



ORIGINAL

**In The Matter Of:**  
*UNITED STATES DEPARTMENT OF THE INTERIOR*  
*BUREAU OF INDIAN AFFAIRS*

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*FEE-TO-TRUST TRIBAL CONSULTATION*  
*April 12, 2018*

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4 UNITED STATES DEPARTMENT OF THE INTERIOR  
5 BUREAU OF INDIAN AFFAIRS  
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8 FEE-TO-TRUST TRIBAL CONSULTATION  
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11 Tribal Council Leaders Consultation held at the  
12 Foxwoods Resort and Casino, 350 Trolley Line Boulevard,  
13 Mashantucket, Connecticut, on April 12, 2018, beginning at  
14 9:29 a.m.

15 H e l d B e f o r e:

16 JOHN TAHSUDA, III, THE HEARING OFFICER, and  
17 Principal Deputy Assistant Secretary;

18 and

19 PAULA HART, Director, Office of Indian  
20 Gaming  
21  
22  
23  
24  
25

1 THE HEARING OFFICER: Good morning, folks. I think  
2 let's go ahead and get started.

3 Chairman Butler, do you have somebody who can  
4 say a blessing for us to get us off on the right  
5 track?

6 RODNEY BUTLER: I call on our spiritual leader,  
7 Laughing Woman who will give us an opening.

8 LAUGHING WOMAN PATRICK: [Wampanoag greeting], or good  
9 morning. Isn't it a beautiful day? I hope you  
10 got up this morning and gave thanks for just being  
11 alive and seeing the beautiful sunshine this  
12 morning.

13 So we need a lot of prayer for all of the  
14 world, the United States -- in particular, Indian  
15 country. Eh? Yes, so we're going to give thanks  
16 to the Creator.

17  
18 [Prayer in Wampanoag.]  
19

20 Almighty God, Master of us all, we give you  
21 honor. We give you praise. We thank you for  
22 allowing us once again to see the morning light,  
23 once again to hear the songs of the Winged Ones.  
24 We give you good thanks for gentle rains that fall  
25 down upon the Earth.



1           A new beginning. It is our new year.

2           Fathers, we humbly stand and bow our hands,  
3 not in shame, but in reverence, reverence to you  
4 to thank you, to guide us, to watch over us, to  
5 restore joy once again, to give us good knowledge,  
6 to give us direction.

7           And we ask for your forgiveness if we have  
8 offended you or anyone.

9           For Thou has said, if my peoples who are  
10 called by my name would humble themselves and  
11 repent, and turn from their evil ways -- oh,  
12 hallelujah. Praise the Lord. He will open those  
13 windows of heaven.

14          And Lord, pour down the blessings upon all.

15          Fathers. We each pray in our own way,  
16 Father, for you are called by many names in many  
17 languages. Let us be united in prayer, in love.

18          And Father, we, as we stand here in freedom,  
19 we lift up the people of Syria, Father. Lord,  
20 that thou will protect, that Thou will guide the  
21 hearts of the United States, Russia, China. We  
22 know that the prophecies are being fulfilled,  
23 Father. So we ask for you to strengthen our  
24 shields from the top of our heads to the bottom of  
25 our feet.

1 Lord, we ask you to bless this conference,  
2 that there be good discussions, good outcome. So  
3 we ask this of you in the name of Jesus Christ.

4 Amen.

5 THE HEARING OFFICER: Good morning, everyone. Thank  
6 you for attending the sixth consultation we've had  
7 on off-reservation fee-to-trust.

8 And I'll start off by apologizing. So this  
9 is the third time we've tried to hold this  
10 particular consultation, and we appreciate your  
11 patience and willingness to show up when we could  
12 finally get it on the, board.

13 And so my apologies. They were, of course,  
14 not really within our control, but again we  
15 appreciate your patience with us as we wanted to  
16 hear from the tribal leaders in this region, and  
17 of course from folks from all around the country.  
18 But it's good to be here and possibly maybe a  
19 little bit better time than a month ago to be here  
20 whether-wise.

21 And so I will want to also note we have -- I  
22 don't have a good list of -- in part because we  
23 had to reschedule -- we don't have a good list of  
24 the tribal leaders that RSVP-ed. So if you could  
25 just help us out when you come up. Make sure that

1 we get your tribe and your name and everything  
2 down clearly for the record. It would be helpful.

3 And so I'll leave it to you guys to make an  
4 orderly progression up to the mic when you want to  
5 instead of going down the list. So I appreciate  
6 that. And we'll get started, I think.

7 Do you have anything to add?

8 MS. HART: No.

9 THE HEARING OFFICER: Okay. So following up  
10 on Congress' enactment of the Indian  
11 Reorganization Act of 1934, the department took a  
12 role in taking land into trust for tribes that has  
13 evolved over the years. It wasn't until 1980  
14 actually that the department first promulgated  
15 regulations for evaluating applications to take  
16 land into trust. Since that time, the part 151  
17 regulations which deal with fee to trust have been  
18 amended several times.

19 Generally speaking those changes that  
20 corresponded to decisions by the federal courts  
21 which have required us to make adjustments in how  
22 the regulations provide the due process, and sort  
23 of public notice, comment and other  
24 constitutional and APA requirements under federal  
25 law.

1           So we are now asking for input whether it's  
2           appropriate to make some changes now specifically  
3           focused on off-reservation fee to trust to respond  
4           to needs and concerns that we've heard from tribes  
5           over the years.

6           The current process for taking the  
7           application for taking land into trust off  
8           reservation -- actually taking land into trust in  
9           general can be very costly and time consuming, and  
10          when it's off reservation we have additional  
11          considerations to be made under the regulations.

