

UNITED STATES DEPARTMENT OF THE INTERIOR

OFFICE OF THE SECRETARY

INDIAN AFFAIRS

Virtual Tribal Council Meeting

DATE: Monday, December 20, 2021

TIME: 03:03 P.M. - 3:42 P.M.

PLACE: Zoom

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A P P E A R A N C E S

Bryan Newland, *Moderator*

Assistant Secretary of the Indian Affairs

Kathryn Isom-Clause

Deputy Assistant Secretary of Indian Affairs

Rose Petosky

Counselor with Office of Deputy Assistant Secretary

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Raina Thiele

Senior Advisor to the Secretary on Alaska Affairs

Heather Dawn Thompson

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Joaquin Gallegos

Special Assistant, Jicarilla Apache Tribe

Rachel Brown

Special Assistant

Chief Gary Harrison

Chickaloon Village, Alaska

Will Micklin

Vice President, Tlingit & Haida Indian Tribes of

Alaska

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P R O C E E D I N G S

MR. NEWLAND: Thank you everybody, good morning. Thank you for joining us today. This is our fourth virtual consultation session on the Department's Protection and Restoration of Tribal Homelands.

We added an additional session for tribes in Alaska because of difficulties getting notice out earlier this fall to different representatives. So, this is the final session we will hold in this series of consultations that the Department is hosting.

My name is Bryan Newland. I'm the Assistant Secretary for Indian Affairs here at the Department of the Interior and joined by a number of folks from the Department of the Interior today as well.

Before we start, we did not have somebody available to offer us a prayer today. We'll just ask that you take a moment before the meeting begins to reflect or pray in your own way. Every time we come together; we want to make sure that we're doing it in the right way.

1 All right, thank you so much. Again, I want
2 to welcome those of you who have joined us today.
3 The Department is looking for tribal feedback on how
4 we can take steps to protect and restore tribal
5 homelands. As part of this effort earlier this fall
6 we sent a letter to tribal leaders setting out some
7 framing questions on different topics related to
8 tribal homelands.

9 The land in the trust process, the leasing and
10 right of way process, sacred sites and treaty rights,
11 and then overall questions. With respect to the
12 land in the trust process we've asked, does the
13 Department's land in the trust process adequately
14 allow tribes to consolidate land holdings in or near
15 existing reservations?

16 Does the Departments land in the trust process
17 adequately allow tribes to establish homelands for
18 landless tribes?

19 How can the Department improve its land in the
20 trust process to facilitate protection of sacred
21 sites, conservation and the exercise of civil and
22 criminal jurisdiction?

1 And we also asked for tribes in Alaska, how
2 should the Department approach the land in the trust
3 process to adequately account for factors that are
4 unique to Alaska?

5 With respect to leasing and rights of way, we
6 asked, are the Department's existing regulations
7 governing agricultural leasing adequate to protect
8 the interest of tribes and Indian landowners.

9 We also asked if any changes are needed to the
10 Department's leasing and rights of way procedures to
11 clarify tax and jurisdiction in Indian country, and
12 to promote economic development in Indian country.

13 With respect to sacred sites and treaty
14 rights, we have asked what steps can the Department
15 take to ensure that tribes have the ability to
16 protect our sacred sites and access those places to
17 exercise religious rights.

18 We've asked what steps can the Department take
19 to protect the exercise of off reservation treaty
20 rights, including habitat for treaty resources.

21 And we have asked what actions can the
22 Department take in relation to other agencies to

1 ensure the protection of sacred sites and treaty
2 rights.

3 And lastly, the Department has asked what is
4 the most pressing need for the protection of
5 restoration of tribal homelands that the Assistant
6 Secretary's office can help address?

7 We are also in addition to this accepting
8 written comments. I believe that we've extended
9 that deadline as well. Initially, we had written
10 comments were to be submitted by November the 5th,
11 but because, you know, we wanted to add this
12 additional session for tribes in Alaska, I believe
13 you can still submit written comments to us if you
14 wish.

