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FEE-TO-TRUST TRIBAL CONSULTATION

TUESDAY, FEBRUARY 20, 2018

PHOENIX, ARIZONA

9:20 A.M.

MODERATING:

MR. JOHN TAHSUDAH, III  
Acting Assistant Secretary  
Indian Affairs

MR. KYLE SCHERER  
Counselor to Assistant Secretary  
Indian Affairs

Carmelita E. Lee  
Professional Court Reporter



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1 Phoenix, Arizona; Tuesday, January 20th, 2018;

2 9:20 a.m.

3

4 MR. TAHSUDAH: Good morning. We've started  
5 here. This is the Department of Interior, Bureau of  
6 Indian Affairs.

7 Let me start over.

8 Good morning.

9 GROUP PARTICIPANTS: Good morning.

10 MR. TAHSUDAH: Good morning.

11 This is the Department of Interior, Indian  
12 Affairs Consultation on some needed trust proposals,  
13 ideas that we put out. There is no proposed regulation  
14 yet. This is just a discussion, and we have previously  
15 sent out in your Tribal Leader letter that had a number  
16 of questions that have been raised by folks inside of  
17 the Department and folks outside of the Department. We  
18 are using that to serve as a basis to begin the  
19 discussion as to whether or not it's worthwhile to  
20 change Part 51 Regulations, dealing with off-reservation  
21 trust.

22 Before we go too much further, I would like  
23 to ask the Pastor to give us an opening prayer.

24 PASTOR: Let us pray.

25 Father, Creator, we come to you this

1 morning to just ask Your presence. We come because we  
2 have come to exchange words, words that are very  
3 important for us. I pray that as we exchange words that  
4 it would be in truth and in honesty, because we come  
5 here from many places, but we come in the common  
6 knowledge that we come here to speak on behalf of our  
7 people. We pray that as we have always looked to others  
8 for leadership, and have trusted in their words, we pray  
9 that that would be true today.

10 I thank You, Father, for giving everyone  
11 who has come safe travels. We pray that this day will  
12 be fruitful in many different ways; that we might be  
13 patient and long-suffering, and always dealing with one  
14 another in kindness.

15 We thank You for life itself. We thank you  
16 for the responsibilities that we hold because we know  
17 that we represent creation. We thank you for being  
18 stewards of our people, and I just give this meeting to  
19 You, and pray that as each one has come that they will  
20 be blessed.

21 And I give them to You, Father, because as  
22 each one has come, may they enjoy life, and we pray that  
23 our leadership here on both sides will be understanding  
24 of one another.

25 I give this day to You. I give this day to

1 You, Lord.

2 In Jesus' name, amen.

3 MR. TAHSUDAH: So just a couple of  
4 housekeeping things.

5 This is the fourth of six scheduled  
6 consultations on this discussion. If you haven't  
7 received it yet, it should cross your desk very shortly.  
8 We had to postpone the Connecticut consultation that is  
9 now scheduled for March 15th, still at Foxwoods, which  
10 is where it will be held, and we also, in that letter to  
11 Tribal leaders crossing your desk, has that information.  
12 We moved the date out for final written comments to be  
13 submitted, and those are now June 30th. So as you have  
14 been traveling, they may not have crossed your desk yet,  
15 but the final consultation will now be at Foxwoods, and  
16 I want you to understand that the final date to submit  
17 your comments will be June 30th.

18 We have -- so this is the Tribal  
19 Consultation. So we have to proceed on government to  
20 government basis, so we need to make sure that everybody  
21 that gives comments on the record here today is either a  
22 Tribal leader, or you have been specifically appointed  
23 by your Tribal leader or your Tribal Council to speak on  
24 their behalf if they cannot be here.

25 So that being the case, I hope whoever is

1 your designated spokesperson has signed in out front. I  
2 have a list of folks here. We will try to go in a more  
3 or less orderly fashion, but we'll just go name by name.  
4 But I will be -- I don't think it is an issue yet. I'll  
5 try to give priority on at least the first speaking  
6 spots to the Tribal Leaders, and those folks who are not  
7 Tribal Leaders but are speaking on behalf of the Tribe  
8 after that.

9 MR. SCHERER: And for the benefit of the  
10 record and the court reporter, maybe you are familiar  
11 with how we operate, but maybe if you could just state  
12 your name and your Tribal affiliation, that would be  
13 helpful. Also for our benefit and the benefit of the  
14 court reporter, about halfway through we will take a  
15 brief restroom break. And to the extent that we are  
16 running short on time, we will add whatever time period  
17 that tacks onto the end of the Consultation.

18 While many of you know John, my name is  
19 Kyle Scherer. I am somewhat new to the Department. I  
20 have been here for about three months.

21 MR. TAHSUDAH: My apologies. We are  
22 working together almost daily at the offices, and we  
23 still don't have a full suite of offices, so my  
24 apologies, Kyle. I also assume everyone knows everyone  
25 here.

1                   So with that, I'll open up the floor. The  
2 first Tribal leader I have on the list is Chairman Harry  
3 Pinkernell.

4                   CHAIRMAN PINKERNELL: Good morning, and  
5 thank you. Thank you for the time and thank you for the  
6 opportunity.

7                   My name is Harry Pinkernell. I am the  
8 Chairman of the Confederated Tribes of the Chehalis  
9 Reservation. The Chehalis Reservation is located in  
10 Southwest Washington State, about 15 minutes south of  
11 Olympia, Washington. The original reservation was  
12 established by Executive Order in 1864, consisting of  
13 about 4400 acres at the confluence of the Chehalis and  
14 the Black Rivers.

15                   In modern times, under the current  
16 regulations, the Tribe has been able to repurchase land  
17 within its own land areas. The Tribe has been able to  
18 add 380 acres of lands into trust off-reservation, 835  
19 acres of fee lands off-reservation, and 597 acres of  
20 trust land added to the Reservation, totalling an  
21 additional 1,820 acres, which provided ecological  
22 protection for the rivers, which the Tribe fish, for  
23 wetland protection, and other parcels devoted to  
24 economic development and jobs.

25                   Through the fee-to-trust regulations as

1 they currently stand, the Tribe has been able to build,  
2 own and operate the Great Wolf Lodge Waterpark in Grand  
3 Mound, adjacent to I-5, and also the Fairfield Inns and  
4 Suites in Grand Mound. These projects provide  
5 employment for Tribal members, and for non-Indians and  
6 economic diversification for the Tribe.

7                   The Tribe was fought tooth and nail by  
8 Thurston County in Washington when we proposed and  
9 developed the Great Wolf Lodge, even though the Lodge  
10 employs 542 employees in an economically depressed end  
11 of the county.

12                   In addition, the Tribe has now added 32  
13 more employees at the Fairfield Inn and Suites in the  
14 same economically depressed end of the county, as a  
15 result of the fee-to-trust process under the current  
16 regulations.

17                   If the Tribe had been required to obtain an  
18 MOU with Thurston Country, or even if there was a  
19 checklist with an MOU on it, the Tribe would not be  
20 owning and operating the economic development projects  
21 that exist instituted to diversify its economy beyond  
22 gaming. Instead, the Tribe would be fighting Thurston  
23 County in the IBIA and in Federal Court. That would be  
24 an unintended consequence of a reference to an MOU in  
25 any proposed regulation.

1                   The Tribe understands that voluntary  
2 cooperation between Tribal and non-Tribal governments is  
3 good. But enabling a non-Indian government to demand  
4 payments or withhold consent to an MOU is a major Tribal  
5 diversification.

6                   The second issue I wish to address is the  
7 proposed 30-day wait to take land into trust. The  
8 opponents of fee-to-trust conversions already have ample  
9 appeal time guaranteed by court cases. Under the  
10 current regulations and procedures, the State and  
11 counties already have time to comment on the  
12 fee-to-trust process in advance of a Record of Decision.  
13 30 days is just an unnecessary delay and a further  
14 invitation for non-governmental opponents to sue and  
15 diminish the resources of Tribes in defense, not to  
16 mention the resources of the United States, which could  
17 be better spent to assist Tribes rather than to defend a  
18 legitimate decision.

19                   Finally, as discussed by many tribes in  
20 Sacramento, Mystic Lake, and again in Portland, what  
21 prompted this discussion about changing the regulations?  
22 It certainly wasn't prompted by the vast majority of  
23 Tribes. The current regulations are the devil we know,  
24 not the devils that went outside of the trust  
25 responsibility and want to impose on the Tribes. As has

1 been said to you, if it ain't broke, don't try to fix  
2 it. End this inquiry and do not overturn the current  
3 fee-to-trust process because you think you will not be  
4 sued as often. Those people who want to sue will sue no  
5 matter what the process looks like. Hands off our  
6 current regulations. Thank you.