12          So the department is looking for ways to  
13          reduce that burden. We greatly appreciate hearing  
14          your perspectives as tribes on the fee-to-trust  
15          process and how we conduct it. Again, to get your  
16          input on how we can do that better, how we can  
17          make it more efficient, more effective and  
18          hopefully also less costly and less time  
19          intensive.

20          Your input is critical as you are the folks  
21          who are asking us to fulfill our trust  
22          responsibility in taking the land and putting it  
23          within your jurisdictions. So I look forward to  
24          hearing from you. This is a formal consultation,  
25          so we have a court reporter. And they will get

1 your comments -- both oral, and I would encourage  
2 you to submit written comments as well -- will be  
3 part of the formal record of this meeting.

4 So we are also looking at -- let's see. To  
5 make sure we know, the deadline for written  
6 submissions has been extended to June 30th. And  
7 before that date we're looking at actually adding  
8 an additional consultation in the Great Plains  
9 region, probably Rapid City, and potentially  
10 looking at May 30 to 31st. We will announce in a  
11 couple of days as we finalize the location and  
12 lock in the technical details like where we can  
13 hold it and whatnot. We issue a  
14 dear-tribal-leader letter within a few days to put  
15 that on the report.

16 So hopefully you picked up out front -- you  
17 have a set of questions that we offer to guide the  
18 discussion. Clearly you can raise your own points  
19 as well. You don't have to stick strictly to  
20 that, but that provides us some structure as we  
21 consider your comments and we look at how we can  
22 put those into the record to guide any action that  
23 we take.

24 Along with that you have a set of the current  
25 151 regulations. And so if you need to reference

1       that, feel free. If you need a copy I think we  
2       have additional ones on the table out front where  
3       you signed in.

4               With that we'll get started. The first  
5       tribal leader -- I guess when you own the house  
6       you get to go first.

7               Thank you, Chairman.

8   RODNEY BUTLER: Thank you, John and Paula for being  
9       here today. Thank you.

10              I was saying the same as John earlier. I  
11       appreciate his persistence in rescheduling this.  
12       We can't control the weather. And so the fact  
13       that this was rescheduled three times, including  
14       the fact that yesterday we hosted a Region 1 EPA  
15       summit -- and that's when the original third  
16       reschedule date was set for, was yesterday.

17              And we were able to accommodate to have  
18       posted that yesterday, and then have this here  
19       today. So we appreciate the flexibility and your  
20       commitment to hearing out the tribal leaders in  
21       this region.

22              So welcome to the Mashantucket tribal leaders  
23       and staff. We appreciate you all being here and  
24       we hope you enjoy your visit here at Mashantucket,  
25       and we're honored to be able to host you all.

1           With regard to your visit, I have talked to  
2           several of you. I've sent out an e-mail. This is  
3           probably one of the most important things today  
4           that you should take note from, aside from this  
5           meeting here this morning.

6           Today is the ribbon cutting that we're having  
7           for our zip line that goes from the top of the  
8           hotel tower over here all the way over to our  
9           wonderful world-class museum, and Cedric has  
10          agreed to be the first one going down.

11          So -- no, in all seriousness, we're up there  
12          at two o'clock today, and we'd be honored for any  
13          of you that are brave enough and interested in  
14          joining us to ride with us this afternoon. John  
15          has committed that he'll be riding.

16          So if you're interested, reach out to  
17          Angelina over there and she'll take down your  
18          name. And we just need to have folks over to the  
19          lobby of the Fox Tower by one o'clock to get them  
20          signed up. So please let Angelina know if you're  
21          interested and you're going to stay. So again,  
22          we'd be honored for all of you to join us.

23          You know, we're here today obviously for  
24          critically important issue to talk about, the  
25          fee-to-trust process. We appreciate the fact that

1 the earlier update that Interior had proposed you  
2 have since withdrawn and are now looking to speak  
3 with tribes and hear our perspective on it. So we  
4 certainly appreciate that and look forward to the  
5 continued dialogue as such.

6 Here at Mashantucket we believes that the  
7 changes that possibly could be made to regulations  
8 dealing with fee to trust should really achieve  
9 three specific goals, and those being that they  
10 should, first and foremost, fulfill the  
11 department's trust obligation to Indian tribes,  
12 and therefore work in the tribes' best interest.  
13 And that's not just with these regulations, but  
14 it's with all regulations that you take that  
15 obligation true to heart in every path that you  
16 walk in everyday.

17 They also should streamline or make the  
18 process more efficient so that the process is  
19 quicker and less burdensome and costly. We've  
20 heard about the concern about the cost that it is  
21 for tribes to go through this. Well, if it was  
22 more expeditious its costs were less. Right?

23 So I think there's a lot of openings in the  
24 current regulations and even in the proposed that  
25 allow for interference from outside jurisdictions



1 that lengthens the process and adds to the cost of  
2 the process as well. Also as opposed for adding  
3 opportunities for them to insert their opinions  
4 that aren't necessary and we should be limiting  
5 those opportunities.

6 And then third, they should fulfill the  
7 purpose of the Indian Reorganization Act which is  
8 to rectify the effects of the allotment policy and  
9 restore tribal governments to self sufficiency.

10 The introduction of the idea that mitigation  
11 agreements or MOUs with state and local  
12 governments should be provided to the department  
13 as part of the fee-to-trust process is absolutely  
14 unacceptable as it gives the perception that  
15 neighboring governments have power or leverage  
16 over tribes.