15 And before I turn the floor over to
16 representatives from tribes on the line, I just want
17 to note that in the next day or two you will be
18 receiving a letter from several officials here at the
19 Department of the Interior, including myself along
20 with Raina Thiele, who has joined us today as the
21 Senior Advisor to the Secretary on Alaska Affairs,
22 and Heather Dawn Thompson from USDA announcing

1 tribal consultation in Alaska related to
2 subsistence, fishing and hunting and gathering
3 rights. So please look for that letter in your
4 inbox here in the next few days.

5 So, with that, I want to thank you for joining
6 us this morning and I will open the floor up to any
7 representative from tribal governments or
8 inter-tribal organizations who wishes to speak. I
9 have a hand raised from Chief Gary.

10 CHIEF GARY HARRISON: Good morning everyone,
11 or afternoon, depending on where you're at.

12 We've been wondering about the land in the
13 trust, when the process is going to start, because
14 we at Chickaloon Village would like to put some land
15 in the trust.

16 And I also wanted to discuss a little bit about
17 the corporations, the Native corporations. I
18 believe that when they were made, they didn't want
19 them to put land in the trust, so I believe if the
20 corporations were allowed to put their land into the
21 villages in the trust that it would help the
22 corporations and the tribes work together rather

1 than what's happening now. And also, that way the
2 land could actually get back to the tribes and
3 restore the homelands better than what this Native
4 Land Claims Act has done.

5 The Native Land Claims Act has done several
6 things that do not help the tribes. Number one, all
7 of their land was taken and some of it was given back
8 to these corporations, and the United States Federal
9 Government kept a bunch of it and gave a bunch of it
10 to the State of Alaska. And there was a certain
11 amount of it that they left in the private hands as
12 well, and I think that when we start talking about
13 restoration of the tribal homelands, that we need to
14 be able to take the State land and the Federal land
15 and the corporation land and put it into trust for
16 the tribes.

17 I also want to include the boroughs, because
18 in this -- where I'm at, we're within the -- well,
19 part of the borough is within our jurisdictional area
20 as well, and I know that other tribes have boroughs
21 in their areas as well. And I think this would not
22 only help fulfil the trust responsibility that the

1 United States has for these tribes, but I think it
2 would also not only help the tribes restore their
3 homeland, but it would also help the interaction
4 between the corporations and the tribes.

5 I know that the corporations are probably
6 going to want to be able to put land into trust
7 themselves, but I think that's a mistake. Right
8 now, the tribes and corporations already have a
9 problem with the corporations taking their rights
10 and responsibilities, and also the funding in many
11 areas as well. And I think that if this was done,
12 it would further increase the divide.

13 Thank you once again for having this and
14 (speaking in another language).

15 BRYAN NEWLAND: Thank you so much Chief Gary.
16 Just for our consultation record, can you say your
17 all name here?

18 CHIEF GARY HARRISON: Traditional Chief Gary
19 Dwayne Harrison. I'm with Chickaloon Village or
20 Nay'didi'aa'Na'.

21 BRYAN NEWLAND: Thank you. Thank you, Chief
22 Harrison.

1 And just going back to your opening comment,
2 Chief Harrison, I just want to -- related to when will
3 the Department move forward putting land into trust,
4 we are processing for land into trust in Alaska right
5 now under policy changes that were put in place by
6 the Department earlier this year. To affirm that we
7 have the authority to put land in the trust within
8 Alaska for tribes in Alaska, we have a number of
9 applications at the Alaska Regional office that we
10 are processing right now.

11 And as I suspect you know, that does take a
12 bit of time, depending on the unique factors with
13 each application. But I do appreciate you raising
14 that.

15 CHIEF GARY HARRISON: Thank you.

16 BRYAN NEWLAND: If you wish to make a comment,
17 please use the raised hand feature, or you can enter
18 your comment in the chat if you're having difficulty
19 getting onto the audio or video side of the meeting.

20 We will also remind you, again, that the
21 Department is going to be issuing a consultation
22 notice to tribal leaders in Alaska and corporate

1 representatives on subsistence issues and how the
2 Department of the Interior and the Department of
3 Agriculture can work with you all to address your
4 needs and your rights related to subsistence. So
5 please be on the lookout for that.

