TRIBAL CONSULTATION

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Reported by: Rosemary Tanzer, RPR, OR CSR
MR. TAHSUDA: Good morning. Thanks everybody for coming, and I think we would like to start off with a prayer. So if there is an elder here attending that would like to offer a prayer for us, I would love to offer that to you. Nobody? Brian has offered to step into the breach.

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

Greater God, Heavenly Father, we just thank you for this beautiful day. We thank you for the leadership that you have chosen. We thank you for the leadership that the people have chosen that are here in this room to speak on behalf of their nations. Lord, I thank you for John and Bryan who you also chosen to work with this new administration, Lord. And we pray for this administration and their leadership and we pray that their hearts and their minds will forever be towards Indian country and they would be the trustee that we would hope that they would be. It's a relationship that we didn't ask for but it's one that we inherited and we need to make the best of it, Lord. Sometimes we're not always
going to agree, but let's agree to disagree and keep talking. Bless our time together, bless our conversations and bless our families as we are away from them. In Jesus' name we pray, Amen.

MR. TAHSUDA: Thank you, Brian.

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

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

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

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

I have a list of what -- I will work my way through it. If you hadn't signed on to the list when you came into the door, please do that. I think Liz has a paper with open spots on it that she can bring it up during the break or whatever. And then when you do come up to speak, we have a court reporter.
And so for ease of record if you can please clearly state your name and the tribe that you lead, that would be good. I'd appreciate that. So I think probably that's all we need to do. Don't need to be too formal.

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

So we started off this process by proposing some ideas that would have been amendments to the regulations at Part 151 of the regulations, and
specifically the off-reservation provisions in there.
And so there was a lot of discussion about maybe we
were predetermining things or maybe there was -- we
were moving forward too fast. So taking those
comments into consideration, we did several
discussions, especially NCAI last year and in the
fall. We took a step back and said, okay, let's move
the discussion a little further back and say, okay,
here are some questions that we have received. And
again, these come from a variety of sources but
primarily from tribal leaders from over the years.
So we sent out a new schedule for consultation and a
series of questions about what are some of the issues
-- these questions are sort of intended to
incapsulate comments -- requests for changing the way
the Department does stuff, a whole range of things,
but trying to capture them into a relatively concise
set of questions. If we can work through those
questions, maybe we come out on the backend with some
ideas on how we can improve the process.

So that -- I want you to -- I want to make
clear that this is not a predetermined process, but
this is an attempt to get the best information we
can. There is probably one predetermined assumption
in this, and that is there is a better way that we
can do what we do, processing land-into-trust
applications, and particularly off-reservation
applications. Because at the end of the day, they
have an impact on the on-reservation applications as
well as the difficulties they run into because they
are off-reservation.

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

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

The last thing is, we have a good-sized
group here. I appreciate and am thankful for the
turnout. So we do have some time limitations that we
have to fit this into. So I know that many tribes
have unique history, unique circumstances in which
they operate and which impact how you interact with us and the decisions we make on your behalf. But to the extent that that will take a longer discussion, I would greatly appreciate if we can put that into written comments. Everything here is being taken down by the reporter, but we also accept -- are accepting written comments. So if you have a more extensive background or history to the particular history, facts or circumstances of your tribe, if you could submit those in writing and maybe just give us a very brief overview of that today, that would probably be -- also be helpful on time management.

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

MR. RICE: No.

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

MR. FORSMAN: Yes, sir.

MR. TAHSUDA: Thank you, sir.

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

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

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

But as chairman of the Suquamish Tribe and ATNI president and NCAI vice president for the northwest region, I would like to offer the following comments. First, land restoration is critically important to the northwest tribes. The draft regulation is making an assumption that tribes generally have adequate land bases and our
off-reservation trust acquisition is limited. This is not an accurate assumption in the northwest. A lot of our reservations are smaller, so they're a very small part of our original ceded areas. And they're often poorly located and away from urban areas and preferable lands. So that requires tribes to, often times, acquire off-reservation parcels for economic development and also for traditional and cultural needs.

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

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

There is one tribe in the northwest that has had to acquire a large portion of land just to
have an area where they can hunt unmolested. So there is an option oftentimes where tribes that have the resources can do that. So it's important that we make this process as easy as possible.

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

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

The tribes are not asking for the, quote, benefit of an expedited denial process for land-into-trust acquisitions. We want to make sure that the Department doesn't try to justify these changes by claiming that -- establishing a new two-step process. To quickly turn down trust land
applications will spare the tribe the time and
expense of completing the trust process. So we don't
need this favor to make it quicker for you to deny
us.

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

So these animosities can present
insurmountable obstacles in reaching cooperative agreements. And the proposed regulatory changes are necessary and warranted. And proposed changes is 25 CFR Part 151 are a solution in search for a problem. We suggest the need and wisdom of pursuing this endeavor at a time when so many other basic travesties go unmet and unaddressed.

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

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

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

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

Good morning. My name is Jan Reibach and I'm the lands manager for the Confederated Tribes of Grand Ronde. That's G-R-A-N-D-R-O-N-D-E. I would
like to welcome the DUI, the BIA, and all our tribal representatives from other tribes here to our homelands, to our ceded lands. Historically the lands that we're on right now were inhabited by the bands of the Chinook people who were part of the Willamette Valley treaty of 1855. Personal note, my great grandfather signed that treaty. So we're very connected to the land.

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

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

As a result of the diminishment and termination, Grand Ronde was reduced to only a few acre cemetery until it was restored. Through both legislation and fee-to-trust conversions, we have been able to regain over 11,000 acres. Because
terminated and restored tribes may not have exterior reservation boundaries, the off-reservation fee-to-trust regulations often apply to land acquisitions of original homelands. Many of our fee-to-trust acquisitions within exterior boundaries of our original reservations, approximately 60,000-acre area, were considered off-reservation and processed through the slower, more expensive off-reservation regulations.

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

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

First, the Bureau is requesting input as to what they should consider in developing the criteria and regulations for off-reservation trust regulations. However, they have already proposed the revised regulations. It would be more appropriate for the Bureau to seek that input through
consultation with tribes as the initial step, then
develop draft regulations after considering our input
to begin with.

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

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

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

Recently through an off-reservation
acquisition in the tribes' homelands and with the
cooperation of the local and federal government
agencies, Grand Ronde was able to celebrate the
return of a property with very significant cultural
and natural resources as well as historic
significance. This is a property that is not for economic development. It's not for gaming, keeping it in its natural state within our homelands that an actual city donated to the tribe in working with them. Now this property will be protected for generations to come. Grand Ronde is hopeful to have -- I actually recant that. I was talking about another property that went into trust. Grand Ronde is hopeful to have that same success with an application that is currently the off-reservation fee-to-trust. This is the one that the city actually donated to the tribe, so it's currently pending. It's very culturally and historically significant. It's in our homelands. And was donated by a county government for the explicit purpose of restoring into tribal ownership through the fee-to-trust conversion. So this is a property that's not for gaming. It's for just very, very simple use, culturally, historically significant, natural resource-type property.

Unfortunately that application has been held up in Washington D.C. for months now, and we are uncertain when we will receive a decision. We have inquired several times in the northwest regional 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.
So Central Council submitted a fee-to-trust application beginning in 2008. And we struggled through the contention with the administration that the moratorium on fee-to-trust applications and acquisitions in Alaska imposed by the Part 151, that wonderful provision, that accepted that these activities in the state of Alaska was inappropriate and unlawful. We finally prevailed by litigation in the Achiak case and had a completed application submitted to Anchorage in October of this last year. And Desiree will speak directly to those specific applications in the context of these proposed regulatory changes by the Department.

I'd just like to say that of the questions posed to us in one through four really go to the question of the purpose and intent and the goals of the Indian Organization Act of 1934. And those were to develop tribal lands and resources for the benefit of tribes. And as you see in the testimony submitted from the National Congress of American Indians and by the ATNI as well as the comments that we'll be providing, specifically from Central Council, those purposes and goals were well-documented in testimony at the time in 1934 as well as in practice since that time with over 65 percent of tribal Indian lands lost
between the Dawes Act in 1887 and the IRA in 1934. The effort was to restore these lands. And significantly less than five percent of the lands lost have been restored since the enactment of the IRA in 1934.

So really the purpose and goals of the regulation, which is the responsibility of the Department to carry out under the statutory authority of the IRA, is really to acquire lands for the benefit of tribes. And we are most concerned by the imposition of waiting and interest on behalf of local government, state and local government. That is, in our view, inappropriate. The considerations of jurisdiction for state and local government where they have no jurisdiction on tribal lands and the consideration of the impacts and the benefits for state and local government are extremely concerning for us. The purpose and goal and the task of the Department is to evaluate the benefit for tribes. Tribes are not working for state and local government. We do not -- they don't impose their jurisdiction on us and we ought not to contravene hundreds of years of federal Indian law and federal Indian policy by assuming in regulation the rights and privileges that are statutory authority for state
and local government that does not currently exist. So we also are concerned by the imposition of additional requirements on tribes for business plans. I'm really -- it's hard to think of other entities, whether they're governments or they're commercial enterprises, that are required to divulge their proprietary business information, their business plans and models for anyone to see given that these applications, once submitted, oftentimes take years in the process. So the utility of business plans that are years old, it is certainly questionable. The impropriety of divulging proprietary business information by a tribe for others to take advantage of and to diminish the value of these proposed uses for the tribe really flies in the face of the purpose and intent of these regulations and carrying out the goals of the IRA. We were to ask that additional requirements for business plans be carefully considered given the injury to tribal interests that occur by divulging this information.