17 We've seen that firsthand here in  
18 Mashantucket, and many of you have seen that in  
19 the federal with respect to the cases that we were  
20 dealing with. And certainly it's absolutely  
21 unacceptable, and it infringes on our sovereign  
22 rights. We oppose that provision in the October  
23 draft, or any provision that would  
24 require agreements or MOUs with local governments  
25 be submitted to the department as part of the

1 fee-to-trust application process.

2 The other provision I'd like to discuss is  
3 removal of the Pachaug patch by reinstating the  
4 30-day waiting period for placing land in trust  
5 after a final agency decision to place land into  
6 trust.

7 We opposed this for two reasons. Leaving  
8 these decisions open to challenge may simply  
9 invite additional litigation which is costly,  
10 burdensome and keeps the land out of trust until  
11 the litigation concludes.

12 The department proposed a separate provision  
13 that would recognize the secretary's authority to  
14 remove land from the trust if it loses the  
15 litigation. This allows the department to deal  
16 with the extremely rare case of a fee-to-trust  
17 determination being overturned by taking the land  
18 out of trust, therefore the 30-day window is  
19 unnecessary.

20 In closing, we appreciate the opportunity to  
21 provide input into this process, and would like to  
22 note our support of changes that make the process  
23 more efficient, but not at the expense of tribal  
24 rights, and note our opposition to any changes to  
25 the regulations that make it more difficult or

1       costly for tribes to place land into trust.

2               And with that, I thank you again. I thank  
3       you all for being here. I look forward to the  
4       conversations today from my esteemed tribal  
5       leaders. Thank you.

6       THE CHAIRMAN: Thank you, Chairman.

7       CEDRIC CROMWELL: Zip line, one o'clock.

8               First of all, I would like to thank Chairman  
9       Butler, and the Pequot Tribal Nation for hosting  
10      this consultation.

11              I'm Cedric Cromwell, Chairman of the Mashpee  
12      Wampanoag Tribe, Cape Code, Massachusetts.

13              You know, we're an effectively recognized  
14      tribe that has existed in what is now know as  
15      Southeastern Massachusetts since time in memorial.  
16      We're the tribe that fed the pilgrims on that  
17      first Thanksgiving day. Don't hate us for that,  
18      but that's what happened with the Wampanoag Tribal  
19      Nation.

20              The United States failed to protect our land  
21      from encroachment in the 18th century, despite  
22      federal laws which should have protected our land.  
23      And so we became a landless tribe. The  
24      department finally took land into trust from  
25      Mashpee and proclaimed it a reservation in 2015.

1 We had strong local support for the creation of  
2 our reservation. This ended decades of  
3 landlessness for my tribe. Now the administration  
4 has refused to defend the original decision and  
5 take our land into trust, and it has withdrawn  
6 from the appeal in that litigation.

7 To us it appears that the administration is  
8 poised de-establish our reservation, take our land  
9 out of trust and make us landless again. In its  
10 proposed regulations the department includes a  
11 provision that references taking the land out of  
12 trust, something that the Interior has never tried  
13 to do before. We are concerned that our  
14 reservation is the department's target.

15 This would be the first time since the  
16 Termination Era the Interior has taken land out of  
17 trust and de-established a reservation. I hope  
18 everyone in Indian country sees what has happened  
19 to us.

20 I want to make three points today. First,  
21 Indian country is not for these changes to the  
22 fee-to-trust regulations that you have suggested.  
23 What we have asked for is your help to relieve  
24 some of the serious damage that Cochere decision  
25 has on many of the most-needy and economically

1       disadvantaged tribes in America. It is incredible  
2       to us that the department's ten questions do  
3       not even acknowledge the Cochere problem. The  
4       current proposals appear to perpetuate the  
5       creation of second-class tribes, which has  
6       worsened since the Cochere decision was rendered.

7               Second, we're deeply concerned that the  
8       consultation was while we still have no assistant  
9       secretary of Indian affairs and no deputy  
10      solicitor of Indian affairs.

11              The third point, the onerous burdens the  
12      department wishes to place on Cochere tribes are  
13      inconsistent with case law, with the spirit of the  
14      Indian Reorganization Act, the trust  
15      responsibility, with common moral decency, and of  
16      course, they are inconsistent with the President's  
17      pledge to reduce regulatory burdens.

18              In conclusion, the Mashpee tribe urges the  
19      department to seize this assault on fee to trust  
20      and have more compassion for the landless and  
21      land-poor tribes who have no access to your  
22      on-reservation rules, and to do everything you can  
23      to avoid being the first administration since the  
24      Termination Era to take a reservation away from a  
25      federally recognized tribe.

1 Thank you for your time.

2 THE HEARING OFFICER: Thank you, Chairman.

3 RODNEY BUTLER: Thank you. Appreciate it.

4 JESSIE LITTLE DOE BAIRD: [Greeting in Wampanoag].

5 Good morning. I'm Jessie Little Doe Baird of  
6 the Mashpee Wampanoag Nation. I am Vice  
7 Chairwoman of the nation and I would like to thank  
8 my sisters and brothers here at Pequot for hosting  
9 us, and thank you for taking the time to hear us  
10 and having these consultations.

11 Just a couple of points that I would like to  
12 make. Under question number two on the document,  
13 the question is, how effectively does the  
14 department address on-reservation land into trust  
15 applications?

16 The question is a problem because tribes do  
17 not apply for trust lands where there's already a  
18 reservation. And so I take it that the question  
19 is meant to say, how effectively does the  
20 department handle continuous lands? So the  
21 question was off base.

22 But number three, under the circumstances  
23 should the department approve or disapprove an  
24 off-reservation trust application?

