the idea that tribes would become beholden, but --
22 whether explicitly or implicitly to getting an MOU
23 before they can proceed with an acquisition. I just
24 wanted to give you my impression of that discussion
25 with Senator Barrasso, that there was a real concern

1 of many tribes with the legislation, and it may be
2 reflected in the comments that you're receiving today
3 as well.

4 MR. TAHSUDA: Thanks, John.

5 UNKNOWN SPEAKER: You had mentioned a part
6 of the thinking process here, and having an MOU
7 requirement was that it might avoid having the
8 Department insert its views into the process on what
9 the potential impacts would be. And you know, from
10 my perspective, both that and I think the 30-day
11 waiting period that's proposed in the new
12 regulations, all seem to really stem from what we've
13 seen as a shift in the policies of the Department to
14 really insulate the Department from another Cobell
15 type of lawsuit. And this isn't unique, I don't
16 think, to these regulations. We've seen this time
17 and time again. And in the wake of Cobell, perhaps
18 one of the unintended consequences of that lawsuit
19 has been the shifting of policy where everything is
20 geared to put at the forefront what the liability of
21 the United States is, and that that eclipses any
22 considerations of the tribe or the trust
23 responsibility owed to the tribes.

24 So all of that, you know, sounds good and I
25 think benefits the Department. But maybe it's not so

1 good for tribes that are seeking to put land into
2 trust.

3 My question, though, is really in light of
4 all of that, would you agree under the Indian
5 Reorganization Act that the Department has, under the
6 clear language in the statute, the fiduciary
7 obligation to take land into trust, and essentially
8 that's just nothing more than a ministerial act? In
9 other words, these considerations, what the liability
10 for the Department might be in taking land into
11 trust, shouldn't take precedence over the obligation
12 that the secretary is charged, essentially, by that
13 legislation to take land into trust. It's not a
14 discretionary process and it's certainly not, I think
15 under the terms of the legislation, doing tribes a
16 favor, essentially, or taking action to -- that is
17 some type of benefit to the tribe as it's oftentimes
18 characterized, acting under the tribe's request to
19 somehow favor the tribe when it's really a statutory
20 function under the legislation.

21 MR. TAHSUDA: So you had a couple of
22 thoughts in there. Let me try to make sure I sort
23 through and answer them all. So first off, the IRA
24 is an old statute. It's very simple, as a lot of
25 older statutes are. And so that, in itself, is a bit

1 of a challenge. Now, there is long-standing
2 Department policy case law, et cetera, that that
3 simple authority is not mandatory. It's a
4 discretionary act on behalf of the secretary. And as
5 a discretionary act, that then requires consideration
6 for how the decision to act is made. This is sort of
7 basic admin law. So there has to be an adequate
8 record for the decision made. And how do we -- this
9 is all part of how these regs develop over time. And
10 I appreciate the notion that in the early 1970s it
11 was a pretty simple process. Probably -- the world
12 was probably a little bit simpler back then. I was a
13 young kid. So -- but it's a little more complicated
14 now. And we have had -- there have been several
15 challenges and there are ongoing challenges to the
16 authority of the secretary, what his authority and
17 powers are under the IRA, and challenges to the IRA
18 itself. Is it a constitutionally valid law. And for
19 better or for worse, the Supreme Court changes its
20 views over time, as its membership changes. And so
21 they have, over time, offered additional views on the
22 act when we have these decisions, like pack jack
23 (phonetic) and others that come along.

24 So the regulations themselves have been
25 flushed out over time, I think, in part anyway to

1 address the notion of creating a better record of
2 decision for the secretary's actions. Now that, of
3 course, in one sense benefits the Department because
4 we can better support our decisions. But in my view
5 anyway, that's actually part of our trust
6 responsibility to the tribes. It would be a failure
7 of our trust responsibility if we didn't take
8 adequate care and attention to making a decision such
9 that a decision was made for a tribe and that's
10 overturned simply because we didn't create a good
11 enough record for it or we didn't do our job well
12 enough. And so that's part of trying to make sure
13 that the regulations are sufficient for the decision
14 process, sufficient to answer the questions that have
15 been raised over time in court cases. And you know,
16 we have a lot of questions that -- every new case
17 that comes along raises some new issue. And
18 obviously you can't predict the future and anticipate
19 all of them. But to the extent that we can address
20 some of these issues in the regulations, that
21 certainly -- to my mind, it bolsters the
22 defensibility of the act itself and it bolsters the
23 defensibility of the secretary's actions and
24 authority under that act. So that really is, I
25 think, part of the trust responsibility that the