7 MR. TAHSUDAH: Thank you, Chairman.

8 Vice-Chairman Lewis, Shan Lewis.

9 VICE-CHAIRMAN LEWIS: Good morning. My  
10 name is Shan Lewis. I am the Vice-Chairman of the Fort  
11 Mohave Indian Tribe, and I'm President of the  
12 Intertribal Association of Arizona. And on behalf of  
13 the 21 member Tribes, I want to welcome all the Tribal  
14 leaders here and those who have come to Arizona from  
15 across the region to discuss this important matter. I  
16 also wanted to extend a warm welcome to the  
17 representatives from the Department of Interior who are  
18 in attendance here this morning.

19 We appreciate you coming to Arizona to hear  
20 directly from Tribal leaders about Interior's proposal  
21 to revise the Land into Trust Regulation, dealing  
22 primarily with off-reservation acquisitions. In  
23 deference to the many Tribal leaders we have who have  
24 traveled here today, I will make my comments on behalf  
25 of ITAA very brief.

1 Overall, we are concerned with the proposed  
2 changes to Part 151, which seem to be premised on  
3 several bold assumptions. First, the Tribes already  
4 have adequate land base. I'm sure many of the Tribal  
5 leaders will explain to you today, many tribes still do  
6 not have a significant land base for housing, economic  
7 development and other needs. The extra hurdles proposed  
8 within in the current draft regulations make the process  
9 of restoring land specifically harder, not easier, for  
10 the Tribes.

11 Second, most fee-to-trust acquisitions are  
12 controversial, and not well received by the local  
13 communities. This is not the case. In fact, the vast  
14 majority of fee-to-trust acquisitions do not present the  
15 controversy or difficulty that the proposed regulations  
16 appear to address.

17 Third, the proposed changes seem to suggest  
18 that tribes generally have and pursue relationships with  
19 the neighboring non-Indian communities, one that must be  
20 mediated by the Department of Interior through a  
21 regulatory process. This is not the everyday experience  
22 for most Indian tribes. To the contrary, Tribes  
23 generally work very well with their local communities.  
24 They are often one of the largest employers in the  
25 region, and they work hand in hand with the neighboring

1 communities on public safety, economic development and  
2 regional planning matters, just to name a few of our  
3 cooperative activities.

4 In short, on behalf of ITAA, we urge the  
5 Department of Interior to listen very closely to the  
6 Tribal comments here today, and to revisit the draft, so  
7 that it truly can streamline the fee-to-trust process  
8 for tribes, and not impose additional hurdles that seem  
9 to be -- that attempt to solve a problem that doesn't  
10 exist, and sadly, solve it badly at that.

11 Again, we thank you for being here today  
12 and look forward to hearing from the Tribal leaders on  
13 this important issue. Thank you.

14 MR. TAHSUDAH: Thank you, Vice-Chairman.

15 Next up, I have the Campo Band of Mission  
16 Indians, Treasurer Marcus Cuero.

17 We'll go now to the Picayune Rancheria,  
18 Chair Jennifer Ruiz.

19 CHAIRWOMAN RUIZ: Good morning.

20 My name is Jennifer Ruiz. I am the  
21 Chairwoman representing the Rancheria Chukchansi Indians  
22 from Coarsegold, California. Thank you for taking the  
23 time to listen to us this morning. We appreciate that.

24 We have five properties that have been  
25 pending via trust approvals for quite a few years, and

1 so the first point I want to make is that for  
2 on-reservation or non-gaming land acquisitions, that  
3 process definitely needs to be streamlined. The biggest  
4 point that I want to make -- and we're going to submit  
5 more detailed written comments on this -- but the  
6 biggest point that impacts us is having the local  
7 government, the County, be more involved in the process.  
8 Unfortunately, that has been a challenge for us. You  
9 know, I would love to say -- I hear other Tribes talking  
10 about how good their relationships are with their county  
11 government, and I definitely see that it hasn't been for  
12 us trying. But unfortunately, our county has made it  
13 very challenging for us in every step of the process,  
14 trying to build our on-reservation economic development  
15 ventures. Everything we try to do is opposed in some  
16 way.

17                   It is tied to what I really wanted to focus  
18 on today, which is off-reservation land acquisitions for  
19 gaming. I would not be doing my job as Tribal leader if  
20 I didn't say that this issue has impacted us  
21 specifically, and already today, because we have an  
22 off-reservation proposal that would directly affect our  
23 Tribe and our on-reservation economic development, and  
24 it's a significant issue for us.

25                   We feel that off-reservation gaming, by

1 definition, has to be looked at completely differently  
2 from on-reservation acquisitions for non-gaming  
3 purposes, because it triggers a completely separate set  
4 of issues and impacts.

5           The Congress approved a draft because  
6 on-reservation Indian gaming enhances on-reservation  
7 economies, and creates on-reservation jobs, not just to  
8 make money. That is why Congress added, post 1988, Land  
9 Limitations For Gaming Act, and carved out exceptions to  
10 it for land-claim-related acquisitions and newly  
11 recognized Tribes.

12           The mere fact that Congress put that post  
13 1988 limitation into the Act, and their vote in the  
14 two-part determination process, demonstrates how Tribes,  
15 the Congress and the Department of the Interior were  
16 thinking about off-reservation gaming at times in the  
17 past.

18           Congress made the two-part determination a  
19 very conditional opportunity that can only be afforded  
20 if all of the parties agreed, and there is little  
21 question that Congress believed that the surrounding  
22 Tribes would have a clear voice in that process.

23           For our Tribe specifically, a proposed  
24 off-reservation project is already impractical today.  
25 Even if we go to negotiate our compact, and are in

1 league with our county, county officials have told our  
2 Tribal leaders that they won't accept anything less than  
3 what was offered to them by the off-reservation proposed  
4 projects. And having an on-reservation project, we  
5 really think we cannot be without it, and it is  
6 impacting our Tribe today before that project is even  
7 able to move forward.

8           A new off-reservation gaming proposal can,  
9 and often does, at least in California, have a direct  
10 impact on the surrounding Tribes, and even the other  
11 Tribes in the State. We have over 195 in our state, so  
12 maybe we need it there. Yet under their new proposal,  
13 State and local governments are afforded a far greater  
14 role in the approval process, while the other tribes in  
15 the State are left out. Even those who suffer direct  
16 impact are left out of the process if they are not  
17 within 25 miles of the proposed site, and in our case it  
18 is less than 30, so it is very close to that.

19           Decisions about off-reservation casinos can  
20 have a direct impact on the compact renewals of other  
21 tribes, who are also experiencing that. They can also  
22 impact the way that the State and local governments view  
23 the casinos, and the economy of the non-Indian  
24 communities that are surrounding existing on-reservation  
25 facilities.

1 All of these factors need to be considered  
2 in the off-reservation casino approval process, and this  
3 is not happening today. Interior should be required to  
4 undertake its own inquiries into all of these issues  
5 before approving an off-reservation two-part decision.

6 We don't oppose Tribes, any Tribe's right  
7 to gaming, and we never have. But like I said, we would  
8 not be doing our job as Tribal leaders if we did not  
9 communicate how impactful this decision would be for our  
10 community.

11 Thank you for this opportunity. Thank you.

12 MR. TAHSUDAH: Next up I have Chairperson  
13 Jane Russell, Yavapai-Apache.

14 CHAIRPERSON WINIECKI: My name is Jane  
15 Russell-Winiecki. I'm the chairperson of the  
16 Yavapai-Apache Nation.

17 All Indian Nations across the country share  
18 a common history of losing all, or a portion of our  
19 homelands. As America expanded its borders across the  
20 continent over 200 years, a period known as "Westward  
21 Expansion," a similar story was repeated many times  
22 over. The Indian Nations encountered by the United  
23 States were different in name, language and culture, but  
24 the experience was largely the same. The Indian Nations  
25 lived on and cared for their respective homelands. The

1 non-Indians, moving west, wanted that land and its  
2 resources for themselves, and they proceeded to take it  
3 through the political and military power of the United  
4 States government.

5           The effect on Indian people of the loss of  
6 their land was profoundly devastating culturally,  
7 spiritually and economically. The land was everything  
8 to Indian people. The land was a living, breathing  
9 entity given to the people by the Creator to care for,  
10 as one would care for a person. The land provided the  
11 economy and livelihood for the people. It provided  
12 sustenance to both the farmer and the hunter. Wherever  
13 Indian people lived, that place was their home, a place  
14 to raise their family, to find purpose and fulfillment,  
15 and to find happiness through all the seasons of life.  
16 This land gave us blessings of life generously to the  
17 people, and asked for respect in return. The spiritual  
18 strength of the people was tied to the land in its  
19 sacred and holy places. To walk the earth and see its  
20 beauty was to see and feel the hand of the Creator and  
21 to understand the people's place in this world.