25 So for two and three I would just like to

1 make the point that all of these United States are  
2 Indian country. These are our aboriginal lands  
3 and the trust application process and the trust  
4 process itself were powers that were granted by  
5 Congress to the department in order to undo the  
6 damage during the Termination Era.

7 My fervent hope is that this administration  
8 will keep that trust responsibility to the  
9 original peoples of these lands. And my case, in  
10 1629 there were 9 Wampanoag tribes that gave land  
11 and title to a group of people called the Pilgrims  
12 so that they could keep the trust lands -- keep  
13 the lands under their feet that they had  
14 established Plymouth Colony on. That government  
15 today is the United States of America. Those  
16 original nine signatory tribes, eight of them are  
17 gone.

18 Mashpee is left and we are today struggling  
19 to keep less than one half of one percent of that  
20 original territory under our feet that the  
21 Department of the Interior placed into trust for  
22 us. And again, I hope you would take these things  
23 into consideration when looking at any change in  
24 regulations.

25 THE HEARING OFFICER: Thank you, Vice Chairwoman.

1 HARRY PICKERNELL: Good morning, John. Good morning,  
2 Paula. Thank you, Mashantucket, for hosting and  
3 allowing us on your lands.

4 My name is Harry Pickernell, Chairman of the  
5 Confederated Tribes of Chehalis Reservation in  
6 Southwest Washington State.

7 As you may have noticed, I have attended the  
8 Sacramento, Mystic Lake, Portland, Phoenix, Miami,  
9 and now the Foxwoods consultations. I think the  
10 summary of the concerns of the Chehalis Tribe is  
11 in order.

12 First, let me commend you and Paula Hart for  
13 describing in a number of the consultations the  
14 thinking of the department with respect to certain  
15 issues that have been raised. Thank you. I think  
16 those discussions, while Chehalis doesn't  
17 necessarily agree with the department's thinking,  
18 at least clarify why some of the issues are open  
19 to discussion.

20 However, some questions have gone unanswered  
21 or inadequately answered, like what is that need  
22 to alter the current regulations? What tribe or  
23 tribes have asked for new regulations? Why does  
24 the department want to further complicate and make  
25 more expensive the fee-to-trust process by



1 reinventing the wheel? What would be the  
2 department's response if informed by a tribe that  
3 the delay may prompt further lawsuits from  
4 opponents.

5 What would the department's response be to  
6 governments that want to tax tribes or demand  
7 payments as a condition of agreeing to an MOU?  
8 This comes down to the implementation of the  
9 Indian Reorganization Act not bending to the  
10 critics of fee to trust. New regulations that are  
11 not court mandated from previous cases are not in  
12 the best interests of tribes, and the tribes at  
13 these consultations have said so with one voice.

14 Second, don't block the tribes which need fee  
15 to trust for housing, jobs, economic  
16 diversification and government services together  
17 with tribes which want to offer gaming at a  
18 particular location. Even the Indian Gaming  
19 Regulatory Act recognized at Section 2719(c) that  
20 the two types of fee-to-trust transactions were  
21 different and shouldn't be dealt with in the same  
22 manner. It didn't diminish the responsibility of  
23 the secretary to treat non-gaming fee to trust  
24 differently and not address them together.

25 Third, the potential of a two-step process

1 doesn't save drives, time and money. If done  
2 properly under the current regulations -- and that  
3 means working in conjunction with the agency and  
4 the region before submitting, that tribes know  
5 that they have developed all the information and  
6 answered all the concerns before submitting the  
7 final request for fee-to-trust conversion.

8 Don't impose an unnecessary and costly  
9 two-step process with central office interfering  
10 in non-gaming fee-to-trust determinations. Return  
11 off-reservation non-gaming fee-to-trust  
12 conversions in a tribe's aboriginal homelands to  
13 the region. The region understands the local  
14 tribes, their aboriginal areas and their needs.  
15 Don't add to the already long queue of tribes  
16 waiting years for a record of decision by piling  
17 cases on desks at D.C., where already diminishing  
18 resources will be further diluted.

19 Fourth, you stated that central office had a  
20 concern about different regions applying different  
21 standards to fee-to-trust applications. Tribes  
22 are all sovereigns and all different. How can you  
23 determine that one region is applying for some  
24 different standard when each tribe, each location,  
25 each need and each request is different from all

1 other tribes' locations, needs and requests?

2 If there is some glaring inconsistency, then  
3 fix it at the regional level with the consent of  
4 the affected tribes. Don't bottleneck the process  
5 at central office.

6 Fifth, why do you want to substitute your  
7 decision making for the sovereign decision of  
8 tribes when it comes to MOUs? Do you think tribes  
9 don't want to work with local governments? Do you  
10 think tribes are incapable of reaching agreements  
11 with willing local governments?

12 Do you think local governments don't know  
13 that tribes provide jobs to non-Indians, many of  
14 whom live in depressed areas of counties. Isn't  
15 that a benefit to the entire county and state  
16 economies that far exceeds the loss of some real  
17 estate tax revenue or infrastructure impacts?

18 Why require, let-alone mention MOUs? Tribes  
19 will obtain them on their own if they can. And if  
20 they can't, it means that the local governments  
21 said, unless you pay for us from your own  
22 stretched resources allocated to the needs of your  
23 tribal members, we will prevent you from economic  
24 diversification. How does that help tribes? How  
25 does that meet your responsibility to the tribes?

1           Six, trying to avoid lawsuits through  
2 regulations is a futile effort. No matter what  
3 precautions the department takes up front there  
4 are whole firms all over the country that make a  
5 living suing tribes on these issues. Focus on the  
6 needs of the tribes, not on trying to preempt  
7 litigation.