1 secretary has and the United States has for the
2 tribes. I really -- it's happened. I think it's
3 really a tragedy whenever the Department has taken an
4 action to benefit a tribe and its later overturned by
5 a court, and doubly tragic when the court overturns
6 that because the Department in some way failed to
7 adequately provide a record for that action. I don't
8 know if that answers all your questions.

9 MR. REY-BEAR: Question and a comment. My
10 name is Dan Rey-Bear, Rey-Bear McLaughlin. I guess
11 first a comment on the question. It seems that the
12 concerns regarding having a good record that is
13 defensible could be more easily addressed, except
14 regarding budgetary matters, through more staffing
15 and training rather than changing the regulations.
16 The question then is, are there tribes or what tribes
17 have asked the Department to have D.C. central office
18 consideration of trust acquisitions and to add back
19 the 30-day waiting period?

20 MR. TAHSUDA: So the question of central
21 office consideration applies to off-reservation
22 applications. All the on-reservation stuff is
23 primarily at the regional offices and should be being
24 conducted as normal business through the processes
25 that are there. Gaming decisions have largely always

1 come to the central office, and so those still come
2 up. The off-reservation acquisitions have come back
3 to the central office at least in the short-term. I
4 think there was some question as to the adequacy of
5 the direction given to the local -- to the regional
6 offices and local offices. Now it's not -- I think
7 it's kind of to a misnomer to think it's a purely
8 central office task. There is a lot of work, and
9 much of the primary work goes on actually at the
10 region before the packet comes to the central office
11 for consideration.

12 Most of the work on the ground is done out
13 in the region. And then only when it's forwarded to
14 us for consideration for the legal authority to
15 conduct the activities on the land, particularly with
16 gaming, et cetera, those are brought forward for a
17 decision, concurrent decision by the central office.

18 The issue with training is a good one. I
19 think that I would concur that the Bureau could do
20 more and better training on its -- on its processes
21 and how people will implement their programs, so I
22 would agree with that. It is true that at times you
23 have to make budget decisions as to what is more
24 critical, what critical priority at this time, and
25 maybe you put off some of that. We have some ongoing

1 training stuff. We've actually talked about some
2 more. So that's a valid concern to raise and
3 something that we need to do better on for sure.

4 MR. HARJU: So I have I guess a -- to
5 complete the circle, if we have an off-reservation
6 application that's gone to the Portland regional
7 office that's non-gaming. They have everything done.
8 They send it to Washington D.C., what's the process
9 and who is making the decision whether to grant that
10 or not right now? Do you have rules or regulations?
11 You don't have an assistant secretary. Who is
12 handling those and how are they done?

13 MR. TAHSUDA: So let me go backwards
14 through this. It's not necessary that there be an
15 assistant secretary there to -- a senate-confirmed
16 assistant secretary to make that decision as long as
17 we have the secretary and then we have delegated
18 authorities from him. So we have an internal process
19 that we follow. There is the manual. We issued an
20 instructional memorandum back in April on where in
21 the process. Those will get forwarded to the central
22 office. And do you want -- if you want to know about
23 the specific process?

24 MR. HARJU: Somebody has to make a
25 decision.

1 MR. TAHSUDA: Right. So the decision --
2 there are factual decisions that have to be confirmed
3 and there are legal decisions and policy decisions
4 that have to be confirmed.