And we are also concerned that these changes don't seek to reduce the timeline and the cost burden for tribes. The bifurcation of the process really presents an opportunity, as Chairman
Forsman indicated, for the Department to say no to applications and then repeat the process during the second phase, which includes NEPA. And it's very difficult to progress through the first tier of the two-tier process without -- without assuming conclusions that really need be determined in the NEPA study that is vested in the second tier.

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

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

So we are -- we have specific recommendations for improving the process. We think
that this ought not to be a year's long process. We
are well acquainted with applications that have been
sitting in the Department for years and years. We
are well aware that it became very politicized in the
early part of this century, beginning in 2000. And
with the whole Abramoff issue, where there was a
section with the congressional record, in essence,
for sale to advocates where congressional members
railed against fee-to-trust applications by tribes
because of imputed gaming interest. And we think
it's a real mistake to mix part 292 with Part 151.
It's difficult enough to have any project that's a
nongaming project not be accused of a cumulative
benefit that would encourage a later gaming
enterprise by mixing the two. Today we can say no,
that is suited to the part 292 process instead of
Part 151, which is not gaming. But to now mix these
and provide the opportunity for a greater -- a more
weighted assertion that it could lead to gaming or
possibly could be gaming is a real mistake and we
think it is actually provided -- prohibited by
provision Agren (phonetic) in 2719 C.
So those are my general comments, and I
would like Desiree to speak specifically to a couple
of issues that Central Council has with its
applications.

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

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

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

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

The Port Gamble S'Klallam Tribe is located on the northern tip of the Kitsap Peninsula in Western Washington. We have about 1200 tribal members. We are signatory to the Point No Point Treaty of 1855 wherein the federal government obligated itself both in treaty relationships and a trust obligation. We are a major employer in Kitsap county. Even though we only have 1200 enrolled members, we employ over 450 people. The majority of those people are nonIndians. So we are an important part of the economic development in Kitsap County. Along with Joe Spar (phonetic) we are the two staff that are primarily responsible for processing land acquisitions and placing them into trust. And to date we have been able to place over 470 acres of
I recently spoke to a group of students at Evergreen State College. And one of the students asked me why it was so important to place land into trust. And as an enrolled member who lives on my reservation, works for my tribe and raised my daughters there, I thought, you know, I have the opportunity to place land that will live -- that will be there forever in perpetuity for my kids, and some day grandkids, and hopefully some day great-grandkids. So I think about it in that way as my personal obligation to work for my tribe and serve my people like this. It's very personal to me.

I can't overstate the importance of acquiring land and placing it into trust. It helps us rebuild our homelands and for sovereignty and self-governance. No one can regulate and take care of S'Klallam people like we can. The county can't, the state can't, the federal government can't. We know our people best and we provide the best services for them. And placing land into trust is a critical part of that. It helps spur economic development, provide critical services, essential government services like housing and natural resource protection and Children and Family Services, and protect our
Our reservation has always been 100 percent trust land status, and I think that's very unique. We are one of the reservations that are fortunate in that way. I think it's an inherit part of our cultural identity. We don't have land disputes with our neighbors or with each other. That trust helps perpetuate us in our cultural identity as a people. We've used the acquisitions to develop affordable housing for our people, economic development. And we built and developed our tribal government complex that provides space for council, administration, tribal court and health and social services programs. We recently built a hotel and acquired a second convenience store and revitalized a well and renown botanical garden. Our projects serve our people and overall stimulate the economy. But we are only beginning. We have so much work to do. We have over 100 people on our waiting list for housing. We need more land and infrastructure to provide critical services for our people. The tribe has a growing need for health and human services. Every single one of our administration buildings is overcrowded. And we want to continue to build our economy to be more self-sufficient. The tribe relies
on trust land for all of these issues. We didn't take part in answering the questions. We didn't want to be led down that road. For us the process has worked. We do not want to see any changes. If we were to ask you to do anything, it would be to allocate more resources and staff to our local agencies to continue to help us provide services.

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

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

MR. TAHSUDA: Thank you very much.

Vice Chairman Philip Harju.

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

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

MR. TAHSUDA: Mr. Chair, can you restate
your name clearly for the record.

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

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

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

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


MR. TAHSUDA: Thank you.

MR. IYALL: Thank you. I apologize.

Yeah, the first concern we faced going in, with the new administration coming in previously, was the lack of an assistant secretary of the Interior for BIA, when Larry Echohawk assumed that position. It took nearly six months to get that position filled. And here we are now well beyond that, and so I think it's very important to -- for the administration to put that person forward because we work very closely on a personal relationship basis with our agencies and it's much better and easier to put a face on that agency and to be able to
communicate on a routine basis. And that continued throughout the process. And we're just hopeful that the administration will do that soon.

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

And the Department should just rely on the log, just the plain language of IRA. These regulations have strayed so far from that. It's hard to recognize that. Just get back to the basic
authority of the assistant secretary, the Department of Interior, to provide guides with restoration of their lands.

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

MR. TAHSUDA: Thank you Chairman.

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

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

MR. HARJU: Just too few. It's an honor to be here and represent my tribe. And we've had a very powerful week here with ATNI, with the tribal leaders from all over the northwest and federal and other
officers here. So I do want to start off by, again, saying that for the Cowlitz, if you talk about land in trust, the Cowlitz were in treaty negotiations in 1855. It took us 161 years to get land into trust officially until the Supreme Court last year denied the cert petition. So I think that's one of the longer fee-to-trust applications probably in history.

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

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

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

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

So I also want to echo the fact, with all due respect, that these consultations should wait until there is a senate-confirmed assistant secretary
of Indian affairs who can actually do consultations
directly with the tribes. Again, with all due
respect, I think that's how the Interior Department
is set up. I think that's how the tribes -- I think
that's how the public wants is that these
senate-confirmed and in place. That's their
constitutional and lawful job to do those type of
consultations with the tribes.

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

   So they -- in doing those, if you ask us to
do MOUs, they refuse to negotiate with us. Some of
their lawyers didn't think that the tribe was
Federally recognized. They did not allow a county
agency to negotiate with the tribe for fire, police,
all the things that you'd want done if you're taking
land into trust and providing for public safety and
everything. They prevented it. So we would never
have gotten land into trust under your current regulations because the county -- they had a veto basically. So I want to say, I think land into trust is a federal responsibility. I want to say that three times. Land into trust for Native Americans is a federal responsibility. Do not give local governments a veto over the federal responsibility. Please trust the elected governments from the sovereign nations in this country that are providing for their people. They've been here for a long time, time in memorial. So they have governments. They have to make decisions. There are economic decisions, there are legal decisions, there are practical decisions that have to be made. And land is -- next to our people is probably our most important resource for tribes.

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

So there are laws in that -- many of those cases have been litigated all the way to the Supreme Court. And we have definite answers there. You change the regulations. We're going to start the whole legal process over again and delay land into trust for the tribes. So the IRA is not perfect but we have some fairly good case law on many of these issues, so don't change it. In you want to expedite the process, get rid of some of the regulations. We have to do full environmental impact statements. We have all these other notices, a 30-day wait period is just going to complicate this whole process. So if we're going to have consultation on these issues, make it meaningful, listen to the tribes, and do not give -- do not advocate a federal responsibility to a local government. And my final part is please do not confuse the vital land into trust regulations and laws that Congress has given to the Interior Department with gaming. There is clearly a difference between those. There are specific gaming regulations, and do not confuse those with the important land into trust that all of the tribes need. Our tribe is going to need -- we have historic sites that we would like to protect. We have health,
housing and other needs that we're going to need land
for and we don't need the delays or additional
regulations and additional long court waits. So I
thank you for coming to the great northwest and
listening to the tribal leaders.

MR. TAHSUDA: Thank you, vice chairman.

Chairwoman Carol Evans of Spokane.

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

(Native language.) My name is Somosa
(phonic) given to me by my late grandmother, Cecila
Peone Abrahamson. And my English name is Carol
easy and also not -- doesn't -- probably is a branch
or something like that. My husband is Blackfeet, so
he brings the Evans to the Spokane tribe.

So I want to first thank you for taking the
time to hear us and be here, and I always encourage
consultation. I encourage you to listen with your
hearts and realize that we have a lot of important
tribal leaders and tribal representatives here to
speak on issues that are so very important to them
and the people they represent. And so it's important
that you do listen to us and that you listen. Like
Phil mentioned, I believe consultation is provided in a means where it's free and the information is given to us. We get to comment before you establish the regs and it's informed and we provide you consent, so it's free, prior and informed consent. So I definitely support that in all consultation.