8           Seven, while many compacts required under the  
9 Indian Gaming Regulatory Act provide for an  
10 assessment of impacts to non-Indian governments  
11 and communities, there is no such requirement  
12 under the Indian Reorganization Act.

13           The department should never get to an impact  
14 analysis to deny fee to trust. The department  
15 should not impose an impact analysis through MOUs.

16           The department should return lands to the  
17 land base of tribes for cultural, religious,  
18 essential government services and economic  
19 diversification, because no one will protect  
20 cultural and religious sites except the tribes.  
21 No one will provide housing and essential  
22 government services to our members except the  
23 tribes. No one will provide economic  
24 diversification and economic resources for tribal  
25 member betterment except the tribes.

1           Eight, I know that Mr. Tahsuda indicated that  
2           when the proposed regulation comes out there will  
3           be a new round of consultations. This presupposes  
4           that the department intends to ignore the comments  
5           of all the tribes urging that there be no new  
6           regulations.

7           What happened to the tribes are sovereigns?  
8           The U.S. supports self determination. The  
9           department owes the sovereigns a duty under trust  
10          responsibility. Not a single tribe in the  
11          consultation said, good job. Give us new  
12          regulations which make this process more  
13          difficult, time consuming and expensive.

14          Therefore, the department should not issue  
15          new regulations and should stick with the current  
16          regulations.

17          Nine, the department asked what weight should  
18          be given to public comments? The tribe already  
19          gives notice to state and local government  
20          entities. Those governments can hopefully not be  
21          shortsighted and express their support, however if  
22          their concern is that they lose real estate tax  
23          revenue, then that issue should be ignored because  
24          that is always the case.

25          Shouldn't the protection of state religious

1 and cultural sites overcome a claim for tax  
2 revenues? Doesn't economic diversification  
3 provide a boost to the economies of the state and  
4 local governments which they want to ignore?  
5 Doesn't a dollar paid to tribal members and  
6 nonunion employees circulate off reservation at  
7 grocery stores, restaurants, movie theaters,  
8 bowling alleys, drugstores, and even in parking  
9 tickets at least?

10 Some ornaments say as many as seven or eight  
11 times off-the-reservation for each dollar in  
12 wages. Don't tribes pay fees for services for  
13 fire and emergency services from local fire  
14 districts? The department has been doing this  
15 fee-to-trust work for a long time. Don't you  
16 already know the balancing of all these  
17 benefits versus a loss of a small amount of real  
18 estate tax revenues from a fee-to-trust  
19 conversion -- why are tribes having to justify and  
20 reinvent the wheel for every fee-to-trust  
21 conversion?

22 And now the issue that tribes are now  
23 incapable of protecting the land and limiting of  
24 liability, thereby removing many prior burdens  
25 that the department shouldered. The reality is

1       that once the department takes land into trust,  
2       tribes zone, plan, develop, protect, police and  
3       provide services to that land without burdening  
4       the resources of the department.

5             Don't pretend this is the 1950's and the  
6       department has to do everything for the tribes  
7       with the department's unlimited resources.  
8       Self-determination has worked and is working. The  
9       burden on the department has lifted. Don't try to  
10      disadvantage tribes by claiming that fee to trusts  
11      stresses the department resources.

12            Finally, I say to the department, use your  
13      resources and expertise better. Speed up the  
14      fee-to-trust process by returning off-reservation  
15      fee-to-trust decisions to the region. Why bury  
16      tribes behind an additional D.C. layer of  
17      bureaucracy? The regions know their tribes. The  
18      regions often tell tribes, we need to provide more  
19      information. The regions get a solicitor opinion  
20      about the legality of the tribal request.

21            Rely on the regions and use your central  
22      office resources assisting and protecting tribes,  
23      not delaying the tribal progress.

24            Thank you for your time.

25      THE HEARING OFFICER: Thank you, Chairman.

1 SARAH E. HARRIS: This might not be the only time I'm  
2 up here. It's been a while since I've been  
3 through all this stuff again. But I'm Sarah  
4 Harris. I am a councilwoman at the Mohegan Tribe.

5 And I think, just sort of a global comment,  
6 I'm not sure who has been asking for these  
7 revisions to the 151 and 292 regulations that  
8 essentially conflate the two, but I know that any  
9 country has always wanted things to function more  
10 efficiently.

11 I just don't know -- I think prioritization  
12 and additional funding to allow the BIA to do  
13 their job. And a lot that's happened under the  
14 Obama administration -- there was  
15 500,000 acres taken into trust and I know that  
16 that process was working much more efficiently.

17 So if the aim is to make it -- the stated aim  
18 is that -- it's supposed to make the process go  
19 more quickly, the proposed regulations, you know,  
20 suggest that the department will first make a  
21 decision on certain criteria and then only after  
22 that decision is made will you consider NEPA or  
23 Cochere, or 292. And you know, those -- those  
24 processes can be time consuming, which is why if  
25 you run the processes simultaneously, you know,



1 the tribes understand that, you know, pretty  
2 significant amounts are for Cochere and NEPA.

3 And the 292 process can be time consuming,  
4 but if, you know, if they choose to spend the  
5 money and want to pursue that process at the same  
6 time it actually can make the process go much more  
7 quickly. And if you're rendering an initial  
8 decision it can also lead to additional rounds of  
9 litigation over the initial decision which can  
10 push off a final decision for quite some time.