22           Now, before I go on, I would ask you to  
23 stop for a moment and imagine in your mind's eye the  
24 overpowering loss experienced by Indian people when all  
25 of this was taken away, when their deep connection to

1 the land as a gift from the Creator, as a place of both  
2 physical and spiritual sustenance, was ripped away and  
3 shattered.

4           The story of the Yavapai-Apache people of  
5 the Verde Valley and their loss of land is emblematic of  
6 the loss suffered by all of Indian Country in the course  
7 of America's expansion.

8           The ancestors of the Yavapai-Apache people,  
9 whom I represent here today, inhabited the Verde Valley  
10 of Central Arizona for many generations prior to the  
11 arrival of non-Indians in what is now Arizona. The  
12 Verde Valley and the surrounding mountains were their  
13 homeland. During wars for expansion that followed  
14 America's settlers across the continent, the Yavapai and  
15 the Apache people were looked upon as the enemy to the  
16 non-Indian farmers, ranchers and miners. As an entire  
17 people, we became inconvenient roadblocks in the  
18 American nation's vision of its so-called Manifest  
19 Destiny. By 1871, the United States had ordered the  
20 Yavapai and Apache families living in and around Verde  
21 Valley to be concentrated onto the Camp Verde Indian  
22 Reserve, which was a 575,000 acre reservation -- 575,000  
23 acre reservation -- carved out of our much larger  
24 aboriginal homeland encompassing some 16,000 square  
25 miles. The Camp Verde Reservation was set aside in 1871

1 by Executive Order of President Ulysses S. Grant, and  
2 was intended as our permanent homeland. To the United  
3 States, however, the idea of a permanent homeland  
4 apparently meant less than five years. At the urging of  
5 federal officials, as well as non-Indian Arizonans --  
6 the farmers, ranchers and miners who would benefit from  
7 an Indian Country where all the Indians had been removed  
8 -- President Grant, in 1875, rescinded the Executive  
9 Order, he abolished our reservation homeland, and agreed  
10 to the demands of federal and Arizona territorial  
11 officials and private citizens, that the Yavapai and  
12 Apache people be removed some 200 miles to the San  
13 Carlos Reservation, where they could be further  
14 concentrated, along with the Indian people already held  
15 there. In this terrible act of bad faith on the part of  
16 the United States, the Yavapai and Apache people lost  
17 their entire homeland, their birthright, and their  
18 legacy.

19                   The Yavapai-Apache land of the Verde Valley  
20 was taken by the United States for the specific purpose  
21 of opening that land to non-Indian settlement. What was  
22 once Indian land was to become the property of  
23 non-Indian settlers, a federal policy enforced by  
24 military power.

25                   So on February 27th, 1875, about 170 years

1 ago this weekend, on a cold and snowy day, more than  
2 1300 Yavapai-Apache people were rounded up by American  
3 soldiers over the preceding days, began the forced  
4 marched over the mountains to San Carlos. There was no  
5 waiting a few more weeks for spring to arrive. No  
6 horses. No wagons to carry the people. There was only  
7 walking in moccasins that eventually gave way to bare  
8 feet while walking through brush, cactus and sharp  
9 rocks.

10           There was no travel over established wagon  
11 roads to the south in what might have been warmer  
12 weather. There was only a straight-line route over the  
13 mountains. The people were forced into exile with only  
14 so much of their belongings as they could carry on their  
15 backs. The very young and the very old were all treated  
16 with equal cruelty. Those of our people who refused to  
17 leave the Verde Valley tried to escape, and remain free  
18 and unseen. As ordered by the United States, these  
19 people were hunted down and either captured or killed  
20 outright.

21           Imprisoned in San Carlos, the Yavapai and  
22 Apache people never forgot their Verde Valley homeland.  
23 It is our homeland, and we never gave up the hope that  
24 someday we would be allowed to return to that homeland  
25 to rebuild our lives.

1                   So in the early 1900s, Yavapai-Apache  
2 individuals and families began to trickle back to the  
3 Verde Valley, back to what had once been their homeland.  
4 There they found that their former home was now owned by  
5 the non-Indians and their descendants who had insisted  
6 on their removal to San Carlos some 30 years earlier.

7                   In November 1909, the United States  
8 acquired 18 acres of land in trust for the  
9 Yavapai-Apache. I repeat. 18 acres. A school was  
10 built, and a small reservation was reestablished for the  
11 people. Recognizing that the needs of the people were  
12 great, the United States acquired an additional 460  
13 acres in trust in 1915. This was the beginning of our  
14 recovery as a people from the terrible loss that we have  
15 suffered when our lands were taken and given to others.  
16 The harm done in 1875 through the loss of our land was  
17 deep and abiding, and has reached down through the years  
18 to harm every generation of the Yavapai-Apache people  
19 from then until now. To take away everything that a  
20 people have is to rob them of their culture, their  
21 economy, their sense of place in the world, and their  
22 identity as a people. Little by little, over the years  
23 since then, the Yavapai-Apache people, with the  
24 occasional assistance of the United States, began the  
25 slow and painful process of recovering from the

1 devastating loss of their homeland by reacquiring a  
2 small portion of our original lands. Additional small  
3 trust acquisitions have occurred slowly over the years  
4 so that now our small reservation consists of just over  
5 1830 acres. Remember, the Yavapai-Apache people went  
6 from an aboriginal territory of over 16,000 square miles  
7 to a 575,000 acre reservation in 1871, to no land at all  
8 in 1875, when imprisoned at San Carlos, and now to only  
9 1830 acres. That is less than three square miles of  
10 land. Three square miles of land. The loss of land for  
11 the Yavapai-Apache people was stark in its magnitude.

12                   For the Yavapai-Apache Nation, the  
13 acquisition of land is always about our recovery from  
14 the terrible harm done to us by the United States, which  
15 shattered our connection to the land, took away our  
16 homeland, and gave it away to strangers. The recovery  
17 from such loss by a Nation of people can only occur over  
18 a long period of time, so every land acquisition by the  
19 Yavapai-Apache Nation is aimed at rebuilding at least a  
20 small portion of our homeland. Whether for housing,  
21 economic development, cultural preservation or open  
22 space, for agriculture, watershed protection, all land  
23 acquisitions are for the benefit and for the general  
24 welfare, and long-term prosperity of the Yavapai-Apache  
25 Nation. Reacquiring our lands is a small part of

1 reclaiming the legacy which was stripped away from us in  
2 that long march to San Carlos in 1875. In acting to  
3 acquire new lands into trust, the Yavapai-Apache Nation  
4 is simply trying to regain a very small portion of what  
5 was taken away from us by the United States.

6           Acquiring lands in trust is not about  
7 diminishing the local non-Indian tax bases or rezoning  
8 land use. Again, acquiring land in trust is not about  
9 diminishing local non-Indian tax bases or rezoning land  
10 uses. Land acquisitions are about rebuilding Indian  
11 communities that have long been devastated by the loss  
12 of their land. The Indian Nations and local communities  
13 can, in many cases, work out their differences in land  
14 acquisitions. The Yavapai-Apache Nation, for example,  
15 works closely with local non-Indian communities to  
16 provide for cross-jurisdictional cooperation. The  
17 Tribes and the local communities should be left to work  
18 out our local issues without particularized regulatory  
19 mandates. Again, the Tribes and the local communities  
20 should be left to work out local issues without  
21 particularized regulatory mandates. Where such mutual  
22 arrangements are difficult because of lingering local  
23 animosity towards the Tribes -- and this is important --  
24 it is the responsibility of the United States to  
25 exercise the discretion Congress provided in 1934 -- in

1 1934 -- under the Indian Reorganization Act, to acquire  
2 land for the various needs of the tribes. That is your  
3 responsibility. What we cannot accept in your proposed  
4 regulatory revisions is any regulatory changes that take  
5 away Secretarial discretion, or that gives local,  
6 non-Indian communities veto power over Native Nations'  
7 land acquisitions. Unacceptable. This would be  
8 contrary to Congressional intent, and harmful to the  
9 Indian Nations.

10           The United States should not now begrudge  
11 the Indian Nations the opportunity to recover from the  
12 cultural, spiritual and economic losses, and the  
13 genocidal harm inflicted on Indian people by the failed  
14 federal policies of the past. Instead of making it more  
15 difficult for Indian people to recover their lost lands,  
16 as the proposed revisions of the Part 151 regulations  
17 will do, the United States should be clearing away the  
18 bureaucratic obstacles that currently stand in the way.  
19 Instead of throwing up sandbags, laying down pitfalls,  
20 the United States should be smoothing out the road to  
21 greater Tribal prosperity by streamlining the land into  
22 trust process.

23           The current regulatory requirements are  
24 onerous enough. They do not need to be made worse by  
25 the proposed provisions. Please, don't ask Indian

1 Country and the various Nations that have been harmed  
2 enough by failed federal policies, to buy into new bad  
3 policy initiatives. I cannot agree with this. Please.