5 Primarily these things -- any decision, if
6 it has a real question of law or policy, eventually
7 has to come to be confirmed by the D.C. office or the
8 central office because, again, at the end of the day
9 we have to confirm that the actions taken by the
10 Department on behalf of the secretary are sufficient,
11 both from legal authority and also following policy
12 and prior precedent within the Department. They come
13 up, and we have an internal process that are reviewed
14 by lawyers and get reviewed by the program policy
15 people and eventually they work their way through to
16 me. They go upstairs to make sure that -- I think
17 that's part of the process. The secretary is aware
18 of the decisions that are made that have that level
19 of import and they come back down and out the door.
20 This makes it sound really simple, doesn't it? It
21 actually takes a while because some of these -- so
22 when the issues come to D.C., often they have some
23 things that have to be thought through and how do
24 they fit in with policy or legal authority.

25 UNKNOWN SPEAKER: Do you have adequate

1 staff?

2 MR. TAHSUDA: I'm sorry?

3 UNKNOWN SPEAKER: Do you have enough staff
4 to -- because that seems to be where the problems
5 lie, that there isn't enough staff to do all these
6 reviews and take out a decision.

7 MR. TAHSUDA: Yes, I think we have the
8 staff, not that we couldn't use more, probably. I
9 think there is actually -- so there is two issues
10 there, I think. So one is, do we have -- so the
11 staff that we have, are they adequately trained for
12 the functions that they're performing and are they
13 able to do those quickly and efficiently? And we
14 also -- I mean so we do have staff needs, both
15 short-term and long-term within the Department and
16 within the Bureaus, within our Bureaus, Indian Head
17 and BIA. So those are part of sort of long-term
18 human capital plans that we made and have to be made.

19 I don't want to step on Bryan's toes. He's
20 the one that actually has to make some decisions
21 about where the staff are and are they getting things
22 done. It's not my impression that we have -- that
23 things don't happen more quickly because of a lack of
24 staff. I think it's more because these are knotty
25 issues and they take some time sometimes to work

1 their way through.

2 One of the things -- let me add. So it is
3 sort of a responsibility at the end of the day by my
4 office to confirm that the packet, if you want to
5 call it that, that's coming through has hit all the
6 touch bases that it's supposed to. So when somebody
7 calls the secretary and says -- say governor
8 so-and-so calls the secretary and says, "did you know
9 that your office signed off on this?"

10 He can say, "give me one second." He can
11 call down to my office and we can say, "yes, this is
12 the basis of the decision and we took it," and he can
13 respond that way.

14 We have processes that we go through to
15 make sure, that, again, we've touched all the bases.
16 We have all the record there that we need to make
17 including being able to answer questions. Do you
18 want to talk about it? He doesn't want to answer
19 questions.

20 MS. NICHOLSON: Janet Nicholson. I just
21 wanted to make a comment on -- having done
22 fee-to-trust for decades and understanding the
23 delegations, you know, if we have our fee-to-trust
24 for on-reservation is -- with the superintendents,
25 where the land is, where the tribes are, and in the

1 past we had our on-reservation at the region, again,
2 close proximity to our homelands. And in looking at
3 your instructional memo, basically the regional
4 office has upheld the same standard as if they were
5 making the decision. So they're preparing the
6 packages with the tribes for their off-reservation
7 acquisitions. And it's no different than as if the
8 regional director were making the decision. So
9 they're submitting that package to central office to
10 have it analyzed again by the central office staff.
11 And if we're doing that, you've heard many tribes
12 here talk about the delays. And with the regional
13 director -- with the regional director they are also
14 having a legal review here with the solicitor's
15 office. Now, if you make the decision on that
16 fee-to-trust off-reservation, what does it do if that
17 decision is appealed? If we did the decision here at
18 the regional level, then the next level is the
19 assistant secretary and then it goes to IBIA. What
20 happens to the decisions that you make at your level
21 with your delegated authority?

22 MR. TAHSUDA: So I'm not sure if this is
23 what you're getting at, but let me say -- so one of
24 the efforts that we're making internally is to have
25 more consistent internal processes. And over time --

1 and I think if you -- it would be my observation, in
2 the short time that I've been there, that if you
3 don't watch it -- we push a lot of decision making
4 down to the regions and even down to the agency
5 offices. But -- so over time you can deal with
6 issues on the ground. If you don't keep on top of
7 it, you can have growing differences between how
8 things are handled at one region as opposed to
9 another and how they come up to the central office.
10 That's one thing, trying to keep consistent processes
11 as much as possible, obviously recognizing that
12 tribes in different regions have different histories
13 and different ways of handling things.