6 RAINA THIELE: And Bryan, this is Raina. That
7 letter should be out today.

8 BRYAN NEWLAND: Right. We're expecting those
9 sessions to take place in January.

10 All right, I want to issue -- I know we don't
11 have a lot of folks on the line, but if you do wish
12 to weigh in during this round of consultation, this
13 will be the last part of this consultation and we're
14 taking comments and folding them into work that we're
15 doing at the Department to protect and restore tribal
16 homelands.

17 I do see Mr. Micklin has his hand raised, so
18 Will. I hope you don't mind me calling you Will.

19 WILL MICKLIN: Please. Thank you, Mr.
20 Assistant Secretary, Mr. Newland.

21 BRYAN NEWLAND: You can call me Bryan but
22 thank you.

1 WILL MICKLIN: Thank you. Well, it's an honor
2 to contribute and thank you for the invitation.
3 Will Micklin. I'm second vice president for Tlingit
4 & Haida Central Council tribes of Alaska. We are a
5 regional tribe for southeast Alaska with 32,000 plus
6 tribal citizens. The area of southeast Alaska is
7 135,000 square miles. It's about the size of the
8 state of Indiana and there are some IRA tribes within
9 southeast Alaska.

10 So, we've provided testimony and written
11 testimony on these matters before. We will, again,
12 submit written comments by the deadline. Just a
13 couple of points to offer that I think the issues with
14 fee to trust in Alaska will actually and should be
15 less difficult than in lower 48 for a number of
16 reasons.

17 In most jurisdictions in Alaska, there's no
18 property tax. So, there's no nexus for local
19 government or the state to make a claim due to loss
20 of tax base resulting from a fee to trust
21 acquisition. Most of the applications, the few that
22 have been submitted and that you're likely to see are

1 for land the tribes -- Alaska tribes already own that
2 we have used for governmental purposes for an
3 extended period. And in addition to tribal
4 governance, our use for housing, healthcare, sacred
5 site preservation and other non-gaming economic
6 development.

7 Also, tribal gaming in Alaska doesn't require
8 tribal trust land acquisitions. We are not a Class
9 III state, we are a Class II state. There are no
10 tribal gaming operations in the state. There are
11 some -- there's some interest in that but that is
12 exclusively Class II that doesn't require any free
13 to trust acquisition for that purpose.

14 The trust acquisitions on the benefit side
15 will be a real significance because they -- they
16 remove expense to tribal government operations and
17 provide an opportunity for business revenue and tax
18 revenues to most of the 229, I think, tribes in the
19 state that are in large part small, rural and remote
20 and challenged by capacity.

21 There is a significant crisis in tribal
22 governments with small tribes and particularly in

1 Alaska because of the great majority of small tribes
2 where there is insufficient funding just to conduct
3 the business operations of the tribe and with the
4 advent of the COVID-19 pandemic and the additional
5 administrative burden placed on tribal governments,
6 it is sorely taxing the resources of many small
7 tribes. And so it takes -- oftentimes takes an
8 opportunity for a tribe like Central Council, who has
9 greater capacity, to engage in these consultations
10 and promote any activity that would improve the
11 capacity of tribes to operate as expected and as
12 desired, particularly under self-determination, and
13 most tribes in Alaska operate under
14 self-determination, either self-governance
15 contracts or 638 contracts.

16 The fee to trust acquisitions will not
17 threaten the Alaska Native Claims Settlement Act
18 corporations. These are separate. There is great
19 confusion, I think, with the Cincinnati opinion,
20 that it was referring to when it said ED country
21 doesn't exist in Alaska. That was the determination
22 of ANCSA corporation lands and not a determination

1 of whether a tribe had trust land, whether it qualify
2 as Indian country under the Federal statutory
3 definition.