4 In closing, I have two questions I would  
5 like to leave with you. First, it is not entirely clear  
6 why the Secretary is considering the proposed Part 151  
7 revisions. One of the issues that we hope to address by  
8 such revisions, is the Secretary opposed to all trust  
9 acquisitions? Or just certain acquisitions?

10 Can you identify the kinds of acquisitions  
11 with which the Secretary is concerned? It is difficult  
12 to respond in generalities, so greater specificity is  
13 needed.

14 In addition to my comments made today for  
15 the Yavapai-Apache Nation, we will submit formal  
16 comments in response to the consultation questions by  
17 the June 30th deadline.

18 Thank you very much.

19 MR. TAHSUDAH: Thank you very much.

20 Next up I have Mr. Marcos Ceuro, has he  
21 come in? From the Campo Band?

22 All right. So then I have Bruce Talawyma.

23 MR. TALAWYMA: (Remarks in Native  
24 language.)

25 Thank you. Good morning.

1                   My name is Bruce Talawyma. I have the  
2 honor of serving as chief of staff for the Chairman  
3 Timothy Nuvangyaoma. Chairman Nuvangyaoma was unable to  
4 attend, but he sends his warm welcome to everyone here.

5                   I would like to thank you, Acting Assistant  
6 Secretary, Indian Affairs, Tahsudah and his team for  
7 traveling to Arizona to meet with our Tribal leaders to  
8 discuss the Department's proposed rulemaking on Part 151  
9 regulations.

10                  I appreciate the Department being here  
11 today and holding this consultation, but Indian Country  
12 did not ask for the Department to make changes to the  
13 fee-to-trust process. The Indian Reorganization Act and  
14 the Part 151 Regulations are working for Indian Country  
15 in helping Tribal Nations to rebuild their homelands.  
16 Of course, there are always areas where the process can  
17 be improved, but I am skeptical that this is the purpose  
18 of this rulemaking.

19                  Every Tribal leader in this room today will  
20 tell you that land is essential to our future as Tribal  
21 Nations. Every Tribal leader here will tell you that  
22 our respective Tribal Nations' territories stretch far  
23 beyond our current reservation boundaries. From the  
24 outset, it is critical to acknowledge that any  
25 acquisition made by any Tribal Nation pursuant to the

1 Indian Reorganization Act and the 151 Regulations is a  
2 re-acquisition. We all understand what that is. We are  
3 re-acquiring what was once ours and taken from our  
4 Peoples.

5           The Hopi Tribe resides on a 2,500 square  
6 mile reservation located in Northeastern Arizona. Our  
7 reservation is unique in that it is landlocked and  
8 completely surrounded by the Navajo Nation's  
9 reservation. It is absolutely essential for our Tribe  
10 to look off-reservation for lands for economic  
11 development, housing and other needs because there is no  
12 land adjacent to our reservation. We are completely  
13 surrounded by the Navajo. This makes the fee-to-trust  
14 process very important to the Hopi Tribe.

15           Many other Tribal nations confront the  
16 issues of the lack of available land on reservations, or  
17 even lack of a formal reservation. This means that they  
18 have to pursue acquisitions off-reservation to help meet  
19 the needs of their Tribal citizens. The Indian  
20 Reorganization Act did not limit acquisitions to  
21 on-reservation lands or the reacquisition of allotted  
22 lands. The IRA's language and the powers it granted to  
23 the Secretary were broad. The IRA did not place  
24 distinctions between on-reservation and off-reservation  
25 lands. The Department should not impose undue burdens

1 on off-reservation acquisitions.

2                   The Hopi Tribe appreciates that the  
3 Department withdrew the discussion draft at issue last  
4 fall, and abandoned that rulemaking process. It is good  
5 to see that the Department listened to Indian Country.  
6 It is always better to listen to Tribal leaders before  
7 the Department begins changing its regulations and  
8 processes.

9                   Even though the Department withdrew its  
10 discussion draft, I feel compelled to share some of the  
11 Hopi Tribe's concerns with the proposal. The first is  
12 that it created a two-step review process to address  
13 State and local governments' concerns. The current Part  
14 151 Regulations already take into account the local  
15 governments' views, and the proposed two-step process  
16 would only complicate the fee-to-trust process and place  
17 new hurdles in the way of Tribal Nations reacquiring  
18 lands.

19                   The discussion draft also contained a  
20 requirement that the applicant Tribal Nation enter into  
21 an MOU with the local governments, and if it did not, it  
22 was required to explain why. The current regulations do  
23 not require MOUs. MOUs may be best practices but they  
24 are not always possible to achieve. The Hopi Tribe has  
25 a great relationship with our local neighbors but not

1 all Tribal nations are that fortunate. The MOU  
2 requirement could tip the scales in favor of local  
3 communities and provide them with more leverage to  
4 extract concessions from Tribal Nations. Worse, the  
5 MOUs could even be seen as providing local communities  
6 with a pocket veto on fee-to-trust acquisitions.

7           As the Department searches for ways to  
8 improve the fee-to-trust process, the most obvious issue  
9 that needs to be addressed is where the decision-making  
10 process occurs. Last April, the Department moved  
11 decision-making authority for non-gaming off-reservation  
12 fee-to-trust applications from the regional offices to  
13 the central office. This creates a logjam at the  
14 central office because it does not have the resources or  
15 expertise to process so many application from diverse  
16 regions. The regional offices have the local expertise,  
17 institutional knowledge and the resources to efficiently  
18 and effectively handle these applications. The  
19 Department should return decisional-making authority to  
20 regional offices for non-gaming off-reservation  
21 applications.

22           Another improvement that the Department  
23 could immediately initiate is abandoning the 30-day  
24 self-stay policy for fee-to-trust acquisitions. The  
25 Patchak decision made clear that the Quiet Title Act

1 does not protect fee-to-trust applications from legal  
2 challenges; therefore, the 30-day self-stay is no longer  
3 necessary, so the land should be placed immediately into  
4 trust upon approval of the application. The 30-day stay  
5 prolongs the fee-to-trust process and allows legal  
6 challenges, even frivolous challenges, to prevent land  
7 from going into trust. This causes Tribal Nations to  
8 deal with added expenses and uncertainty.

9                   Again, I appreciate the Department  
10 withdrawing its decision draft, and instead asking  
11 Tribal nations to answer a series of ten questions. The  
12 Hopi Tribe will answer the ten questions with formal  
13 comments that we will submit to the Department during  
14 this consultation period.

15                   However, I would like to express my concern  
16 that the Department is pursuing this consultation that  
17 will have a major impact on Tribal Nations without a  
18 Senate-confirmed political appointee at the helm. The  
19 Senate has yet to confirm an Assistant Secretary for  
20 Indian Affairs, which is an important aspect of the  
21 checks and balances built into the United States  
22 Constitution. Similarly, there is no Deputy Solicitor  
23 for Indian Affairs. The Department's current  
24 consultation efforts would be better served if  
25 Senate-confirmed political appointees were leading this

1 effort.

2                   Finally, I would be remiss if I did not  
3 express my concern that some of our sister Tribal  
4 Nations are being left out of this consultation process.  
5 The Department's efforts would have a profound impact on  
6 all Tribal Nations across the entire United States, yet,  
7 there are no consultations scheduled in Oklahoma, Alaska  
8 or the Great Plains. These areas are home to many  
9 Tribal Nations, and they deserve a voice in this  
10 process. The Department should schedule additional  
11 consultations to listen to Tribal Nations located in  
12 these areas.

13                   Again, I would like to thank the Acting  
14 Assistant Secretary of Indian Affairs, John Tahsuda, for  
15 meeting with us today. We will supplement the record  
16 with formal comments, addressing the ten questions the  
17 Department asked. The Hopi Tribe is also open to  
18 discussing ways to improve the fee-to-trust process, but  
19 we will vigorously oppose any efforts to create new  
20 obstacles.

21                   And also, I would just like to point out  
22 also for all of us Indian Nations, we have our culture,  
23 and last month we just finished our Hopi Tribal  
24 ceremony, which is a cleansing and purification in our  
25 Hopi Nation, and this begins the New Year for the Hopi,

1 and this is the time that we move forward with good  
2 hearts and prepared for everything, all life, that we  
3 will continue to grow in our own ways and not be  
4 burdened by so many other issues that we now have.  
5 Thank you.

6 MR. TAHSUDAH: Mr. Bald Eagle, Cheyenne  
7 River Sioux Tribe.

8 MR. BALD EAGLE: Good morning,  
9 Mr. Tahsudah, Chair, people of the southwest.

10 My name is Remi Bald Eagle. I come from  
11 the Cheyenne River Sioux Tribe of the Great Plains.  
12 Thank you for welcoming me to your territory today, and  
13 giving me the opportunity to speak to the federal  
14 government on your lands. Actually, my lands, the top  
15 of the Sioux Nation. Thank you to the representative  
16 from the Hopi Nation for mentioning us today.