14 But this goes to an issue that we deal with
15 constantly. And part of this is probably a sign of
16 the times. We live in litigious times. If we don't
17 have more consistent decision-making processes, for
18 us internally that then opens the door for more
19 litigation. If we have consistent processes from the
20 region all the way up through or, in this case, if we
21 have all the footwork done by the regional office in
22 an off-reservation package where there is no decision
23 yet made, until it comes to our level to be made,
24 then there is only one decision. Right? And it's --
25 whatever is open for litigation is based on that

1 decision and that record. It's not based on the fact
2 that we actually may have had two varying views on
3 the issue.

4 So not to cut Scott out of any additional
5 work, but that makes -- that makes, at least for us,
6 the world cleaner. And so that's -- I don't know if
7 I'm answering your question quite or not, but that's
8 part of the process that we're going through
9 internally, in addition to all the other work we have
10 to do. We're looking at, can we be more consistent
11 with the decision-making processes that we make.
12 Again, all this going to hopefully creating a better
13 record of decision and one that's more defensible for
14 the tribes whenever we get done.

15 And I know we're pretty much on time. I
16 did want to --

17 UNKNOWN SPEAKER: Can I make one more
18 comment?

19 MR. TAHSUDA: Sure.

20 UNKNOWN SPEAKER: I wanted to -- going
21 through this process I think emphasizes two things.
22 One is, it's really different parts of the country.
23 And I've been traveling to these different meetings,
24 it's really different in different parts of the
25 country, and having the existing regs address that.

1 The existing regs, it's first a record. The states
2 and local governments can submit comments on
3 anything. So the record -- and then the tribes get a
4 chance to respond. So the record is going to reflect
5 not just MOUs, but almost anything that the state and
6 local government wants to put into the record. And I
7 think that's important because the issues in Alabama,
8 where they don't have any land use laws at all, are
9 different from southern California. So if you try to
10 standardize that, it's -- the different parts of the
11 country are not alike and going to create problems
12 with that. I think that part of the system that
13 reflects the different -- it's just really -- in
14 North Dakota it's way different than it is in other
15 parts of the country.

16 And then there is -- the standard is, the
17 further from the reservation, the more weight to the
18 state and local government. The closer you are, the
19 less weight that they get. That's a very flexible
20 standard but it also reflects that far away from the
21 reservation means one thing in North Dakota, 100
22 miles isn't that far. But in southern California,
23 100 miles is a pretty big distance. I think you need
24 that flexibility in order to apply these regulations
25 in the various parts of the country.

1 And anyway, I just want to speak a little
2 bit, that the existing regs are ready. They already
3 built a record for off-reservation acquisitions and
4 they already have a standard in them, that's sort
5 of -- when you look back at everything, they may have
6 been thinking about the broad diversity of situations
7 that you're going to run into. I wanted to mention
8 that. Thanks.

9 MR. TAHSUDA: Thanks, John. So I want to
10 leave with a couple more thoughts. And one is I
11 heard a lot of comments today about the bifurcated
12 process, and I'm not entirely sure what that means.
13 I wanted to see if I can maybe clarify the thoughts
14 behind some of questions asked. And this is
15 conceptually going to the notion of, can we move
16 certain parts of the decision-making process to the
17 frontend so that would actually shorten the time.

18 I know -- I know from personal
19 experience -- I know and several tribal members have
20 made comments. One of the most expensive parts of
21 this process is the NEMA process. Right? If a
22 decision isn't made relatively timely, then you have
23 to go through and spend more money to go through
24 that.