4 So ANCSA interest are not implicated. I did
5 note Chief Harrison echoed a suggestion that has been
6 made in the past and has -- in one instance there has
7 been lands between ANCSA corps and the tribe, but I
8 must emphasize that that is always consensual. That
9 takes two willing parties, at least, to make
10 agreement. So, by the fee to trust, the active fee
11 to trust acquisitions in Alaska, that does not
12 mandate any such activity between ANCSA corps and
13 tribes and so I think it only increases opportunity
14 and improve advantage, but all based on a consensual
15 relationship.

16 We do hope that 1993 Cincinnati solicitors M
17 Opinion on Indian country's existence in Alaska,
18 which was unauthorized, unpublished and informal
19 agency interpretation. It showed lack, the weight
20 of law, it's not binding in the Courts and has no
21 claim to Chevron deference. That's what I call a
22 zombie opinion and should be buried and not dug up

1 again to threaten tribes' interests by confusion and
2 misapplication.

3 So I think one note I'll make, that in the
4 recent Alaska Federation of Native's annual meeting,
5 which we held virtually, we had a panel, and on some
6 of those panels, one in particular was Emil Notti,
7 one of the active participants during the formation
8 of ANCSA and one of the comments he made was that his
9 thought on the 50th anniversary of the enactment of
10 ANCSA, that the villages, Alaska villages ought to
11 have their land base conveyed into trusts for all of
12 the reasons that I just mentioned. And that's one
13 of the founders of ANCSA that precipitated its
14 enactment.

15 So, for all of those reasons we think that the
16 fee to trust acquisition when moved in earnest and
17 accomplished by actual conveyances will be
18 accommodation for this administration. It will
19 improve the interest of the tribes in Alaska. It
20 will fulfil the Tribal List Act of 1994 to ensure that
21 tribes in Alaska have equal rights, privileges and
22 immunities as tribes in the lower 48 and will

1 significantly assist tribes in doing the things that
2 we not only always have to do through particular
3 challenges unique to Alaska by our remoteness where
4 many villages are only accessed by float plane or
5 ferry, and where we have challenges with a third of
6 the villages not having law enforcement, and with
7 challenges in being unserved or under served by
8 broadband and wasted water issues where some
9 villages still have honey pots in place or inadequate
10 containment of waste streams.

11 So, for all those reasons I thank you for
12 moving on what is of particular importance to Alaska
13 tribes, which is the fee to trust acquisition process
14 and making that once again active.

15 Thank you, Assistant Secretary Newland, and
16 I wish to Bryan Happy Holidays, Merry Christmas and
17 Happy New Year. Thank you.

18 BRYAN NEWLAND: Thank you Vice-President.
19 It's always great to hear from you and same to you
20 and your family and your communities.

21 Chief Harrison has -- you have your hand
22 raised. Since we don't have a lot of people in this

1 session, I'm happy to hear from you again.

2 CHIEF GARY HARRISON: Yeah, I noticed that, and
3 thank you once again for letting me talk again.
4 There was a point that I missed and I also agree with
5 Will. I always appreciate Will. On whatever
6 subject he's on, he always makes very good points,
7 so thank you.

8 But one of the other things is is in our area
9 there's been several trust properties come up to buy,
10 and we not only didn't have the funding, but also,
11 we were told that if we were to purchase that trust
12 property that it would come out of trust that the
13 tribe purchased it. And I kind of have a problem
14 with that statement about coming out of trust if the
15 tribe purchased it.

16 But the other thing is is that land that does
17 come up for sale in our areas, when they talk about
18 restoring the land, maybe that's one thing that the
19 Federal Government could do is purchase those
20 properties for the tribes in that area. Because
21 we've had several com up. We've also asked to be put
22 on the list of trust properties that come up for sale

1 and have not been able to get on that list.

2 However, I know non-indigenous people who get
3 on that list and purchase that property in the past,
4 so I'm not saying that it's happening now, but it
5 could be as far as I know, and I think that that's
6 just wrong to allow other people to purchase our
7 property prior to us having the ability and us not
8 even knowing that it's happening.