17 Mr. Assistant Secretary, I am here on  
18 behalf of the Chairman of the Cheyenne River Sioux Tribe  
19 with the following message.

20 First, we would like to quote one of our  
21 leaders, Crazy Horse, by saying, "My lands are where my  
22 dead are buried."

23 You gave us many questions to answer. But  
24 now I will briefly go over those questions because I  
25 know you want them. I am not going to read the

1 questions. I am pretty sure you already know what they  
2 are.

3 First question, restoring our homelands  
4 should be our primary purpose of the fee-to-trust  
5 process. States have more authority than the Tribes  
6 under the proposed regulations, and that isn't right.  
7 It is much easier to take trust-to-fee than it is to  
8 take fee-into-trust. It should not be more difficult to  
9 do so. For off-reservation acquisitions we should not  
10 be required to submit a map showing the parcel of land  
11 in relation to the reservation. The fee-to-trust  
12 process should be about restoring our homelands, not  
13 about regulating gaming.

14 Second question, Interior doesn't have an  
15 effective fee-to-trust application process. Every time  
16 the Cheyenne Sioux Tribe attempts to reach out to our  
17 fee-to-trust process, we are constantly met with  
18 roadblocks, told the person isn't there, told the people  
19 we need to talk to are not present, and never return our  
20 phone calls.

21 Question number three. There should never  
22 be a disapproval of treaty lands ever. My lands are  
23 where my dead lie buried. If you can point to one place  
24 in the great Sioux Nation, according to our treaty  
25 territory, and come to a parcel and tell us this spot

1 right here in your treaty land, a Lakota warrior didn't  
2 die in that spot. Then we can start assisting you about  
3 fee-to-trust in our Native lands. If it is treaty land  
4 it should be approved.

5 Question number four. The Black Hills were  
6 illegally taken from the Great Sioux Nation. Your  
7 courts say that. So any fee-to-trust that has been  
8 taken into consideration regarding the Black Hills  
9 should be put into trust without being frivolous because  
10 they were illegally taken.

11 Question number five. No questions or  
12 criteria should be implemented. America is free, isn't  
13 it? Why is capitalism only okay if you are not an  
14 Indian?

15 Question number six. It is a taxing  
16 revenue.

17 Question number seven. No application  
18 should not be subject to community agents prior to  
19 approval.

20 Question number eight. Federal government  
21 doesn't have fiduciary responsibility for the states and  
22 local government, and has no absolutely no  
23 responsibility to the general public as regards  
24 fee-to-trust on Indian lands. So comments from the  
25 states and local governments and federal authorities

1 should carry no weight. This is a nation to nation  
2 issue. Our treaties don't require communities or state  
3 governments.

4 Question nine. MOUs are dangerous for  
5 Tribal jurisdiction. It gives guardianship to Indian  
6 lands that are not their land.

7 Question number ten. Easy. Simply remove  
8 the application as they come in. The federal  
9 government's responsibility is to protect Tribal lands  
10 and not diminish it.

11 Lastly, I want to point out that the Tribal  
12 leaders does not consider my presence here as formal  
13 consultation. They invite you here to the Cheyenne  
14 River Sioux Tribe to speak before our Tribal Council  
15 regarding this and look forward to providing additional  
16 comments before the deadline on January 30th.

17 I moved this microphone because I didn't  
18 want to turn my back on my elders. Thank you.

19 MR. TAHSUDAH: Thank you, Mr. Bald Eagle.  
20 Mr. Quentin Cook, Craig Tribe.

21 PRESIDENT COOK: Good morning. My name is  
22 Clinton Cook, I'm the Tribal President of the Craig  
23 Tribal Association. I am honored to be here today to  
24 tell you how important land-in-trust is for tribes in  
25 Indian Country.

1                   We are a small Tribe in Craig, Alaska, and  
2 are the only Tribe in Alaska that has been able to put  
3 land taken into trust since the Alaska Exception, which  
4 barred tribes in Alaska from taking land into trust was  
5 finally removed from Department 151 Regulations in late  
6 2014.

7                   I would like to thank the Hopi Nation for  
8 recognizing that you guys did not come to Alaska. 568  
9 federally recognized Tribes across the U.S., 229 of them  
10 are in Alaska. You need to be in Alaska. You need to  
11 be on the Great Plains.

12                   Having land in trust has profitably changed  
13 our community. We now have a small parcel of trust land  
14 that our members and Tribal children can be proud to  
15 call home again. The land we have put in trust houses  
16 the Tribal government, program offices, the Tribal  
17 community center and economic development center.

18                   Land into trust program is critical in  
19 fostering greater Tribal self-sufficiency, and stronger  
20 Tribal governments. Without land in the trust, Tribal  
21 governments like my own, that operate on fee lands, are  
22 subject to State and local laws, and are forced to  
23 function more like private companies or non-profits.  
24 Because of this we are often not treated as sovereign  
25 nations by local governments in telling them that we

1 have land in trust.

2                   The Department must continue to support  
3 Tribes in restoring our homelands, and ensure that the  
4 land-in-trust process is geared towards helping us  
5 achieve this goal.

6                   We do believe that any changes in the  
7 current regulations are necessary, the current  
8 regulations provide sufficient standards to allow the  
9 Department to effectively and adequately balance the  
10 State and local interests of the Tribe's responsibility  
11 when evaluating land-into-trust applications, regardless  
12 of whether they are on or off-reservation.

13                   For example, State and local governments  
14 are provided notice of land-in-trust applications and  
15 decisions. They have adequate opportunity to submit  
16 comments, voicing their concerns during the process.  
17 But the Department must not confuse the opportunity for  
18 State and local governments to be heard with some  
19 broader but unfounded notion that these third parties  
20 have a right to prevail on the merits, or veto  
21 land-into-trust decisions. The Department is required  
22 to make its decision based on the law, consistent with  
23 its trust responsibility to the tribes. State and local  
24 government concerns do not change the law or government  
25 obligations to the Indian Tribes.

1                   The Department must remember that Indian --  
2 the IRA Act -- was intended to reverse the wrong of  
3 prior political policies, and help to revitalize Tribal  
4 self-government by taking land-into-trust to tribes.

5                   In passing the IRA, Congress established a  
6 clear policy in favor of taking land-into-trust to help  
7 tribes achieve self-determination and correct the harms  
8 done by the federal government, taking so much from the  
9 Tribes throughout our history.

10                   Any changes to the current land-into-trust  
11 program will also have an immediate and negative impact  
12 on Alaska tribes. It has only been just over two years  
13 since we have been able to submit applications to have  
14 land taken into trust, and only one application has been  
15 approved to date.

16                   The Department should not make this process  
17 more difficult by changing it now, or creating  
18 additional hurdles for off-reservation acquisitions,  
19 especially since there is only one reservation in  
20 Alaska, and it is only because of the Department's past  
21 policy barring tribes in Alaska from taking land into  
22 trust that we don't have more reservations in Alaska  
23 today.

24                   We must be given the same opportunity that  
25 Indian Tribes in the lower 48 states have had to acquire

1 land in trust, and finally be able to have meaningful  
2 government upon our lands as sovereign agents.

3 We urge the Department not to make any  
4 changes to the current process; rather, the Department  
5 should ensure that all agents and regional offices have  
6 enough staff, and are properly trained in the  
7 land-in-trust process to ensure that applications of the  
8 process are received in a timely manner.

9 Given the Department's reorganization and  
10 staff reduction, the current land-into-trust program  
11 must be protected, and the environment should make land  
12 into trust a priority in terms of both staffing and  
13 funding resources all over Indian Country.

14 Thank you for your time. Like I said  
15 before, I came from Alaska at great effort to get here.  
16 You guys need to be everywhere. You don't need to be  
17 where you guys want to be. You need to be where we are  
18 at. It's very shameful not to have government authority  
19 in Alaska, or even Washington, where it would be easier  
20 for us to travel. Thank you.

21 MR. TAHSUDAH: Thank you, President Cook.

22 I think we have another group. Ms. Frias  
23 from Pascua Yaqui.

24 MS. FRIAS: Good morning.

25 I have some comments that I would like to

1 read on behalf of the Pascua Yaqui tribe. We have one  
2 of our council members here, Mrs. Antonia Campoy, and we  
3 hope to have other Tribal Council Members join us today.

4 I would like to thank you for providing us  
5 a forum to provide feedback on the fee-to-trust process.

6 Before I go into my thoughts, I think it's  
7 helpful for you to understand the history of the Pascua  
8 Yaqui Tribe as the original proposed regulation and the  
9 subsequent questions seem to assume that so-called  
10 off-reservation acquisitions should be the exception,  
11 and therefore more difficult to acquire. However, this  
12 ignores the history of many Tribes in the U.S., which  
13 have included terminated Tribes -- terminated tribes --  
14 and Tribes, like us, that are left land-poor. For some  
15 of the Tribes it is nearly impossible to acquire  
16 on-reservation or contiguous parcels of land to put into  
17 trust. We should not be punished for the history that  
18 the U.S. government is responsible for.