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

The Spokane tribe, like Phil stated, does not support giving a lot of power to the outside entities, the cities, the counties, the states in objecting to our land into trust applications. We believe that we need to be able to have the opportunity to acquire some of the land that is in
our historical homelands to help our people, to
govern, to provide services. Because we have so many
services that we need to provide to our tribal
members. We have high unemployment. We have a lot
of social issues that follow from historical trauma.
And like the one lady stated before me, we just have
a lot to do for our tribes. We have a long way to
go. It took us a long way to get to where we were,
being suppressed and put on the reservations on these
reservations that never provided us with the
opportunity to move forward, rather provided us
hoping that we would go away. But we're here. We've
been here forever. We are here and we will be here
into the future.

So what I wanted to state, Spokane tribe
believes that the off-reservation fee-to-trust
applications that -- the current regulations and the
proposed regulations don't allow for resident tribes
the opportunity to comment and object to nonresident
tribes coming in to your historical homelands and
making applications for fee-to-trust. They do not
allow that and we believe they need to allow that.
Because we're a perfect example of a tribe where a
nonresident tribe came in, was allowed to put land
into trust, and then consequently built a casino on
that land and then later get that land declared as a reservation. On our historical homelands, on the land where we fought our last war, the Plains War, they were allowed to do that without consideration of the Spokane tribes' objection to that. And so I wanted to make that clear, that that has harmed our tribe. That has devastated our economies. And then when we turned around and submitted a 2719 application, that same tribe objected and that same tribe, to this day, even though we opened the doors and -- finally opened the doors to our Spokane tribe casino, they have filed a lawsuit against the government along with the county commissions.

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

The other thing that -- the other point that I want to make for the Spokane tribe is that we don't believe that the gaming regs and the land-into-trust regs should be mixed. I think we have a regulation established through gaming. If tribes want to game they go through the 2719 process
putting that -- establishing that, and so we don't want those -- I wanted to state that we too support not allowing that in the existing regs.

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

(Native tongue).

MR. TAHSUDA: Thank you, chairwoman.

Chairman Thomas Wooten, Samish.

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

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

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

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

MR. CLADOOSBY: Brian Cladoosby, B-R-I-A-N, C-L-A-D-O-O-S-B-Y Swinomish Tribe, S-W-I-N-O-M-I-S-H. First of all, in my opinion of a consultation, John and Bryan, we come and have a dialogue. I don't just sit here and talk to you. We have a dialogue. That's what part of consultation is. So you can speak into the microphone. For the record, are you my trustee?

MR. TAHSUDA: Yes.

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

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

MR. CLADOOSBY: Thank you, John. See, that's consultation. You answered number one for us. That was the first question that you put on here, what should be the objective of the land-into-trust program. And you answered it with "the IRA says." We went from 138 million acres of land into trust in 1887 to 48 million acres in 1934. And today only eight million acres going on 100 years, 84 years since this passed. And there has been various reasons why only eight million has been recovered, and that was the main tenant of the Indian Reorganization Act. There has been, number one, the tribes didn't have the resources to buy the land back
when it was up for sale. That was probably the
biggest stumbling block in the last 80-plus years,
that we just didn't have those resources. We didn't
have no economic -- no Marshal Plan ever was created.
And you know, when you look at on-reservation,
land-into-trust, I will give you a horror story.
This will feed right into your other questions. In
1971 our elders wanted to create an economic
development project at Swinomish by creating a 1200
slip marina. From 1970 to 1977 we had to jump
through all the hoops, all the rules, all the
regulations, everything that was put in front of us
plus we had to fight the county that was there.

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

Now this was a 400-acre on-reservation
application. For ten years -- so the agency approved
it, the area approved it, headquarters approved it, and they appealed it all the way to the IBIA. Ten years later the IBIA ruled in our favor, like every other level. But in ten years, from 1997 to 2007, when that marina was finally approved and that fee-to-trust was finally put into place, the project went from 35 to $60 million. It was not feasible, and our partners stayed around that long. But when we finally got that, it was not feasible. That's the horror story of allowing outside governments to come in and have a say on on-reservation applications. I've been preaching this message for years. And I will share you a story of one of my tribal members who married a Chinese national, very beautiful lady, beautiful couple. He had a couple of kids before that marriage. He had land at Swimomish. He didn't have a will. When he died, she got his trust property. And you know how quick it took them to change that from trust to fee? At a snap of a finger. This is the horror story. Because this county is appealing every fee-to-trust of ours on reservation, when that lady -- and she's already willed this to the kids -- but when they have to go through that fee-to-trust process, you know the nightmare they're going to have to go through because
this is on reservation. And on-reservation application should have the same exact rules as a trust-to-fee application. It should happen overnight. It should be a no-brainer. 1934 was created to allow us to reestablish our reservations, not to give the local elected officials the opportunity to fight us on it. And so that's a very serious concern when you let these elected nonIndian, anti-Indian -- and we have some of the biggest national anti-Indian fighters living on our reservation right now that belong to these national organizations, CERA and others, whose number-one goal is to fight tribes at all costs. So that has to be taken into consideration.

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

MR. TAHSUDA: Of course.

MR. CLADOOSBY: Of course. Good, good.

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

And so once again, in closing, I agree with the MLU process. There is counties out there that will not work with their tribes. There are horror stories where they will not sit down in a room. They have a history. That is the relationship is broken and sometimes it's nuked because of the things that the county has done to these tribes, and it makes it virtually impossible. So when you try to say that a tribe has -- you will put more weight on a tribe that
has MLU as the local government, I don't agree with that. Because in my situation it would be very very hard for me probably to sit down with these county commissioners and come up with some kind of agreement.

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

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

MR. TAHSUDA: One.

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

MR. TAHSUDA: That will be great. I appreciate it.
MR. CLADOOSBY: Thank you once again. I appreciate your time, and God bless you too and keep up the good work.

MR. TAHSUDA: Thank you, Chairman.

Chairman, go ahead.

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

In Sacramento and at Mystic Lake I explained the Chehalis' concern about the possibility of changes to Part 151 and also responded to the ten questions identified by the BIA. Now I would like to focus on a few issues that I have seen from the consultation so far. At the end of the Sacramento consultation, Mr. Tahsuda discussed the Department's prospective on the rationale for talking about MLUs with local governments. There are two problems with that perspective. Tribes have the ability now to do MLUs without making it a condition of a fee-to-trust process. Good government relationships can be addressed by a sovereign tribe without free condition. Two: However, bad relationships from nonIndian local governments or nonIndian groups would
only be encouraged by such precondition to delay what's a vulnerable, valuable, financial resources of tribes by holding tribes hostage and requiring a financial payment to agree to not contest the BIA fee-to-trust process.

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

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

What would have happened if Part 151 regs had not required an MLU? The county would have extorted money from the tribe or the land would never have gone into trust. This is unacceptable and a violation of the fiduciary duty, the trust responsibility of the Department, and the United
One more example. Right now the city of Oakville has filed an appeal to the Interior Board of Indian appeals of the Department's decision to take a five-acre parcel within the city into trust. That property will be used by the tribe for housing for its members. The claim by the city is that it will lose real estate tax revenue. The amount of revenue that will be lost is slightly more than $350. Why would the Department allow a city like Oakville to extort a sovereign government just because a tribe would have to meet a precondition to the fee-to-trust processes by entering into an MLU.

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

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

Thank you for your time. Thank you.

MR. TAHSUDA: Thank you, Chairman.

Chairman Marchand, Colville Tribe.

MR. MARCHAND: Thank for this opportunity. My name is Michael Marchand, M-A-R-C-H-A-N-D. I'm chairman for the Colville Confederated Tribes, which is composed of 12 tribes. Originally we lived in the multistate area, they were the international tribe interest of British Columbia also.

In general I'm opposed to more regulations, as is our president. I think that's the only thing we agree on. Just because of our history it's no secret, the United States has never really fully supported the Bureau of Indian Affairs in terms of
budgets and staffing and the -- for example, well
just in my background -- my background is in
education, economics, urban planning. I have a PhD
in forestry. And most of my life I've been involved
in national resources and economic development. And
I'm currently the economic development committee
chairman for this organization, so it's kind of my
life's business. But if I have a good idea and a
sack of money in my pocket, I can go to most
jurisdictions, most cities in the United States, I
can be in business in a matter of days, maybe weeks.
I'm sure everyone in this room would agree if I had
the same idea and sack of money in Indian country, we
could be talking about years or maybe never. And I'm
not blaming you personally. I have a lot of
relatives and friends from the Bureau. They are hard
workers. They've worked a lot. But they're not
budgeted. They're not supported by this country.
And just having more regulations, in my mind that's
going to be more time. And time really is money in
business. Every day you delay a project to
completion, you're adding poverty, you're adding to
the unemployment, you're adding to the tribes' lack
of resources, lack of revenues, lack of ability to
make a living for itself. So every day it's
literally money in the business world. And

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

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

In the case of -- I'll just give one
example of -- we were promised by treaty a
reservation in the current town of Leavenworth,
Washington. It was supposed to be a fishery
reservation for Port Wenatchee (sic) people. We were
promised a six-by-six mile reservation. Due to the
Bureau ineptness or corruption, I'm not sure, or
both, that never happened. Presently there is a
nonIndian town site there where a fishery is supposed
to be. There is supposed to be allotments there.  There is supposed to be a fishing site. None of that happened. And so we have a cemetery there -- actually multiple cemeteries there.