11 The requirement with respect to business  
12 purposes and specifying the economic benefits to  
13 tribal members in the tribes, the department is  
14 not well-positioned to make any kind of call on --  
15 nor should they be in the business of making any  
16 kind of call with respect to what's good for the  
17 tribes on their own reservation, and for their  
18 tribal members. And the department shouldn't have  
19 this as a requirement.

20 The Pachaug patch fix to reinstitute the  
21 30-day waiting period, initially in the  
22 regulations the 30-day waiting period was  
23 instated -- I can't remember -- I think in the  
24 1990s because there was a ruling that the Acquired  
25 Title Act prohibited third parties from bringing

1 any sort of a claim against the land, and that the  
2 Acquired Title Act would preserve the trust status  
3 of the land which would effectively, in the  
4 Court's mind, block judicial review of the parcel  
5 that's taken into trust.

6 The Pachaug decision, as we know, said that  
7 the Acquired Title Act no longer applies to Indian  
8 land, which means that there could be a claim  
9 brought at any point in time against the land.

10 So the notion that we would need to wait 30  
11 days so that there would be the availability of  
12 judicial review for third parties just no longer  
13 applies, which is why the previous administration  
14 changed the policy back to say, you know, we will  
15 take the land in trust immediately because there's  
16 no need to wait 30 days to allow for third  
17 parties, you know, judicial, you know, to seek  
18 judicial review because they can always seek  
19 judicial review. So this just further delays, and  
20 it's just unnecessary.

21 And another question -- I guess this is more  
22 of a big question since I know this is a  
23 consultation which can go both ways. The  
24 requirement that tribes submit information with  
25 respect to whether or not the trust acquisition

1 would consolidate fractionation, or otherwise  
2 consolidate tribal land holdings.

3 As you know, not all tribes were subject to  
4 the allotment act and deal with the issue of  
5 fractionation, or necessarily the need to  
6 consolidate lands in the way that I think, you  
7 know, the courts consider lands consolidation or,  
8 you know, that's going on under the Cobell land  
9 buyback program.

10 And so I would ask what sort of is the  
11 thought behind including that requirement for all  
12 tribes? Because it seems that that would -- it  
13 sort of invites a presumption that somehow the  
14 fee-to-trust process should only apply to those  
15 tribes that were maybe subject to allotment, and I  
16 find that really concerning.

17 So I don't know if you could sort of  
18 illuminate what sort of the department's thinking  
19 is behind that specific provision.

20 THE HEARING OFFICER: Sorry. I'm trying to take notes  
21 down on what you're saying.

22 So part of the overall effort in fee to trust  
23 as you probably know is, you know, since it's a  
24 discretionary decision you have to build sort of a  
25 file, what you call that, of information. And

1       having justifications that, you know, strengthen  
2       that is part of it.

3               So if -- and it's not a requirement. What  
4       you're saying is that if this would -- if this  
5       acquisition would consolidate or further augment  
6       landholdings and that then leads to better or more  
7       opportunities for economic development, those are  
8       the kind of things that go into the file that  
9       provide stronger justifications for the  
10      secretary's action. And at the end of the day  
11      that's what helps us have a better defense if it's  
12      challenged, and that's really behind the intent  
13      there.

14   SARAH E. HARRIS: Correct. So the department doesn't  
15      intend for there to be a negative implication?

16   THE HEARING OFFICER: Right, certainly not.

17   SARAH E. HARRIS: Meaning that if there is not a  
18      consolidation of land, or it's not subject to  
19      fractionation fixing that problem, then it's not  
20      going to then count against the tribal  
21      application, that it doesn't do so.

22   THE HEARING OFFICER: Right, absolutely not. It would  
23      only be as a positive addition to the problem, not  
24      a initiative outcome.

25   SARAH E. HARRIS: Great. And I'm sure I'll probably

1       have more comments as we go on -- but thank you.

2       LANCE GUMBS: Good morning, everyone. My name is Lance  
3       Gumbs, councilmember from the Shinnecock Indian  
4       Nation. I'm also the regional vice president for  
5       the national congress of American Indians for the  
6       Northeast here.

7               First and foremost, I'd like to thank our  
8       gracious host Chairman Rodney Butler and  
9       Mashantucket Pequot Nation for hosting this. I'd  
10      also like to thank my elder Laughing Woman for  
11      that wonderful prayer this morning.

12             And I would also like to apologize to my  
13      tribal leaders in this room for my back to you.  
14      It's inappropriate for us to be standing with our  
15      backs to our fellow leaders, but so be it. That  
16      is the structure here.

17             I would also like to acknowledge my  
18      councilmember Terrell Terry who is here this  
19      morning from Shinnecock as well.

20             Before I get started in my response --  
21      because we actually went through and answered all  
22      ten questions, I would like to just give it some  
23      context to my Shinnecock nation's lands, both the  
24      lands that we hold now and the many acres that  
25      were stolen during the time that the United States

1 neglected its duties to us.

2 In clear violation of the Nonintercourse Act  
3 my tribe lost 3900 acres of prime real estate on  
4 Long Island, New York, in the luxurious Lifestyles  
5 of the Rich and Famous Hamptons.

6 Those lands are now the location for four  
7 internationally known golf courses, and one of  
8 those is ironically called Shinnecock Hills which  
9 was built by our people and will host the U.S.  
10 Open this June. That golf course and the lands  
11 that it sits on were our stolen lands. Those  
12 lands hold the bodies of our ancestors.

13 And the seventh hole that -- if you want to  
14 go watch in this upcoming U.S. Open -- is one of  
15 our burial mounds. So it is, you know, a disgrace  
16 to us, but it is, you know, what it is given the  
17 circumstances.