19 The Yaquis have existed in Arizona since  
20 time immemorial. We have inhabited what is now known as  
21 Southern Sinaloa, Sonora, New Mexico, California, Texas,  
22 Utah, Colorado and Arizona. The Yaqui people settled in  
23 various communities from South Tucson to Scottsdale.

24 In 1964, Congressman Morris K. Udall  
25 introduced a bill in Congress authorizing the transfer

1 of 202 acres of federal desert land to our Yaqui elders.  
2 On September 18th, 1978, Public Law 95-375 recognized  
3 the Tribe as a United States Indian Tribe. However, the  
4 Tribe did not have specific connection with the land  
5 that was to be transferred to the Tribe; rather it was  
6 easily transferrable since it was BLM land.

7 Numerous members of the Tribe have  
8 relocated from their traditional communities elsewhere  
9 in the State to the Reservation, and have built a  
10 thriving community there. However, the acquisition of  
11 the land adjacent to the Reservation is limited in space  
12 and is running out to build additional housing for  
13 Tribal members. Traditionally Yaqui communities  
14 continued to exist off-reservation. For example, a  
15 Yaqui community exists in Guadalupe, which is 115 miles  
16 from the Pascua Yaqui Reservation.

17 Public Law 95-375 recognized the Tribe in  
18 1978, and put 202 acres in trust for the Tribe. Public  
19 Law 103-357, which amended Public Law 95-375, recognized  
20 202 acres was insufficient, and directed the Secretary  
21 of Interior to conduct a land study to determine what  
22 land would be sufficient for the Tribe for the  
23 foreseeable future, and at what cost. The Tribe  
24 completed the land study, and determined that a total of  
25 3,815.4 acres will be needed by 2015 to house the Pascua

1 Yaqui population, and an additional 14,353 acres of  
2 nonresidential land will be needed. A total of 18,164.4  
3 acres of land is needed by the Tribe by 2015.

4 The Tribe continues to grow, and due to its  
5 land shortage, the population is suffering. More than  
6 446 Tribal families are waiting for Tribal housing and  
7 239 Tribal families are waiting for land assignment.

8 Therefore putting an additional burden on  
9 off-reservation acquisition discriminates against land  
10 poor and landless Tribes, as all of their acquisitions  
11 fall into that category, despite the fact that  
12 significant Tribal communities exist -- continue to  
13 exist in areas where they seek to acquire land.

14 One of the questions that you asked in your  
15 Dear Tribal Leader letter is, what should the effect of  
16 the land-into-trust program be? What should the  
17 Department be seeking to accomplish? We believe that  
18 the Department has both a legal and a moral obligation  
19 to acquire land-into-trust for all Tribes, and  
20 particularly those where Congress has recognized that  
21 the land base is insufficient. We ask that if  
22 amendments are to be made to the regulations, that the  
23 Department consider acquisition within, or contiguous to  
24 existing recognized Tribal communities, not to be  
25 considered off-reservation, and thus subject to

1 additional scrutiny.

2 Any additional restrictions placed on the  
3 fee-to-trust process will frustrate the Tribe's ability  
4 to meet its land needs for its people. Most federal  
5 programs are designed to assist Tribes, and are tied to  
6 trusts and reservation lands. For example, the Tribe is  
7 prohibited from constructing homes with NAHASDA funding  
8 on fee lands.

9 The Department has expressed concern about  
10 the adequacy of the current criteria in addressing the  
11 concerns of local communities. However, the current  
12 criteria already provides a strenuous process for  
13 considering the concerns of local communities. Any  
14 additional restrictions would effectively allow the  
15 local communities that are unwilling to negotiate with  
16 the tribes the ability to hold the application hostage.  
17 There is no policy justification for providing local  
18 governments to veto over off-reservation land  
19 acquisitions.

20 The questions further asked whether  
21 applications should be treated differently if they are  
22 for gaming purposes. Congress has already set up the  
23 rules when newly acquired land can be used for gaming in  
24 Section 20 of the Indian Gaming Regulatory Act, and the  
25 Department has already adopted regulations implementing

1 this law. Attempting to conflate the fee-to-trust  
2 process with IGRA's gaming requirements is unsupported  
3 by the law, and will only result in a more convoluted,  
4 complicated and legally challengeable process. We urge  
5 the Department to abandon this process entirely.

6           According to the Brookings Institute,  
7 President Trump has rescinded well over three dozen  
8 proposed rules and delayed numerous others. It seems  
9 strange that in this era of deregulation, where America  
10 is open for business, that Indian Country should be  
11 mired in regulations. If infrastructure projects can be  
12 streamlined to less than two years, so, too, can the  
13 fee-to-trust process. Applications shouldn't be allowed  
14 to sit around for years on end. The Department should  
15 develop a streamlined process wherein all applications  
16 are processed within the same two-year window.

17           Additionally, no Assistant Secretary of  
18 Indian Affairs has yet been appointed. Any challenges  
19 to the regulations should await the person's appointment  
20 as they may take a wholly different view of the process.

21           Finally, we appreciate the Department is  
22 looking into these regulations. Perhaps it is time that  
23 they are revisited; however, since the history of the  
24 Tribes are so diverse, and Tribes are in very different  
25 land situations, we invite the Department to consider

1 either a Tribal working group or negotiating rulemaking  
2 so that the Department fully understands all of the  
3 Tribal positions and concerns and can amend the  
4 regulations in a manner that suits all the parties'  
5 needs.

6 I would like to thank you for your time,  
7 for listening, and also on behalf of the Pascua Yaqui  
8 Tribe for this opportunity to speak on their behalf.

9 (Remarks in Native language.)

10 MR. TAHSUDAH: Thank you, Ms. Frias.

11 One more call for the Campo Band. Is there  
12 a spokesperson for the Campo Band?

13 So usually what I do at this point,  
14 whenever all Tribes have had a chance to speak, I try to  
15 take notice of who spoke, and I'll raise some issues and  
16 try to address those as best I can, to go through them.  
17 And I'm happy for you to come back up if you want to  
18 clarify if I say something that I didn't understand  
19 correctly, if you want to clarify that.

20 But let me ask this before we do. Should  
21 we take a break? Why don't we take a break and then,  
22 because I see a few heads nodding, and then I'll start  
23 off again with some responses to the questions. We'll  
24 take a five or ten minute break.

25 Thank you.

1 (Recessed from 10:29 to 11:08 a.m.)

2 THE COURT: All right. Are we ready to go  
3 again?

4 So we have had a couple more folks come in,  
5 I think, so before I comment a little bit, let's put the  
6 mic up to Council Member Charletta Tilousi of the  
7 Havasupai Tribe.

8 COUNCILMEMBER TILOUSI: Good afternoon, or  
9 good morning.

10 On behalf of our Tribal leaders, thank you  
11 for giving me this time to testify on behalf of our  
12 Tribe.

13 I am a member of the Havasupai Tribal  
14 Council, elected official for the Tribe, and I am here  
15 to raise some concerns about what we are going to  
16 discuss today. The Tribe has purchased some territory  
17 near the Grand Canyon south rim. We wanted to purchase  
18 that land to protect the area from uranium mining, and  
19 we also purchased it for the reasons of protecting  
20 various sites.

21 The site I'm talking about, we applied to  
22 put it into trust and we have been waiting for quite  
23 some time. In good faith, the Havasupai Tribe has  
24 applied all the necessary documents and use of the  
25 Tribe's resources to obtain the land and put the land

1 into trust.

2                   It has been a long process for us. We have  
3 used legal attorneys, and we use our resources to  
4 complete all the tasks in a timely manner, and we have  
5 still not received any response from your agency to the  
6 Tribe, whether we have been approved or not.

7                   We are not here to express our concerns  
8 against any gaming Tribe, but we are here to express the  
9 fact that we have waited for quite some time from your  
10 agency.

11                   The land that I am referring to is right  
12 next to our sacred mountain, called Red Butte. That  
13 mountain is not only sacred to the Havasupai, but it's  
14 also sacred to the neighboring tribes, and we have been  
15 fighting for many years against uranium mining. Our  
16 intentions were to protect that area from further  
17 mining, and around that area is a lot of area sites that  
18 we want to protect. And that was the set intention of  
19 the Tribe.

20                   I understand that there are going to be  
21 some suggested changes to regulations, and we would like  
22 to be fully informed of that.

23                   Do we start all over again, since there  
24 will be changes? Is the application ever going to be  
25 approved? Or are we just going to keep waiting for a

1 long time? Those are the concerns and questions that we  
2 have.

3 We have numerous Tribal members in my  
4 tribe, and the history of my tribe is very, very dark,  
5 just as some of the Tribes represented here.