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

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

I was at Standing Rock this summer and meeting with some of the elders there. They're pointing out some of their sites, Cannonball River and the cemetery on the hill. And a couple of weeks later I saw heavy equipment mowing right through the middle of the cemetery. It was just pointed out to
me a couple of weeks before. Those things are important to Indian people. Our ancestors are very important to us.

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

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

On the Canadian side of my tribe they have different policies, similar but there is differences. One difference that I kind of like is if the government comes in and has a need for tribal property, like I say, for a road or exit or something like that, they'll give that tribe alternative lands to compensate for what they took. And if we did that in the Northwest, we're talking about a lot of land. And a more modern example, a lot of that
happened in the 1940s and 50s and 60s. The Wells dam was built in 1964. In more recent times we were looking at marina development at Colville. We were looking at marina sites. We spent a ton of money on a marina site right at Coulee Dam. Then 9/11 came up, the terrorist incident. Because of that, they found pictures of Coulee Dam in a cave, one of the Mosamas (phonetic) caves. They shut the dam down. So all our effort and planning and things went up, the dam shut down. There is guards day and night, which probably makes sense. But we lost the opportunity to develop casinos, marinas, hundreds of jobs. Millions of dollars of income cut off by federal policy. To me, we should be compensated for that site somewhere else.

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

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

MR. TAHSUDA: Thank you, Chairman.

Chairman Gowdy of the Yakama Nation.
MR. GOWDY: English name is JoDe Gowdy, spelled J-O-D-E, last name G-O-W-D-Y. (Native tongue.)

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

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

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

And I wish to express that because the
foundational core of the foundational will of today's
discussion is founded upon some of these historical
acts and atrocities that were imposed and implemented
against our native nations throughout time. But as
the previous tribal leaders and representatives from
the various nations have brought forth, we agree with
many of the sentiments and assertions that have been
made including, as was expressed, not to preach to the choir, specific to the 1934 Indian Reorganization Act, which was essentially a policy as a reaction to a termination era in which the collective native nations lost about 90 million acres of land specific to decisions that were part of the historical acts throughout time, and as was indicated, just about eight million acres since that time period, which has been re-established unto the native nations, many of which are here in this room today and many of which that you'll be hearing from in other listening sessions throughout the country.

So when we receive the Dear Tribal Letter, Dear Tribal Leader Letter, it was a little confusing with regard to the assertions that have been made from this administration and some of the representations, as you heard, from previous tribal leaders with regard to the unregulated, I guess you can say, advocacy. But nonetheless, when I heard the opening comments from you, Mr. Tahsuda, it kind of confused me because I said, okay, so who are these tribal leaders and representatives throughout time that engaged into some type of advocacy to put forth these type of regulations. Because every tribal leader that I've spoken with from every nation that I
engage with in these type of discussions whole-heartily disagrees with these regulations. So I'm struggling to identify those tribal leaders throughout time that provided comment or provided an advocacy to assert these additional and above-and-beyond regulations that are being suggested throughout this CFR 151 11 and 12.

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

Nonetheless it's been somewhat of a fearmongering that's been established at a very high
level, and those discussions, those assertions and
the reaction to that we kind of ironically see the
timing of these Dear Tribal Leader Letters coming
after these significant dialogue of various levels
within the area of Washington D.C. But the question
is, is why does the Trump administration wish to ease
the regulatory burdens and support corporations in
the name of economic growth and job creation but go
out of its way to manufacture unnecessary regulatory
obstacles to the economic development of tribal
nations and communities. That's a question. You
heard it from others. But what is going on here?
That's confusing to us.

And once again, as we look at some of the
dialogue from representations, including Mr. Jim
Cason, our acting deputy secretary, as he stated that
they were taking a step back from the land-into-trust
process as he was testifying before a committee. And
taking off-reservation lands into trust made post
complications for the Department of Interior and for
state and local governments. And the House Committee
on Natural Resources oversight committee hearing, the
question was posed as to whether or not the state and
our local jurisdictions should have, essentially, a
veto process, to which Mr. Cason said in the
affirmative, yes. That's confusing to us as a representative of the Department of Interior, who by law, first and foremost the U.S. Constitution, Article Six, clause two and clause three; secondarily the various treaties and the various other executive orders throughout time and the specific treaty between the Yakama Nation of 1855, 12 Stat. 951 has very specific reserved obligations and promises that are not a matter of discretion but are a matter of adherence to law. And that becomes a little struggling with regard to the interpretation of why these proposed additional regulations, information about unemployment rates amongst our people. That's a little confusing. The assessment of economic benefits of the potential acquisition to the people, an explanation of why the tribal nations need the land, evidence of cooperative efforts with nearby and local governments, the enhanced requirements for tribal nations to address state and local interests, including comment on potential conflicts for land use, potential impacts on regulatory jurisdiction, and then the addition -- or the advocacy for the addition with the gaming component, a plan specifying the anticipated economic benefits to the nations once again, the information on economic benefits to
nonnative local committee from gaming projects, an
analysis of what impact off-reservation gaming
projects might have on the unemployment rates of the
tribal reservation, identification of on-reservation
benefits from the proposed gaming project including
any of the revenue and how it will be used for the
creation of on-reservation economic opportunities.
So the advocacies were very confused as to why this
information becomes relevant and not pertinent to the
pursuit of fee-to-trust advocacies for our lands,
which have many purposes throughout time. The Yakama
Nation specifically has a six-year process that's
been invoked specific to a piece of land that's down
on the Columbia River. We're still awaiting the
response collectively to that application. We have
many more that we will be pursuing into the future
for housing, for development, for resources in and
amongst our ceded territories down along the
Nch'i-Wana, the Columbia River, and various other
areas of our nation. And when we ceded one-third of
the state -- of Washington state on behalf of the
negotiations between Governor Stevens and General
Palmer, the assertions of promises that were
established in 12 Stat. 951 backed up by the U.S.
Constitution, Article Six, Clause two and Clause
Three become very valid. And what we're looking for is the justification with regard to utilizing historical and statutorial arguments and CFR arguments, and how do they surpass and undermine and supersede those very strong constitutional and article -- treaty articles arguments that are in place.

So for us, it's a pretty confusing process that's going on here. But there is additional things, the application of the communicable distance standard that's being proposed within the regulations, the 30-day policy, based upon that, which essentially is 30 days for these outside jurisdictions to essentially bring forth their formal dispute, which has been referenced, the surrounding communities, local jurisdictions, counties and other entities, and just about probably every scenario. There is representation from leadership bodies that outright are disrespectful, that are borderline if not outright racist, specific to the advocacies and the continued pursuits of how we address the well-being of our peoples, and to offer them an opportunity. Pursuant to that then I want to see the treaties that are established amongst those city jurisdictions and those county jurisdictions and the
framework and law that the Department of Interior is adhering to the -- specific to the articles of those treaties amongst the cities and local jurisdictions, such as counties, because I don't think they exist. And I'm going to be asking why ours are not being adhered to.

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

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

And so how does this increased federal regulatory burden coexist with DOI's trust fiduciary duty and the recognition that tribal nations have limited resources? How does this increased federal regulatory burden coexist with the Trump administration's alleged mission on easing the regulatory burden to advance economic development and growth? How does this increased regulatory burden coexist with the Trump administration's alleged mission of local self-determination? These are our questions. We strongly oppose the revisions to the part 51. We are asking and demanding that the
Department of Interior immediately withdraw and cease any efforts to amend the land-into-trust regulations. We're also asking that the letter dated April 6th of 2017 on the notice to the BIA regional directors centralizing all decision-making for off-reservation land acquisitions and allow regional staff to begin processing off-reservation land acquisitions under the current part 51 regulations.

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

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

MR. TAHSUDA: Thank you, Chairman.

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

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

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

(Reporter requests clarification.)

MR. BURKE: Like many tribes here in the Umatilla Indian reservation, entered a treaty with the U.S. in which we gave up 6.4 million acres of our aboriginal land in exchange for a reservation homeland of 250,000 acres, which is to say we ceded 96 percent of our aboriginal territory. Congress later opened up for some portions of our reservation
for non-Indian settlement which reduced our reservation land base to 158,000 acres. I relate this history to point out that the federal government has been primarily responsible for the loss of our reservation homeland, which we have exclusive rights to.