25 One of the questions is, are there certain

1 things that we could make decisions on? So there are
2 several decisions that have to be made in the
3 process. Right? Are there some of those decisions
4 that could be made further on and save the tribe the
5 cost, going down? And I would say that the horror
6 story -- there is a tribe in the northeast that has
7 been going through a fee-to-trust process, and they
8 are now millions of dollars into the process and
9 don't have a legal basis to move forward. What if
10 they could have got that answer upfront, would that
11 not have been beneficial to the tribe? Would it not
12 have saved time as well as the money? So that's a
13 question.

14 If you could get an answer to what the
15 purpose of the land is for, and particularly if it's
16 gaming, since there are additional restrictions on
17 that by IGRA, can we get answers to those upfront?
18 That's the tribes' intended purpose, can we get that
19 upfront? And then if it looks -- if we think that
20 the answer is no, then the tribe can then look at
21 other options. They can look at other properties.
22 But you haven't spent five years and several hundred
23 thousand dollars doing IGRA work and stuff to get the
24 same answers. That's an open question. I don't
25 think of it as bifurcated, because if you got that

1 answer upfront, you're not going to get it in the
2 backend either. You're going to get a different one
3 in the backend.

4 If we have a discussion and the initial
5 response is, we don't think it's eligible for gaming,
6 you have enterprising attorneys and they convince us
7 otherwise, then it would be made upfront still. I'm
8 not sure where that thought comes from. I hope
9 that's -- if I'm not seeing it correctly, I'm sure
10 you guys will let me know.

11 I do think that there is a -- there has
12 been a missing piece to this process and that is
13 other affected tribes. I feel pretty strongly that
14 we have not, over time, given them as much
15 opportunity to weigh in as we should. And sometimes
16 maybe they haven't even had the same opportunity as
17 other local communities have, and that's not
18 consistent with the intent of the law or the intent
19 of the regulation. Whether we need to change the
20 regulations to accomplishing that, that may be.
21 Because there has been so much interpretation now
22 over time going in one direction, but I'm hoping to
23 hear about that some more too.

24 So that's about it. I know there is a
25 question folks had, too, about current applications.

1 So there is no moratorium on applications. We're
2 still working through applications that are before us
3 now. I think that the intent anyway -- if we move
4 forward with these regulations, they would be
5 completely proscriptive. They would be
6 forward-looking. And probably -- if a tribe thought
7 that the new regulations -- hopefully they would
8 think they are actually better than the old ones and
9 they wanted to switch over, maybe early in the
10 process. Great. But until that time comes, we're
11 not stopping what we're doing and we're continuing to
12 move forward.

13 That's all I have to say. Thank you, Guys.
14 So do we have anybody that would like to offer a
15 closing prayer? I appreciate you guys. I want to
16 say thank for speaking honestly and clearly to us.
17 And we'll take your comments to heart and bring them
18 back to the secretary.

19 Anybody would like to offer a closing
20 prayer? Sir.

21 MR. DUNCAN: First of all I want to say
22 thank you again, gentlemen, all of you. At this time
23 I'm going to speak my language and talk to the
24 Creator, talk to the spirits that watch over us and
25 ask them to protect us, our lands and our people and

1 our families, our old people, young children, our
2 homes, everything, the roads that we ride on,
3 everything. I'm going to ask them at this time for
4 that. (Native tongue).

5 MR. TAHSUDA: Thank you, guys.

6

7 (HEARING ADJOURNED AT 1:11 P.M.)

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9 (NOTE: Untranscribed steno notes archived
10 ten years on computer; transcribed English
11 files archived five years on computer.)

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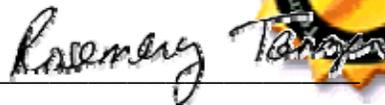
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CERTIFICATE

I, Rosemary Tanzer, a Registered Professional Reporter, and a Certified Shorthand Reporter for Oregon and Washington Certified Court Reporter, hereby certify that I reported in stenotype all proceedings had in the foregoing matter; that thereafter my notes were transcribed through computer-aided transcription, under my direction; and that the foregoing pages constitute a full, true and accurate record of all such testimony adduced and oral proceedings had, and of the whole thereof.

Witness my hand at Portland, Oregon, this 6th day of February, 2018.




Rosemary Tanzer
OREGON CSR NO. 94-0299
Expires September 30, 2020

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