6 We once owned the entire Grand Canyon  
7 National Park, which is now a national park. My  
8 great-grandparents and family members all lived in that  
9 area, and when it came down to Theodore Roosevelt coming  
10 into the Grand Canyon, he took all of that land away  
11 from us, and I was a landless person until I became six  
12 years old. The large demand allowed -- Congress finally  
13 passed a large demand and gave some of our land back to  
14 the Havasupai Tribe, which is now the Havasupai  
15 Reservation.

16 So the goals of my Tribe is to start  
17 purchasing property in our territory to protect them  
18 from mining and protect our ancient burial sites and  
19 protect them forever. So that is our intention here  
20 today, is to voice our concerns about why does it take  
21 so long for us to have any kind of response, because we  
22 have done everything we can think of, followed all of  
23 the guidelines and procedures that your agency has asked  
24 us to do.

25 So thank you for your time to listen to my

1 testimony. My written testimony will be provided again  
2 by your schedule and your deference.

3 So we hope to hear from you guys soon on  
4 that matter. Thank you.

5 MR. TAHSUDAH: Thank you, Ms. Tilousi.

6 So I think to answer your questions, it's  
7 probably fastest and easiest to do that first. I think  
8 there may be one or two more Tribal leaders who may be  
9 coming along wanting a chance to speak when they get  
10 here.

11 So right now, this is only a discussion  
12 about changing the off-reservation fee-to-trust program.  
13 Anything that is in the pipeline that has been  
14 submitted, it will continue on. Nothing is being held  
15 up. Everything should be business as usual, what we  
16 talked about, and improved business as usual on  
17 off-reservation acquisition.

18 We will look into -- I am not sure where  
19 your -- I can't guess where your applications are at,  
20 your now long-awaited fee-to-trust applications are  
21 probably in the regional office here, but we will check  
22 on that and try to get a status for you.

23 So I'm going to try -- I think I can answer  
24 a couple of the questions or points that were raised  
25 this morning fairly quickly.

1                   So there is no intent to hold up any  
2 applications that have been submitted. Again, this is  
3 just a discussion at this point, and if down the road we  
4 went through a rulemaking process and change the  
5 regulation, it would be forward-looking regulation, and  
6 would only deal with applications made after that date.

7                   The Secretary is 100 percent supportive of  
8 trusts, and to continue to develop land on the  
9 reservation, provide better homes and better communities  
10 and better economic opportunities to our members,  
11 whatever it takes. And if it means going off  
12 reservation, then there is no opposition to that, we  
13 just have some extra hurdles that we have, that we're  
14 required to, by law, to go through. This is part of  
15 what we want to discuss now.

16                   But this is, is there a better way to do  
17 it? That is the fundamental question for us. We are  
18 asked, who asked you to do this, et cetera, and I guess  
19 my response is, this question has been hanging around  
20 the Department for a long time. Before I got here, and  
21 going back several administrations. They always raise  
22 the question, why does it take so long to get the  
23 answers? Why does it take 15 years to get an  
24 off-reservation acquisition, or seven years?

25                   So the fundamental question is, is there a

1 better way that we can do this? If it takes a change of  
2 regulations to accomplish that, or more clarity for the  
3 regulations, I don't see that as adding more bureaucracy  
4 if it turns out to be a better process, for instance.

5           So I guess -- I hope that addresses those  
6 questions.

7           I think there is a misunderstanding that I  
8 keep -- we keep running into this, the question on the  
9 local government comments and MOUs. So again, in the  
10 regulations now, and through a number of court cases,  
11 you know, we have -- we have to, as a government agency,  
12 provide the opportunity for affected parties -- the  
13 local governments in this case -- to write comments on  
14 our actions. So that's what that process is for.

15           In a lot of states, and I know in a number  
16 of Tribes, they have been able to establish a pretty  
17 good working relationship with the surrounding  
18 communities. So one of the questions that comes to mind  
19 is, as we go through the process we have to go through,  
20 getting local comment, addressing those, et cetera, is  
21 there a better way to do that? And one better way that  
22 comes to mind is what a lot of Tribes are doing; they go  
23 to their local communities. And if they have a good  
24 ongoing relationship, and I know that is not always the  
25 case, but if they do, then they can already, by the time

1 they submit the application to us, they would hopefully  
2 be able to already have those issues addressed in an  
3 MOU. Well, here they are, they are addressed in the  
4 MOU, and we don't even have to go in and think about it,  
5 right? We just -- it's already in the book. That part  
6 is done.

7                   These are all things along the way that  
8 take up time and take up resources on your part, and  
9 again, if we could find a better, more efficient way to  
10 go about this, I think that's a good thought.

11                   Now, there has never been an intent that --  
12 in discussion about MOUs, is that veto in any way on  
13 behalf of local communities is not in the regs now, and  
14 it's not our intent to add something like that into the  
15 regs.

16                   So I hope that you can consider that  
17 question, that idea in that context. Is there a better  
18 way that we can go about doing it? If you have a decent  
19 relationship, or if you can accomplish this with the  
20 local community, all right. So if you can't, it doesn't  
21 stop us considering it. It's just we have to be more  
22 involved in that, and we have to be more involved in  
23 hearing their comments and your responses, et cetera.  
24 So that is simply the idea.

25                   If you think that's not a good idea, if you

1 have a better idea on how to handle that part of the  
2 process, we are very happy to hear it, but please submit  
3 those comments.

4           Let's see. I think the other thing is,  
5 again, part of this is -- so I guess I'll say there are  
6 two sort of underlying assumptions on our part. One is  
7 can we improve the process. Again, this is all focused  
8 on the off-reservation acquisition of land fee-to-trust.  
9 All right. Is there a better way we can handle the  
10 process? And two, is there a way that we can accomplish  
11 better decision-making?

12           The Department virtually gets sued every  
13 time it makes a decision these days, and Tribal fee  
14 trust is usually -- is often not an exception to that.  
15 So it is incumbent upon us to add that when we make a  
16 decision on your behalf, that we are able to defend it.  
17 Part of this process, as well, is in trying to make  
18 clear for us, and make wholly clear to the Tribes in the  
19 application, information that is helpful to us to come  
20 to a defensible decision on your behalf.

21           I think it is a tragedy in a sense that we  
22 are not able to do that. And we have extra  
23 complications that we didn't have 25 years ago; right?  
24 We have the Carciere case; right? It affects Tribes in  
25 different parts of the country a little differently

1 based on history, but that's -- and it added later that  
2 20 years ago it didn't have to be considered by Tribes.  
3 So that is not something in our hands. That is handled  
4 by the Supreme Court.

5 But for us, and that's something that only  
6 Congress can address. We cannot address that. All we  
7 can do is deal with the impacts of that case because the  
8 Supreme Court has said this is the law of the land.

9 We only apply the law. We don't make it.  
10 So we have to make that consideration as well.

11 So part of all of this is trying to get, at  
12 the end of the day, a better decision so that we don't  
13 have another case like that, hopefully, or maybe like  
14 the Patchak decision. These are all things that, you  
15 know, you learn lessons from those. Hopefully we will  
16 do a better job so that we don't at least get wrapped on  
17 the knuckles for a similar situation, or maybe some  
18 different thing on the law that nobody anticipated.

19 But if we could anticipate what is the  
20 current status of the law and make better decisions  
21 based on that, I think that is also incumbent upon us.  
22 That is a responsibility of ours at the end of the day.

23 So those are sort of two of my assumptions  
24 that also kind of underpin this, and again, you know,  
25 this is intended to begin a dialogue on this. If you

1 think that the process as it stands works well, is  
2 efficient on your behalf, does it take too much time and  
3 money? Please make those comments and submit it to us.  
4 If you think that we are going about the process of  
5 making good decisions and defending it, but we could be  
6 better, we are more than happy to hear about it. But  
7 those are the ultimate goals, is to have better  
8 decision-making and get it done more efficiently and  
9 faster.

10 That's sort of the underlying thought  
11 process that we have. So if you see some of those here,  
12 some of the questions that have been put out, certainly  
13 I think it is helpful for us, as we do turn over the  
14 deliberations, that if you address these questions, but  
15 if you have other parts of the process that you think  
16 need to be addressed or could be improved, I really urge  
17 you to make those comments as well.

18 I'll open the floor to anybody to who has a  
19 comment to that. If not, I'll keep going.

20 So one of the things that I keep hearing a  
21 lot is the uses of the land, and particularly  
22 off-reservation. So that's one of the things that could  
23 be helpful, I think, again in this process, is trying to  
24 find a faster way to be efficient, more defensible  
25 decision-making.

1                   What are some of the uses that we can  
2 identify that don't carry additional legal risks or  
3 concerns or other considerations that we have to make.  
4 So some of those are what we call, you know, continuing  
5 use, right, or no change in use of the land. Are there  
6 things that are, you know, important for other reasons,  
7 cultural reasons, religious reasons? Are those things  
8 -- personally I think they should be -- but are those  
9 factors positive factors that should be considered? I  
10 don't know if they are really addressed in the way that  
11 would make it better for us to make a decision. So are  
12 there uses like that?