The Umatilla Tribe has partnered with federal agencies, states and tribes to restore salmon runs and to acquire managed lands where hunting and gathering can occur. For example, our tribe acquired 2,700 acres in Oregon and 11,300 acres in Washington with Bonneville Power Administration funds to comply with BPA’s obligations under the federal agencies and the laws to mitigate wildlife impact caused by the Columbia River hydro-systems.

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

The Umatilla Tribe knows about the trust -- fee-to-trust process because we use it frequently. Since 2011 we have successfully submitted 59 fee-to-trust applications that have transferred 8,545 acres from fee-to-trust. Of these applications, four were reservation lands totaling
3,219 acres. Our staff is working on several more applications, which include off-resignation lands. The success we have experienced with the fee-to-trust process is due in large part to the work we have done with the BIA Umatilla agency and Portland regional office. In 2009, we negotiated a fee-to-trust to protect (sic) with our BIA agency office to facilitate our accomplishments.

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

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

The Interior Department failed to consult with the tribes in developing the consultation draft.
We have seen the justification changing the fee-to-trust regulations from the Department. Until we do, and until meaningful consultation occurs, our position is that the regulation should remain intact.

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

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

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

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

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

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

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

(Break in proceedings.)

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

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

One of the main things that I would like to actually say in the beginning is that the Nez Perce Tribe originally had 17 million acres in the original treaty of 1855. Our UNA grounds covered actually more than that. But now our reservation is reduced to 770,000 acres. So we've given up a lot in this process. And any time -- it seems like the reason we lost our land was because gold was discovered and, you know, the gold rush was on and we was reduced. But, you know, some of the things that -- we don't
have any off-reservation casinos, but that's similar to what's going on today, is the tribe sees an opportunity to go back to their ceded lands, and that's actually like a gold discovery. But then for us to get back out there again, back out into our ceded lands, we're having issues in this long process of getting to that point.

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

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

Another one of your questions -- I don't want to go over and be redundant here, but 5B, whether the application is getting -- excuse me, whether the application is for gaming purposes as
1 distinguished from other nongaming economic
development. And inquiring about the tribes' use of
the land, once acquired is -- we feel that's
intrusive and this should not be a part of the
criteria and should be under the sole purview of the
tribal government. Also one of your questions you
had are, what are the advantages and disadvantages of
operating on land that is in trust. Of course that
would be to prohibit state intrusion into tribal
affairs and to clarify jurisdictional issues. Tribes
need to be free from state regulations and
requirements.

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

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

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

MR. TAHSUDA: Thank you.

MR. ELLENWOOD: (Native tongue). Quinton Ellenwood, Q-U-I-N-T-O-N, E-L-L-E-N-W-O-O-D. I'm here to give a few words on behalf of my people here, my born inherent right that has been secured with the treaty of 1855, 12 Stat. 957, as my colleague has
addressed. And it's really heartbreaking and hurtful to me, and to the rest of my people, and the generations to come that are going to have to fight just as hard, tooth and nail, and pay these big -- pay these big fees to return back to the original owners of this land. We've -- just from a Nez Perce perspective, we've demonstrated and we've acquired two huge national rewards for the recovery of national resources, one with our Wolf recovery project and one with our Coho project. And we're excellent stewards of the land along with the rest of these tribes that are here.

And I can't agree with the local governments having input on the trust -- fee-to-trust process. Each tribe in here is very, very unique and you can't treat us all the same, which brings me to my -- you mentioned that this was a consultation. According to the Nez Perce Tribe, consultation is -- within government to government is with six board members that is elected by the Nez Perce Tribe. It's in our constitution bylaws and our policies. So I have to echo with what my colleague said, Mr. Wheeler, and with my other (Native tongue), the Yakama Nations that this true consultation, that the Stevens Treaty tribe is what the governing body
coming to our homelands. So I would like to reiterate that. And we will be submitting more comments before the end of next month.

MR. TAHSUDA: Thank you.

Mr. Sheldon.

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

Is it on?

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

But, one, thank you very much for this opportunity to speak with you. And I want to tell you that thank you for being our trustees. Tulalip definitely has some serious concerns. I don't know that I'm going to bring anything new to the table. There has been some very eloquent statements and shared concerns about the draft that's being proposed. It seems like it's working. I'm not sure if we're ready for a radical makeover like I see on TV, how they do that stuff. We're sharing right now. So I'll get to one or two areas where Tulalip is very concerned.
As you know, we're a small reservation. We're 22,000 acres. And at one time after the -- we were down to 5,000 acres. All the land went out in the general allotment act. Over time we worked hard to acquire close to 62 percent, 65 percent back into the reservation. And it's a checkerboard reservation, so fee simple as well as trust land going on there. And most all the desirable land in residential areas as well as some commercial are owned by nontribals. So it's really tough. We have such a limited area where we can develop and build and overcome this challenge. Over the years, like I said, we purchased a number of parcels on the reservation and off-reservation. And our goal is to use these lands for community projects and economic development, nongaming. And as I shared that maybe we have close to 5,000 tribal members. Now that's going to explode at some time. As most mathematicians would say, the population is going to grow really big. The challenges we face to meet our tribal membership needs, close to 12,000 nontribal.

So an example of the challenge we face -- and by the way, thank you very much for helping support us in our tax case. As you know, Tulalip is suing the county and the state to recover taxes from
the Quil Ceda Village arena, which generates close to $15 million of taxes a year, but nothing comes back to the res to help, so we appreciate that help. However, when we can't work a deal out with the county -- and that's part of this draft is we'll work with people. They're not going to work with us very well because we're taking their tax revenue or they think we are. But we just want what's due to us, so it creates a challenge.

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

So now not only do we have a municipality and a county, trying to deal with them, but the whole broad of citizens that don't like Indian people, they don't understand us, they don't care what we're
trying to do. Tulalip is a large economic engine on
the north end of Swinomish County. Like many tribes,
we are economic engines now. But overcoming the
hurdles of racism and discrimination. So just wanted
to highlight those two areas as you go forward and
thank those that spoke before me. And we will submit
more detailed concerns at a later date. Thank you
for your time.

MR. TAHSUDA: Thank you, Council.

Next up I have councilman Michael Ross with
Snoqualmie.

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

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

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

Although the process could always be more quickly and efficient, the regulation under Part 151
does work. The prior Republican administration made this very point, explaining that the existing regulations addressed the concerns of the state and local governments for both on-reservation and off-reservation acquisitions.

In fact the Snoqualmie Tribe's pending on-reservation application was challenged by our neighbor, the city of Snoqualmie, not because our application would harm the city in any meaningful way, but because it disagrees with our existence as a tribe. The Department's proposals to change the process emboldens the city's opposition and we expect the Department to rule on our application definitely to stop these attempts to misuse and abuse the comment period that Part 151 already provides the state and local governments. I'm asking you, as our trustee, to abandon this rule-making. And rather than changing the rules midstream, the Department should be utilizing its time and resources to improve tribal self-governance, strengthen social services, law enforcement, Indian education, housing, energy development, and streamlining the NEPA process to restore tribal homelands. And further, Secretarial Order 3317 and the Department's consultation policy requires open and transparent communication. The
consultation needs to begin with an explanation of why. The Department is pursuing these regulations on whose behalf. Can you please explain to us who is asking for these ruling makings and why, because meaningful and adequate consultation cannot begin until after this question is answered.

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

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

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

MR. TAHSUDA: Thank you, Councilman.

Brenda Meade, chairman of the Coquille -- chairwoman.

I'm sorry.

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

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

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

I do want to point out, we are all different. We are a restored tribe. Prior to our restoration, however, virtually every significant interaction that we had with the federal government
led to the loss of more lands, waters, and rights as a sovereign government. We have unratified treaties. We had experienced assimilation programs that were very effective on Coquille people.

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

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

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

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

I think about the words that we all hear, as tribal leaders, from the federal government. The words that come as, we strive to uphold tribal sovereignty and the trust responsibility to indigenous people. They encourage and support self-sufficiency and self-governance, self-determination. They recognize that each tribe has its own sovereign nation and that we're all very
These proposed changes do not address or uphold any of these words or promises that Coquille have been made and we do not support these changes.

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

MR. TAHSUDA: Thank you, Chairwoman.


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

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

I believe as tribes -- the trust responsibility is with the government. And I don't
I believe I've ever heard of a trust responsibility to the states or the counties. Where I come from, we've had a lot of battles and we're still battling now with the counties and with the states. And we battle with them all the time. They're not connected to whatever the tribe wants to do. Everything that we do, they're against it.

A few years ago -- years past there was a termination act that took lands away from the reservation. The group that was terminated took that land that was part of our reservation. And since that time they sold portions of the land, and eventually the land was all for sale and the tribe bought that back. That is our own homeland. However, we turned it over to the Interior people for approving the trust. It has never been done. We're still waiting. Still waiting to have that done. But in the meantime, we're all paying taxes on those lands. We all are. And that's really not -- that's really hard on us, economic-wise it is. So that's one issue I would like to bring up. Also the fact that you all know -- a lot of you know that we're fighting -- we're fighting the states right now. We're fighting counties. And one big fight is that monumented land down in Utah. We're fighting that.
And the bishop -- Congressman Bishop, they're all upfront on it, the governor and our county people. We have tracks of land that are being addressed right now that have always been tribal lands. Now they've hit Washington where they want to take that land and they're saying it doesn't belong to us. And we're going to be meeting with you on that next week in D.C.