18 The other lands now include the campus of  
19 Stony Brook University and many of the fabulous  
20 homes in the United States. Generations of my  
21 people have supported themselves by housekeeping,  
22 landscaping, and on these trespassing estates.  
23 And as a daily matter we're aware of removal from  
24 our sacred Shinnecock Hills -- and I'm not talking  
25 about the golf course there, but it was as central

1 to our culture as the Black Hills are to the  
2 Lakota people. Archaeologists are still finding  
3 our forts and homesites that are more than 10,000  
4 years old, and these sites are being destroyed in  
5 the construction of new multimillion-dollar homes  
6 while my people are having trouble getting access  
7 to the beach and protecting our hunting and  
8 fishing rights, and our traditional territories.

9 As the people of the shore, our survival  
10 relied upon access to the waterways and now  
11 beachfront properties -- are beyond our reach. In  
12 that context and only eight years since claiming  
13 our rightful federal status after the 32-year  
14 fight, we are struggling to rebuild and restore at  
15 least some of our aboriginal territory we need for  
16 our future.

17 Given the early brutal history of our land  
18 loss, given the intense development of our  
19 rightful lands, we are concerned that some of your  
20 proposed changes would cut off or restrict some of  
21 the options we need to serve our people. Our  
22 children deserve better than our ancestors were  
23 forced to accept. So I'm not going to read the  
24 questions, because you already have them.

25 So on question one our response is, the

1 department as a trustee should be doing its best  
2 to facilitate the best interests of the tribe by  
3 reducing the red tape involved in the tribal land  
4 restoration process.

5 The department should be assisting tribes and  
6 restoring these lands in their land bases, while  
7 streamlining the process, while putting land in a  
8 trust or restricted fee for those tribes with that  
9 type of landholdings, which you are not doing by  
10 creating extra steps and challenges and creating  
11 additional opportunities for legal challenges.  
12 The department should be making sure that tribes  
13 have a sovereign land base to facilitate their  
14 ability to create solid economic development,  
15 adequate housing, healthy living and educational  
16 opportunities for self-sustaining Indian  
17 communities to prosper.

18 Question number two. Many of you are asking  
19 the wrong question, as the gentleman here also  
20 stated -- because we don't have trust lands  
21 where my nation is located. What about addressing  
22 those tribes with undisputed aboriginal territory  
23 held in restricted fee which the department has  
24 fully overlooked? The fact that there are 573  
25 federal tribes from all parts of the country that



1 are in uniquely different situations and different  
2 types of landholdings has to be considered as  
3 well.

4 You cannot just have a cookie-cutter  
5 one-dimensional approach to land applications in  
6 light of the colonial era first-contract tribes of  
7 the Northeast and the eastern region. Our  
8 restricted fee land holdings, which many of us  
9 want to continue, should be taken into  
10 consideration.

11 Question number three, again why is this the  
12 proper question? The distinction is less  
13 important than the tribes need to restore their  
14 territory. We all know that most tribes have lost  
15 the majorities of their land. Tribes need land,  
16 period, on or off-reservation land for a number of  
17 reasons such as not having a land base at all.

18 Small initial reservation lands with no room  
19 for expansion, no continuous land available to  
20 purchase around their reservation, and especially  
21 here in the Northeast for tribes like ours where  
22 development has eaten up all of the local lands  
23 surrounding our communities.

24 All available land should be considered,  
25 especially if it's within the borders of a tribe's

1       aboriginal territory. Any policy that only says  
2       you can have land in your reservation is a  
3       diminishment and a continuation of 19th century  
4       American policy which was to effectively diminish  
5       tribal land basis all around the country. The  
6       basic policy of the IRA was to help tribes recover  
7       their land base, not make it harder to do so.

8               Question number four, if the title and the  
9       environmentals are both clear there should be no  
10      presumption against off-reservation land in  
11      restricted fee or trust. The addition of tribal  
12      lands to a given tribe's land base should be the  
13      department's goal and thought process.

14             Question number five, A, there are already  
15      different requirements for gaining land so you  
16      don't need to create any more. Economic  
17      development serves the tribal government functions  
18      like government buildings, tribal health,  
19      education, schools, tribal housing and et cetera,  
20      but many tribes' noneconomic land can be equally  
21      important like the protection of sacred sites or  
22      historic areas.

23             To have separation and different procedures  
24      only serves to serve an additional handicap to the  
25      tribe in an already arduous process.

1           B, it is legally wrong to insert restrictions  
2           for gaming lands into the trust process. IGRA has  
3           already created those limitations elsewhere and  
4           IGRA specifically says that these restrictions do  
5           not affect the secretary's trust authority.

6           C, if there is no change to the use of the  
7           land and there are no NEPA requirements,  
8           everything is already in place and should be just  
9           automatic to speed up the process.

10          Question six, once again for us this is the  
11          wrong question. I did some research that  
12          confirmed my understanding that there was a real  
13          meaningful difference between fee, restricted fee  
14          and trust land, especially for the colonial era  
15          first-contact tribes of the Northeast. And I know  
16          the department and the United States knows this,  
17          too, because I got this information from an energy  
18          department website and from Interior's own 151  
19          regulations.

20          Fee-to land owned by the tribe outside the  
21          boundaries of a reservation is not subject to  
22          legal restrictions against alienation or  
23          encumbrance absent any special circumstances. The  
24          law is not clear whether such restrictions apply  
25          to fee land within the boundaries of a

1 reservation. So if a tribe has those lands they  
2 are unprotected in important ways, and of course  
3 the tribe's jurisdiction may be limited, and its  
4 ability to exercise sovereignty is also at risk.