13                   Or if it is a commercial use and you are  
14 not changing it, for example, the golf course that the  
15 Tribe has purchased, they are just keeping it as a golf  
16 course.

17                   So there are several things we can do in  
18 the process, hopefully. We are underway in examining  
19 our Geneva analysis, and one of the things that strikes  
20 me as being underutilized in the past are categorical  
21 conclusions. So we have authority to do this. We  
22 actually have about 15 different categories in our  
23 administration currently that are really not used. We  
24 are basically making Tribes go through needless analyses  
25 that they don't necessarily need to right now. So we

1 are looking at that now, and we are going to make sure  
2 that we import those.

3           And to use the golf course example, if it  
4 is not being changed in use, why should there be an  
5 extended Geneva analysis? So those are part of the  
6 things that we want to hopefully build into a better  
7 decision-making process.

8           What else?

9           So I'm not sure -- so the question was  
10 raised before about adding a 30-day period before the  
11 fee-to-trust decision is made public or put in the  
12 federal register. And so again, I encourage you, when  
13 you make a comment, to remember that. But I think that  
14 the easiest way to look at that is the thought process  
15 of anticipating that there will be litigation. So the  
16 fact of the matter is that following the Patchak case,  
17 the Supreme Court has said that those outside folks who  
18 want to challenge the fee-to-trust and have standing to  
19 do it, the fee-to-trust decision, have six years to do  
20 it. That is a fact of life for us.

21           But instead of waiting until year five,  
22 five and a half, if we have a period in which people are  
23 notified, if you want to challenge this decision, please  
24 do it in this 30-day period, they can be encouraged,  
25 those who are going to do it, to jump in and get it

1 done, right, and then we can get through the process  
2 faster. If there is going to be a challenge, we can get  
3 it into court faster and resolve it and not be waiting  
4 until year six and wade through four more years of  
5 litigation or something like that.

6 So that is sort of our very basic thought  
7 process that we have. Again, if you have a better idea  
8 how to help that part of the process, we would be very  
9 happy to hear it.

10 Again, in the category of how we can  
11 structure the process as well, I would certainly  
12 appreciate thoughts and comments, so Councilwoman Frias,  
13 from the Pascua Yaqui talked about they had a  
14 progressive study to identify these, et cetera. It has  
15 been raised before, there has been comment made that  
16 maybe Interior should have sort of a similar process  
17 where we try to put together a plan, sort of structure  
18 it, and get some of the things like public notice out of  
19 the way early on, right. And so again, you know, there  
20 is a thought that might make the process easier, and  
21 certainly you can comment on that.

22 I think the Vice-Chairman from the Tohono  
23 O'odham Tribe is here. Would you like to comment?

24 Good, you'll get a break from hearing me.

25 VICE-CHAIRMAN JOSE: (Remarks in Native

1 language.)

2 Good morning. Greetings to every one of  
3 you. This is a good day. It's an important meeting,  
4 and thank you for being here.

5 I want to make some comments on the  
6 fee-to-trust regulatory review by your questions.

7 The fee-to-trust process is already overly  
8 burdensome, even for mandatory acquisition applications  
9 that should be reviewed and approved as a matter of  
10 routine. Comments are repeated efforts to keep  
11 modifying the regulations and keep changing the rules to  
12 cause significant hardship for applicant Tribes, and is  
13 inconsistent with this administration's pledge to reduce  
14 regulatory burdens.

15 The Nations' mandatory applications for  
16 land adjacent to existing reservations has been pending  
17 before the Department for more than a year and a half.  
18 The Nations find it difficult to understand how the  
19 Department can possibly consider imposing additional  
20 requirements on the fee-to-trust process, when it  
21 already delays processing existing applications.

22 The question of the proposed reinstatement  
23 of a self-stay of trust land acquisitions is both  
24 unnecessary and would results in further delay. Our  
25 comments are if we stay the self-stay provision, it

1 would effectively allow the Department to delay its  
2 acquisition indefinitely, thereby thwarting the Tribal  
3 investments and development. This outcome is neither  
4 consistent with the language and purpose of the IRA --  
5 and the purpose of the IRA -- for other federal  
6 statutes, nor does it streamline or improve the land in  
7 the trust process.

8           The question, the interest of Tribes in  
9 Indian Country, rather than concerns with State and  
10 local jurisdictions, must drive the fee-to-trust  
11 process. State and local communities should not be  
12 allowed a veto over the fee-to-trust process.

13           MOUs between Tribes and local communities  
14 frequently address the economic or environmental impact  
15 regarding the new development on neighboring land. Many  
16 states recognize and encourage such agreement. However,  
17 these agreements are the gravamen of sovereign  
18 government. It would be both paternalistic and contrary  
19 to the plain language and intent of the federal statute  
20 for the Secretary to require MOUs as a part of the trust  
21 acquisition process.

22           Those are our comments. Thank you from the  
23 Tohono O'odham Nation.

24           MR. TAHSUDAH: Thank you, Vice-Chairman.

25           So Chairman, we talked about your mandatory

1 fee in trust acquisition here last week. We will  
2 follow-up with you shortly.

3 VICE-CHAIRMAN JOSE: Thank you. I signed  
4 it yesterday.

5 MR. TAHSUDAH: How's that for speedy  
6 action?

7 So I repeat again, too, so there is no  
8 intent on holding up any applications in the process  
9 now. Any that would be filed before any proposed  
10 changes in the rules were finalized, et cetera.

11 So I did want to go back to -- I think to  
12 the Chairwoman from Picayune, who raised the question  
13 about the 25-mile-radius impact, et cetera. I think, if  
14 I understand what you're asking about, that those were  
15 part of the Part 292, the gaming regulations, but I  
16 certainly think that there is room for improvement there  
17 as well, and if you have comments or suggestions, maybe  
18 you should make those available for us. We can hear  
19 that.

20 So I know there is a question about the  
21 local governments and taxation, and again, the  
22 Chairwoman brought that up in the gaming context, and  
23 the expectation that every time you get sort of a new  
24 bar set, that every fee-to-trust application is not  
25 going to meet that. So that is part of the process now.

1 If you have suggestions on how we can improve that, as  
2 far as the local impacts with the local governments and  
3 responses to that outside of the MOU context, I would  
4 like to hear that. So specifically in that context and  
5 outside of the gaming context.

6 But that brings us back to one of the  
7 questions that we have, and this is what impact does  
8 gaming have on sort of the universe of off-reservation  
9 applications, and should there be a separate track.  
10 It's just a question: Should there be?

11 I know we are going -- I won't say how far,  
12 but a few years back when there was a big question  
13 raised by the Tribes who were looking for land  
14 off-reservation for non-gaming purposes, but everything  
15 was being held up because of the furor over the  
16 off-reservation gaming. And the question was raised  
17 then, should there be a separate track for gaming versus  
18 non-gaming, particularly off reservation.

19 So I guess if that concern is no longer  
20 valid, or is no longer an issue for the Tribes,  
21 certainly a comment can be made. But at least as we  
22 review applications, there is usually more comment, more  
23 political I guess insertion into more politics as  
24 brought into the situation by local communities all the  
25 way up to the states, if there is gaming or potentially

1 gaming involved. So is there a better way to handle  
2 that as well. It's just a question. If you have an  
3 idea, and if you think it works perfectly now, that's  
4 great.

5                   It just strikes me that there is a better  
6 way of looking at it internally that we can handle. So  
7 we would like to work with you.

8                   Does anybody -- did I miss any questions  
9 that anybody asked? I am happy to keep talking. We  
10 still have about a half hour left in the clock here.

11                   So I think that's it. It sounds like  
12 everyone has had a chance to talk, all the travelers had  
13 a chance to talk. I look forward to written responses  
14 again. The deadline for the written responses have been  
15 extended to June 30th.

16                   I guess hopefully that also conveys that we  
17 are very open to making this extended dialogue and  
18 in-depth discussion with it. There is no drop dead  
19 deadline that we are working towards, so as we get  
20 further along, we can get these consultations done and  
21 evaluation of where we are. If there are any new  
22 questions to be raised that need to be considered as  
23 well, we will deal with that too.

24                   I think we are done, and we will close out  
25 the consultation.

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Thank you.  
(The consultation concluded at 11:37 a.m.)

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C E R T I F I C A T E

I, Carmelita E. Lee, do hereby certify that  
the foregoing pages constitute a full, true, and accurate  
transcript of the proceedings had in the foregoing matter,  
all done to the best of my skill and ability.

WITNESS my hand this 6th day of March 2018.

*Carmelita E. Lee*

\_\_\_\_\_  
Carmelita E. Lee

Professional Reporter and Notary Public