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

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

So I, for the record, would say no. I do not want MOU with them. I think the process should stay the way it is. And I believe that -- I hope that our comments that are made here today are taken in a good way where you represent the tribes and say, no, the tribes don't want it. And I hope it leads to that. I hope that you listen to us and not go to D.C. and have it ignored. And we're all here for a reason today, because we care about our homelands.
We care about our people. We care about our way of life. And there are ceremonies that we have on those lands. It means nothing to them. It means everything to us. It's a survival to us and we must remember that. Our people are there. Our people are guiding it and we can't lose this battle. We can't.

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

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

MR. TAHSUDA: Thank you. We have your
comments here.

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

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

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

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

   Although no process is perfect, the current fee-to-trust regulations work for Indian country. The Part 151 regulations have restored hundreds and thousands of acres of tribal homelands to trust status. Indian Country did not ask for this rule-making or the changes that the Department is seeking. The Nisqually Tribe fears that this effort could potentially result in further obstacles to
obtaining land for our tribal citizens, growing our economy and providing a future for our people.

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

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

The current Part 151 regulations already require the Department to take place greater scrutiny on off-reservation applications. The regulations require that as the distance between the tribes' reservation and the land to be acquired increases, the Secretary shall give greater scrutiny to the tribes' justification of anticipated benefits from the acquisition. And the Secretary will also give greater weight to the concerns of the state and the local community where the land is located. This
structure works well for both the local communities and Tribal Nations. It should not be changed. The Department's current efforts cannot ignore the geographic realities of Indian Country. The Nisqually Tribe's historical land base does not stop at the boundaries of our reservation.

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

In addition many tribes -- many nations have to look for off-reservation land because there is no more land left on the reservation. The Nisqually reservation was initially 1200 acres and was enlarged to 4700 acres in 1856. The reservation straddled both sides of the Nisqually River.

Unfortunately 101 years ago in 1917, the United States Army moved onto the Nisqually reservation and ordered the tribe to evacuate back across the Nisqually River. Pierce County later condemned 3300 acres of Nisqually reservation and transferred it to the army to expand what would now become what we know today as Joint Base Lewis-McChord. This illegal condemnation stole 71 percent of our
reservation lands. The army now uses the land as a firing range and we can clearly, loudly hear the blasts and shells of our former homeland. The loss of so much land forced the entire tribe to crowd onto the remaining one-quarter of the reservation. The land that we lost cannot be reacquired and there is very little land available on the remaining reservation. The tribe is forced by a necessity to look off-reservation for new land. The Nisqually Tribe is a good neighbor to the communities where we acquire these lands. We routinely have MOUs and agreements to ensure that the local communities' concerns are addressed while still being able to gain the land that we need for our homes, our businesses our economic development, our habitat restoration.

The current regulations offer a great framework for this interaction. Unfortunately the Department's discussion draft contained a requirement for MOUs for off-reservation acquisitions. This could create a pocket veto for local communities that would allow them to extract disproportionate concession from the Tribal Nations before an off-reservation acquisition could proceed. The Nisqually Tribe opposes mandatory MOUs for off-reservation acquisitions.
In conclusion the Nisqually Tribe does not support changes to the Part 151 regulations that would create new burdens to trust acquisitions, especially off-reservation acquisitions.

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

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

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

Again, thank you for your opportunity to express the Nisqually Tribe's views on the Department's efforts to change the Part 151 regulations. The tribe will submit formal written comments addressing the ten questions that were proposed by the Department. Thank you.
MR. TAHSUDA: Thank you, Ms. Obi.
So next up I have Ray Pierre, vice chair council.

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

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

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

The Department's discussion draft would detrimentally impact the Kalispel Tribe because the draft seeks to place additional burdens and restrictions on off-reservation land acquisitions.
The discussion draft does not take into account that tribal nations were never bound by their reservation boundaries. The traditional homeland of the Kalispel stretches from Paradise, Montana down the Clark Fork River, around Pend Oreille Lake and Northern Idaho, down the Pend Oreille River, up Priest River to Priest Lake and northwestward, across northeastern Washington to the mouth of the Salmo River just over the international boarder in British Columbia.

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

The reservation is approximately one mile wide and ten miles long and is located, except for 240 acres, on the east bank of the Pend Oreille River. In 1924 the federal government allotted the entire reservation to Kalispel tribal citizens. Unlike other tribal nations, we received small 40-acre allotments located mainly on steep hillsides and flood plain. Our reservation is beautiful but small. It's made up of -- primarily of steep
hillsides and floodplains that are totally unsuitable for development. The reservation is hemmed in by the Pend Oreille River on one side and surrounded by federal lands on the other. The Kalispel Tribe has run out of lands on our reservation that we can develop. This forced our tribal government to live off-reservation to provide for the needs of our tribal citizens.

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

The Kalispel Tribe has a deep appreciation and respect for the off-reservation acquisition authority created by the Indian Reorganization Act and implemented under Part 151. These regulations created the opportunity for disadvantaged tribes, like the Kalispel, to provide for their people. Without the Part 151 regulations we would not have been able to acquire trust land and Airway Heights. Our Airway Heights reservation has allowed the tribe to begin addressing the profound socioeconomic disparities and disadvantages which undermine the
strength of our tribal government and the health of our people during the many decades in which we were forced to live on a remote reservation where there was no potable water, where nothing of substance could be built without ruined by annual flooding.

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

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

MR. TAHSUDA: Thank you, vice chairman. Next up I have Chairwoman Pigsley from Siletz.

MS. PIGSLEY: Hello and welcome to Portland. My name is Delores Pigsley and I'm the chairman for the Confederated Tribes of Siletz for over 30 years. So this process isn't new. It's new to every administration just about. And because we were a terminated tribe and a restored tribe, we were
restored with very little land, they were mountain
tops, and it was 3600 acres. We once had a 1.1
million acre reservation. So taking land into trust
has been one of our top priorities, and it's been a
difficult process, a very expensive process. And we
have learned to work with whatever we're given, but
as administration changes, we're always given some
new boundary or some new issue that we have to deal
with. And at one time we had pending applications.
They were pending over eight years, fee-to-trust
applications. And what that caused us to do was to
update all those environmental impact statements. It
cost us a lot of money. And we're a small tribe. We
have 5,000 members. And I think right now we have
about 16,000 acres of land, not all of it is in
trust. But the process is important, and I don't
know why there has to be changes, that expressed by a
lot of people. And it would be interesting to know
what tribes are in favor of doing this.

The land that is taken in trust for us has
mainly been used for housing and economic
development. And it's been difficult. It's been
expensive. We live on the coast, by the ocean. And
all the land that we purchased to use for housing or
economic development is ocean view, lake view or
river view, so the price is triple what you would pay anywhere else.

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

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

Oh, and the other thing I was going to mention, I think those applications should be processed in the Portland regional office for us. Sending them back to Washington is like sending them back in a big black hole. When we're back there and
we're visiting and we're wanting to know what the status is, in the past it's been very difficult to find a body who can tell us and give us that information. And we've been very successful here in the Portland area in getting that information and the office keeping us updated on where we are in that process. So I thank you for coming to Portland.

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

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

The resignation in here is stated almost
equally in every single tribe that spoke because we all feel the same about our land. We all are better stewards, I feel, in our lands than the federal government, the state government or the local government. Our bind to the land and the water and the animals around us supported our ancestors, so I'm going to speak to you for my grandmother. I'm a Wenatchi (Native tongue) Moses Columbia member. My grandmother was born on Moore Creek. We, as Tribal People, don't even have access to this part of our homeland. My grandmother and her brothers and her mother and her father were all medicine people. We honor the Chinook dance. We gather our medicines. Our waters and our medicines are collected for these regions. And we are outsiders. When we would go up there, even today and 50 years ago, we are not welcome. So I would like you today to not look at this people and this discussion as what this is about politically but think of it from your heart because that's where I'm going to talk to you from. And what would your ancestors want? I assume that you took your position thinking that you could help or make a change. That's why I took my shoes off and that's why I took my position. I took it to make a change for our Indian Country on behalf of our people.
You know when we talk about our homelands that were taken from us and allotments that were taken out of trust, if we want to change these rules, expedite them. They're being changed in the opposite direction. Give them back as fast as they were taken away, in same thing, in the same process, the regulations on this process is ridiculous. The suppression to our people has gone on long enough.