9 I think that that's one of the ways that they
10 can restore the tribe's property is by purchasing
11 those trust properties that come up and keep them in
12 trust for the tribes. Thank you.

13 BRYAN NEWLAND: Thank you so much, Chief
14 Harrison, I appreciate that. Okay, I want to offer
15 anyone else who has joined us this morning an
16 opportunity to comment. As you see in the chat, we
17 are accepting written comments all the way through
18 Friday, January the 14th. We've extended that,
19 again, to make sure that we are providing adequate
20 opportunity for tribes in Alaska to submit comments
21 on these important issues and our work on these.

22 I'll issue a second call for comments here in

1 the session. If you wish to ask a question or make
2 a comment for the record here in our consultation,
3 please use the raise my hand feature on Zoom, or you
4 can take your comment into the chat if your
5 connection is spotty and you're not able to join with
6 your audio.

7 I'll do a last call for comments for those who
8 have joined us today. Okay, Vice-President
9 Micklin.

10 WILL MICKLIN: Thank you, Mr. Assistant
11 Secretary. Just to note that because ANCSA, the
12 outcome of ANCSA is that tribes in Alaska in large
13 part, with the exception of Metlakatla, are
14 governments without territorial reach in
15 jurisdictional matters, and I think it's worth some
16 discussion, some active discussion as tribes acquire
17 land in trust through the fee to trust regulation and
18 the now cooperation of the Department, that we ought
19 to determine how we can best both accommodate and
20 effectuate the regaining territory where there can
21 be the application of territorial reach into
22 jurisdiction on both civil and potentially matters

1 that are allowed under PL 280. Alaska is a PL 280
2 state.

3 We have suffered in large part by the absence
4 of territorial reach, the Energy Policy Act of 2005
5 with the distinction between tribal lands and Indian
6 lands, making Alaska tribes without trust lands.
7 Ineligible for funding in most instances is
8 something where there's going to be a cure to an
9 inequity and availability of funding, but I believe
10 with the participation of tribal governments and
11 their Tribal Courts where they exist, and Central
12 Council has a very active and robust Tribal Court
13 that will need to review these issues on
14 jurisdictional matters where we have trust land and
15 we have that reach restored and we begin actively
16 participating in the conversation that the lower 48
17 tribes have had in a number of these matters,
18 particularly civil and particularly in regard to
19 missing murdered and indigenous women in the MMIWW
20 with this hopeful near term reauthorization.

21 So, I look forward to engaging, look forward
22 to engaging the Department on these matters. We're

1 prepared to do so, and I think there will be great
2 improvement in the interest of our tribal citizens
3 as we bring better governance and more robust and
4 more comprehensive governance in our communities
5 where they are most effective rather than from DC or
6 from Anchorage or from Juneau or wherever our state
7 government seems to be functioning or not
8 functioning these days.

9 The final matter is that we do have some unique
10 circumstances as in tribal allotments. There's a
11 large number of tribal allotments in Alaska where
12 when they are sold and Central Council purchases
13 them, the current opinion from the solicitor is that
14 the parcels lose their restricted title status, and
15 we have never agreed with that, and we think it bears
16 a reexamination that this is a transfer of restricted
17 title lands that are intended to be protected because
18 of the status of Indians, either individual as
19 allottees or tribes of governments, that there's
20 this transfer in ownership between those two
21 protected classes that restriction, that protection
22 ought to be maintained and not be lost.

1 And I think this may have some impact on where
2 we need to protect sacred sites, where there may be
3 allotments in the area or just in purchasing
4 allotments and bringing them into restricted status
5 for protections.

6 And hopefully, we do get a resolution on the
7 veteran's allotments where there's a lack of Federal
8 lands available for transfer to veterans in
9 southeast Alaska and having them make selections in
10 other parts of Alaska other than southeast is a
11 significant hardship where we are working hard with
12 our Alaska congressional delegation to amend the act
13 to make that accommodation, which I think was
14 unintended but it significantly consequential.