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

When we want to succeed on our own to develop and we try to move forward, we're looked upon, on the federal government and your commander and chief level, as a drain on the financial society as Indian Country. And at the same time we're asked to suppress even more, suppress them even more, don't allow them to grow, don't allow them to compete with us in our corporate ideas. Keep them bound. My tribe in itself in a rural region, we can't grow
1 economically. Our homeland territories are viable land. Their populations are huge. The infrastructure there is huge and we're not even allowed to approach and to even ask for it back. And to then bind our hands again to even try to take it back, buy it back, and then the fee-to-trust process. And what is the purpose for the region there? Give us the same opportunity that they gave us when they took it. Were we given that same opportunity to say what is your purpose for our land. Because that's what you're asking for us here today. So as a tribal person, indigenous person, remember who we are and where we come from. We're fighting for lands that our parents were born on, our grandparents were born on, our ancestors were killed for. And there is no compensation there and you can't fix that. But we're looking today in Indian Country to move forward. We're trying to be good neighbors. Read the media. There is nothing there, out there, positive whenever an Indian tribe or anybody in any state tries to move forward. It's always hit with negativity. There they are again, asking for a handout. Well, allow us to stop asking and let us support and sustain our own people. Allow us to build our own infrastructure.
can't even take care of the sites that are within our boundaries that are left to dilapidate. And the people who live there pay taxes, but they're still on the wrong side of the river. So these are some concessions that you need to look for. You know, the local government and the legal cost for us to have to sustain that ourselves, for you to ask us to work with the local government is -- always end up in court. If you guys don't want to assist us, then stop binding our hands. Honor your obligations. Right now we are priority one in IHS. We, ourselves, support 100 percent, pay our medical insurance for our members who work for us, because that obligation isn't honored right now. You know, so when we're asking to develop and grow economically to sustain ourselves, maybe -- look at it the opposite way. Expedite these things, because we're not asking for something that wasn't already ours. We're asking for something back to expedite the process, because you're making us buy back what we already had given up. And that -- we have checkerboard all over our reservation. Myself personally. My grandmother, her oldest brother lived across the road from me. Every member of my neighbors up and down the river or the creek that I live are nonmembers fee property in the
heart of our reservation. And I would really like you guys to not send us back to the Washington D.C. Bring it back to our own local BIA agency. Who knows us better than we do. Who knows our issues more than we do. The suppression needs to stop. And when I read this, and I just thought this is another way to suppress Indian Country. And if your commander -- and not my chief, but your chief, if your commander and chief wasn't in gaming and there wasn't other issues out there, would we be standing here today having this discussion.

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

MR. TAHSUDA: Thank you, councilwoman.

Mr. Cawston.

MR. CAWSTON: (Native tongue). So I want to thank all of you for coming here today to hear all of our comments. And I want to really express how
important it is for you to listen to each one of us here and bring this message back. There are so many times when tribes are asked to provide comment on laws and regulations. And even though we'll spill our hearts out, we'll see that the regulation or the laws go forward anyway. So I hope this isn't a futile effort for all of us to come here today and to express, you know, how we feel about this for a fee-to-trust conversion.

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

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

And throughout all of this country, you know, our people, those are our homelands. Our people still want to go back. They still have a huge
desire. And they often do go back to gather and to protect our cultural resources.

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

The Colville Confederated Tribes reservation is in Okanogan and Ferry County, and those counties in Washington state are probably the most economically disadvantaged counties in the state. So for economic development within our reservation, it just doesn't always work. So one of our objectives in the council that we've discussed is really looking at fee-to-trust conversions off our reservation because there are no lucrative areas in our traditional homelands. And many of our people, today about 50 percent of our membership, actually resides off-reservation. And many of those are -- members reside in those larger metropolitan areas. So if we can bring economic activity off the reservation, including gaming, then we're providing jobs for our people. But not only for our people but
for the nonIndian people as well because most tribes, you know, are some of the largest employers in their counties or in their districts.

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

And it seems like we're against time here as well because many of the land management agencies that have public lands, it's those public lands that -- where tribes can go on and access those cultural resources that are important to them, whether you're a large land-based tribe or a small land-based tribe. Yet a lot of these land-based agencies, they buy, sell and exchange land all the time, many times without the tribes knowing about this. And so we're losing a lot of those sites that
are really important to us that are cultural sites, our sacred sites. And we have very little recourse to keep those lands in public status.

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

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

And also working with local governments or state governments, that is very -- can be very problematic. All of us here express that we've all
experienced that. It seems like prejudice is at its worst where there -- you know, near reservations where there are large populations of native people. We have to deal with this. It's just a reality to us. And so to ask us to work with those municipalities or other governments, I think that's just going to make the process longer.

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

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

MR. TAHSUDA: Thank you, councilman.

(Reporter requests clarification.)


MR. TAHSUDA: We still have about half an
hour here, so if anybody else wants to comment. Or I can respond to some of the things that have been raised today as well.

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

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

In the past 40 years we've done about 30 fee-to-trust. About ten of them are off-reservation. They're mostly commercial. They're for small convenience stores and other economic activities, and
they are critical to our economic diversification effort. We need to keep going on that. I think the basic message is that the current process works. We've made it work since 1975. It worked this year. Don't change it because if it ain't broke, don't fix it basically is the message I'm reading today. We work hard on local relationships and partnerships. We have MOAs with the counties and the cities when we do the fee-to-trust. But it is key that those not be made mandatory because that will take away our leverage. We work these relationships hard and we work them on a daily and weekly basis, but please don't put into the regulations that they have cathedral (sic) power. It will undermine everything that we're doing. I can't stress that enough.

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

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

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

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

I know it's been a long morning and a lot
of testimony. I'm really going to try not to cover
ground that's already been covered other than to say
humbly and respectfully I very much appreciated hearing the views of elected tribal officials this morning. And as Chairwoman Evans noted, there is going to be a lot of agreement between my two tribal clients on various concerns that have been raised today. We will memorialize those positions in written comments that we'll submit by the deadline.

I want to make sure you got my name.

Mine's an easy one, just like the grain, W-H-E-A-T.

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

Sadly, however, if you look at the existing rights, there is no expressed provision on on-reservation acquisitions for tribes to submit
comments. All kinds of opportunity for states, counties, cities, local units of government, to provide comments. But as my client, the Spokane Tribe, has been reminded of in litigation, regardless of whether Spokane is the resident tribe, certain tribes and its attorneys take the position that we are not entitled to even comment on their fee-to-trust applications for lands within my tribes undisputed, exclusive, aboriginal territory. Let me repeat that. That we don't even, as the resident tribe, you all should not even consider what we have to say.

Now, we sharply dispute that interpretation of the existing CFRs, but we do want to take this opportunity here to say that if we're going to open this up, something that is broke and does need to be fixed, it’s resident tribes should have a say. We should have a seat at the table. It should be crystal clear in the CFRs that we have that right. If the federal government is going to listen to every other unit of government, there should be some concern about what the resident tribe has to say. We shouldn't be in a position where we object to a foreign tribe exercising governmental jurisdiction in our territory using the United States as a proxy.
have come here today to deliver the message that that needs to stop. We should be heard. 

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

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

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

MR. TAHSUDA: Thank you, Scott. Anybody
1 else? Open mic. Great.

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

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

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

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

Now the other part, and this is not a new discussion. So a couple years ago anyway, there was an active effort by the National Congress of American Indians. And the Congress, particularly the Senate Committee on Indian Affairs, to propose legislation which would amend how the fee-to-trust is conducted,
and particularly how off-reservation fee-to-trust is conducted. One of the ideas that came out of that, my understanding, had broad support, had support from NCI, had support from a lot of local counties, et cetera, had support from Congress, was the idea that -- and again, no mandate, but MOUs could be achieved between local governments and the tribes that had to facilitate the acquisition process and the Department's fee-to-trust process. It could facilitate that, help it happen faster and reduce the level of litigation. So that's not a new idea. It's been out there for a while. I think there are real considerations that it can address.

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

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

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

Anyway, that's a long-winded way to say, this is part of the thinking process behind this idea
of MOUs. So I don't know if anybody has -- wants to respond or has a thought.

Sir?

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

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

UNKNOWN SPEAKER: I was going to respond.

MR. TAHSUDA: -- John, just because I put him on the spot.
UNKNOWN SPEAKER: Yeah, put me on the spot a little bit.

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

So I think that was a reason that there was not very much enthusiasm for keeping that Barrasso bill moving forward. Maybe one of the reasons was the idea that tribes would become beholden, but -- whether explicitly or implicitly to getting an MOU before they can proceed with an acquisition. I just wanted to give you my impression of that discussion with Senator Barrasso, that there was a real concern
of many tribes with the legislation, and it may be
reflected in the comments that you're receiving today
as well.

MR. TAHSUDA: Thanks, John.

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

So all of that, you know, sounds good and I
think benefits the Department. But maybe it's not so
good for tribes that are seeking to put land into
trust.

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

MR. TAHSUDA: So you had a couple of
thoughts in there. Let me try to make sure I sort
through and answer them all. So first off, the IRA
is an old statute. It's very simple, as a lot of
older statutes are. And so that, in itself, is a bit
of a challenge. Now, there is long-standing Department policy case law, et cetera, that that simple authority is not mandatory. It's a discretionary act on behalf of the secretary. And as a discretionary act, that then requires consideration for how the decision to act is made. This is sort of basic admin law. So there has to be an adequate record for the decision made. And how do we -- this is all part of how these regs develop over time. And I appreciate the notion that in the early 1970s it was a pretty simple process. Probably -- the world was probably a little bit simpler back then. I was a young kid. So -- but it's a little more complicated now. And we have had -- there have been several challenges and there are ongoing challenges to the authority of the secretary, what his authority and powers are under the IRA, and challenges to the IRA itself. Is it a constitutionally valid law. And for better or for worse, the Supreme Court changes its views over time, as its membership changes. And so they have, over time, offered additional views on the act when we have these decisions, like pack jack (phonetic) and others that come along.

So the regulations themselves have been flushed out over time, I think, in part anyway to
address the notion of creating a better record of
decision for the secretary's actions. Now that, of
course, in one sense benefits the Department because
we can better support our decisions. But in my view
anyway, that's actually part of our trust
responsibility to the tribes. It would be a failure
of our trust responsibility if we didn't take
adequate care and attention to making a decision such
that a decision was made for a tribe and that's
overturned simply because we didn't create a good
enough record for it or we didn't do our job well
enough. And so that's part of trying to make sure
that the regulations are sufficient for the decision
process, sufficient to answer the questions that have
been raised over time in court cases. And you know,
we have a lot of questions that -- every new case
that comes along raises some new issue. And
obviously you can't predict the future and anticipate
all of them. But to the extent that we can address
some of these issues in the regulations, that
certainly -- to my mind, it bolsters the
defensibility of the act itself and it bolsters the
defensibility of the secretary's actions and
authority under that act. So that really is, I
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
10 MR. REY-BEAR: Question and a comment. My
11 name is Dan Rey-Bear, Rey-Bear McLaughlin. I guess
12 first a comment on the question. It seems that the
13 concerns regarding having a good record that is
14 defensible could be more easily addressed, except
15 regarding budgetary matters, through more staffing
16 and training rather than changing the regulations.
17 The question then is, are there tribes or what tribes
18 have asked the Department to have D.C. central office
19 consideration of trust acquisitions and to add back
20 the 30-day waiting period?
21
22 MR. TAHSUDA: So the question of central
23 office consideration applies to off-reservation
24 applications. All the on-reservation stuff is
25 primarily at the regional offices and should be being
26 conducted as normal business through the processes
27 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
13 Most of the work on the ground is done out
14 in the region. And then only when it's forwarded to
15 us for consideration for the legal authority to
16 conduct the activities on the land, particularly with
17 gaming, et cetera, those are brought forward for a
18 decision, concurrent decision by the central office.
19
20 The issue with training is a good one. I
21 think that I would concur that the Bureau could do
22 more and better training on its -- on its processes
23 and how people will implement their programs, so I
24 would agree with that. It is true that at times you
25 have to make budget decisions as to what is more
26 critical, what critical priority at this time, and
27 maybe you put off some of that. We have some ongoing
1 training stuff. We've actually talked about some
more. So that's a valid concern to raise and
something that we need to do better on for sure.

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

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

MR. HARJU: Somebody has to make a
decision.
MR. TAHSUDA: Right. So the decision --
there are factual decisions that have to be confirmed
and there are legal decisions and policy decisions
that have to be confirmed.

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

UNKNOWN SPEAKER: Do you have adequate
staff?

MR. TAHSUDA: I'm sorry?

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

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

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

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

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

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

MS. NICHOLSON: Janet Nicholson. I just wanted to make a comment on -- having done fee-to-trust for decades and understanding the delegations, you know, if we have our fee-to-trust for on-reservation is -- with the superintendents, where the land is, where the tribes are, and in the
past we had our on-reservation at the region, again, close proximity to our homelands. And in looking at your instructional memo, basically the regional office has upheld the same standard as if they were making the decision. So they're preparing the packages with the tribes for their off-reservation acquisitions. And it's no different than as if the regional director were making the decision. So they're submitting that package to central office to have it analyzed again by the central office staff. And if we're doing that, you've heard many tribes here talk about the delays. And with the regional director -- with the regional director they are also having a legal review here with the solicitor's office. Now, if you make the decision on that fee-to-trust off-reservation, what does it do if that decision is appealed? If we did the decision here at the regional level, then the next level is the assistant secretary and then it goes to IBIA. What happens to the decisions that you make at your level with your delegated authority?

MR. TAHSUDA: So I'm not sure if this is what you're getting at, but let me say -- so one of the efforts that we're making internally is to have more consistent internal processes. And over time --
and I think if you -- it would be my observation, in the short time that I've been there, that if you don't watch it -- we push a lot of decision making down to the regions and even down to the agency offices. But -- so over time you can deal with issues on the ground. If you don't keep on top of it, you can have growing differences between how things are handled at one region as opposed to another and how they come up to the central office.

That's one thing, trying to keep consistent processes as much as possible, obviously recognizing that tribes in different regions have different histories and different ways of handling things.

But this goes to an issue that we deal with constantly. And part of this is probably a sign of the times. We live in litigious times. If we don't have more consistent decision-making processes, for us internally that then opens the door for more litigation. If we have consistent processes from the region all the way up through or, in this case, if we have all the footwork done by the regional office in an off-reservation package where there is no decision yet made, until it comes to our level to be made, then there is only one decision. Right? And it's -- whatever is open for litigation is based on that
decision and that record. It's not based on the fact that we actually may have had two varying views on the issue.

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

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

UNKNOWN SPEAKER: Can I make one more comment?

MR. TAHSUDA: Sure.

UNKNOWN SPEAKER: I wanted to -- going through this process I think emphasizes two things. One is, it's really different parts of the country. And I've been traveling to these different meetings, it's really different in different parts of the country, and having the existing regs address that.
The existing regs, it's first a record. The states and local governments can submit comments on anything. So the record -- and then the tribes get a chance to respond. So the record is going to reflect not just MOUs, but almost anything that the state and local government wants to put into the record. And I think that's important because the issues in Alabama, where they don't have any land use laws at all, are different from southern California. So if you try to standardize that, it's -- the different parts of the country are not alike and going to create problems with that. I think that part of the system that reflects the different -- it's just really -- in North Dakota it's way different than it is in other parts of the country.

And then there is -- the standard is, the further from the reservation, the more weight to the state and local government. The closer you are, the less weight that they get. That's a very flexible standard but it also reflects that far away from the reservation means one thing in North Dakota, 100 miles isn't that far. But in southern California, 100 miles is a pretty big distance. I think you need that flexibility in order to apply these regulations in the various parts of the country.
And anyway, I just want to speak a little bit, that the existing regs are ready. They already built a record for off-reservation acquisitions and they already have a standard in them, that's sort of -- when you look back at everything, they may have been thinking about the broad diversity of situations that you're going to run into. I wanted to mention that. Thanks.

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

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

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

If you could get an answer to what the
purpose of the land is for, and particularly if it's
gaming, since there are additional restrictions on
that by IGRA, can we get answers to those upfront?
That's the tribes' intended purpose, can we get that
upfront? And then if it looks -- if we think that
the answer is no, then the tribe can then look at
other options. They can look at other properties.
But you haven't spent five years and several hundred
thousand dollars doing IGRA work and stuff to get the
same answers. That's an open question. I don't
think of it as bifurcated, because if you got that
answer upfront, you're not going to get it in the backend either. You're going to get a different one in the backend.

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

I do think that there is a -- there has been a missing piece to this process and that is other affected tribes. I feel pretty strongly that we have not, over time, given them as much opportunity to weigh in as we should. And sometimes maybe they haven't even had the same opportunity as other local communities have, and that's not consistent with the intent of the law or the intent of the regulation. Whether we need to change the regulations to accomplishing that, that may be.

Because there has been so much interpretation now over time going in one direction, but I'm hoping to hear about that some more too.

So that's about it. I know there is a question folks had, too, about current applications.
So there is no moratorium on applications. We're still working through applications that are before us now. I think that the intent anyway -- if we move forward with these regulations, they would be completely proscriptive. They would be forward-looking. And probably -- if a tribe thought that the new regulations -- hopefully they would think they are actually better than the old ones and they wanted to switch over, maybe early in the process. Great. But until that time comes, we're not stopping what we're doing and we're continuing to move forward.

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

MR. DUNCAN: First of all I want to say thank you again, gentlemen, all of you. At this time I'm going to speak my language and talk to the Creator, talk to the spirits that watch over us and ask them to protect us, our lands and our people and
our families, our old people, young children, our
homes, everything, the roads that we ride on,
everything. I'm going to ask them at this time for
that. (Native tongue).

MR. TAHSUDA: Thank you, guys.

(Hearing adjourned at 1:11 p.m.)

* * *

(Note: Untranscribed steno notes archived
ten years on computer; transcribed English
files archived five years on computer.)

* * *
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
1/25/2018

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