15 So, thank you, again, for the opportunity to
16 throw in some additional thoughts. I appreciate
17 that.

18 BRYAN NEWLAND: Thank you, Vice-President, I
19 appreciate it.

20 Chief Harrison.

21 CHIEF GARY HARRISON: Hello. Yeah, when I was
22 reminded about Public Law 280 and the jurisdictional

1 issues there when Will brought it up. And the fact
2 of the matter is that 290 is only concurrent
3 jurisdiction, it's not -- it's not just one way like
4 the state wants it.

5 The state has made their thing saying that
6 it's only state jurisdiction when we know it's not.
7 The 280 state is where -- where the two different ones
8 is one where the tribe has to vote to have a 280 state.
9 And the other one is part of Alaska where they just
10 say that there's concurrent jurisdiction. But the
11 state and no one understands what this concurrent
12 jurisdiction is.

13 And we've been citing, which is also for many
14 years, since we issued our driver's licenses. And
15 the U.S. says that our driver's licenses are supposed
16 to be good on any roads with Federal funding in them
17 and the state doesn't want to recognize that. They
18 keep on -- we've won many times, but we've also lost
19 several times on this because you get a new judge that
20 talks about the -- so we still have problems with the
21 280-state stuff. That's part of the problem that we
22 have.

1 And as a matter of fact, I believe I'm either
2 in a Court case or waiting to figure out this Court
3 case on our driver's license issues right now.

4 And I have talked with Tracy Talue from the
5 Department of Justice and he says it should be an easy
6 one to win, but we -- yeah, but the State of Alaska's
7 judicial process isn't that great. Thank you for
8 joining in again.

9 BRYAN NEWLAND: No need to apologize at all,
10 Chief Harrison. Thank you so much, and I think your
11 comments have like the importance of things like
12 having -- and Vice-President Micklin, your comments
13 about territorial jurisdiction and sovereignty, how
14 these issues all tie together, land and public safety
15 and travel governance.

16 All right. Do we have anyone else on the line
17 who wishes to comment? A reminder that you can send
18 written comments to consultation@bia.gov by January
19 the 14th of 2022. I feel strange that we're already
20 speaking about 2022. If you wish to make a comment,
21 you can use the raise my hand feature, or if you're
22 having difficulty connecting to audio or video, you

1 can take your comment into the chat.

2 Okay. I'll do one last call for comments in
3 this consultation session. No further comments. I
4 want to thank you for taking some time to join us this
5 morning, Chief Harrison, Vice-President Micklin and
6 others who have joined us from your communities and
7 organizations. We know how busy you are, especially
8 this week with it being the holiday season, trying
9 to wrap up end of year stuff with your organizations
10 and your travel governments, and also take care of
11 your families and relatives in your communities. I
12 just appreciate you taking some time with us to share
13 your thoughts as we continue our work.

14 And I also want to thank our team from DOI for
15 joining us, Raina Thiele, Deputy Assistant Secretary
16 Kathryn Isom-Clause, our counselors, Rose Petosky
17 and Stephanie Sfirdis, Special Assistant in our
18 office, Joaquin Gallegos and then I also want to
19 acknowledge Rachel Brown, who is -- Zapel (phonetic)
20 has moved on from our office and Rachel is filling
21 in and helping to coordinate our travel
22 consultations for the Department, and thank you,

1 Rachel, for helping to pull this together.

2 I want to wish you all a very Happy Holiday,
3 a very Merry Christmas and Happy New Year if that's
4 what you celebrate, and please be safe and well and
5 enjoy your time with your family. That will
6 conclude our consultation session today.

7 (Whereupon, the consultation was concluded at
8 3:42 o'clock p.m.)

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CERTIFICATE OF REPORTER

I, GARY EUELL do hereby certify that the foregoing proceeding was attended by me and thereafter transcribed from my digital audio recording of the proceeding and thereafter was reduced to typewriting by me.

I further certify that I am not related to any of the parties in this matter, and this transcript is a true and accurate record of said audio recording to the best of my ability. The above information has been transcribed by me with a pledge of confidence, and I do hereby certify that I will not discuss or release the content, or any information contained herein.

GARY EUELL

1