5 Restrictive fee lands. This is how my tribe  
6 and a number of tribes in New York State call  
7 their land. The tribes hold title to the land,  
8 which with legal restrictions against alienation  
9 and encumbrance as we have since time in memorial.

10 As a colonial era first-contract tribe who  
11 has always had possession of its tribal lands we  
12 are not familiar with the trust process to be able  
13 to speak effectively on the differences. We know  
14 that the unrestricted use we have over our land  
15 with no federal government interference, which is  
16 extremely important to us, especially given our  
17 long history of tribal land ownership, we're  
18 deeply uncomfortable with the idea that we have to  
19 turn over our title to our historic lands, which  
20 we have had forever, to the United States.

21 The way that the wording is for trust land  
22 that says that land is held in trust by the United  
23 States is unacceptable to us in New York, and to  
24 my tribe in particular because we don't really  
25 trust the trustee. Trust lands, the federal

1 government holds legal title, but the beneficial  
2 interest remains with the tribe. This is the  
3 majority solution to protecting lands and  
4 jurisdiction, but not all tribes want to  
5 participate in that same way.

6 It's important to remember that a hearing was  
7 held on February 7, 2012, by the Subcommittee on  
8 National Resources on HR 3532, the American Indian  
9 Empowerment Act, which discussed giving tribes  
10 greater control over their tribal lands including  
11 innovations regarding the use of restricted fee  
12 lands. However, the main discussion revolved  
13 around tribes who had already had land in the  
14 trust, and how to move it into restricted fee.

15 Our situation in New York -- where we have  
16 always had restricted fee land, and want to end  
17 land under the tribe's control in the same way,  
18 with the same restrictions against alienation and  
19 encumbrance.

20 Given our unique status and pre-trust era  
21 landholdings in New York, we would be looking for  
22 a special New York carveout to help us secure  
23 additional protected lands under restricted fee.  
24 We have managed our land face for thousands of  
25 years with diminishment through outright theft

1 under the Nonintercourse Act. And it is  
2 imperative that we reacquire additional lands  
3 within our aboriginal territory for economic  
4 sustainability, health and housing needs as our  
5 population continues to grow.

6 At a later time we expect to add to this  
7 important discussion in my tribe's written  
8 submission, as I promised Mr. Cason at the MCAI  
9 listening session in February in D.C.

10 Question seven, pending applications should  
11 be considered under the existing regulations and  
12 promptly processed. Applications were submitted  
13 in reliance on existing requirements and should  
14 not be delayed by the need to finalize new  
15 regulations or redo applications. So far what has  
16 been proposed makes the process harder, rather  
17 than helping it.

18 Question number eight, the department should  
19 listen politely and take comments from state and  
20 local jurisdiction. Balancing their concerns  
21 would be outrageous given the department's primary  
22 obligation to fill its trust responsibility. The  
23 department must really listen to the tribe's  
24 interests first and foremost. In listening to the  
25 State and local jurisdiction the department needs

1 to consider the motivation behind the comments  
2 that are being given. The department should never  
3 forget its primary objective and obligation as a  
4 fiduciary to the tribe, to the tribes and its  
5 trust responsibility.

6 Question nine, no. MOUs should be left to  
7 the tribe's judgment and discretion, but not be a  
8 part of the regulations at all. If a tribe has  
9 good relations with the state and local officials,  
10 then fine, but it should not be required by any  
11 means in the process to have this part be part of,  
12 you know, the new process that you're proposing.

13 Some tribes have great relationships while  
14 other tribes have terrible interactions with state  
15 and locals, and would never get any type of  
16 support or cooperative agreements or MOUs. In  
17 those instances this would be very damaging to the  
18 process that should not be part of any allocation  
19 requirements. This would add to the already  
20 burdensome process and cause additional  
21 unreasonable delay.

22 Question ten, our recommendations leave the  
23 process in the regions that knows them best.  
24 Centralizing it to D.C. would just cause  
25 additional delays.

1           If a tribe can show the land was in their  
2           aboriginal territory and they were the last owner  
3           of record prior to its theft, then it should be an  
4           automatic process to take it into restricted fee  
5           or trust. Instead of fee to trust it should be  
6           tribal lands restoration.

7           Tribes buying land outright that was stolen  
8           from them should automatically be restored to the  
9           tribe's landholdings.

10          There were no questions about tribes that are  
11          landless -- or in the questions that you asked  
12          there were no questions about tribes that are  
13          landless and tribes that have no usable land base.  
14          It presumes that every tribe already has a usable  
15          land base and is just looking for additional land  
16          without consideration for tribes not in that  
17          position.

18          There needs to be encumbrance of the tribes  
19          across the country that have different  
20          circumstances, land requirements and type of  
21          landholdings other than trust lands, and how they  
22          can be included in the tribal lands restoration  
23          policy.

24          In conclusion, we are a federally recognized  
25          tribe with uninterrupted governmental ownership of



1       our tribal lands at Shinnecock. The land has  
2       already been held by the tribe as part of our  
3       Shinnecock sovereignty over the land without  
4       dispute since first contact. Our first contact  
5       was in 1638.

6               We predate the United States. We predate the  
7       Constitution. We predate New York State. We  
8       predate it all. And so our land is our land and  
9       we should not have to have more land put into  
10      trust for us when we are in our aboriginal  
11      territory.

12             The fact that it took the United States  
13      government so long to correct its negligence to  
14      our tribal status during which time the tribe, our  
15      tribe was illegally disposed of over 3900 acres of  
16      land by the State of New York in 1859 should be  
17      the benchmark.

18             They should not impede our ability to  
19      reacquire our land and control it in the same way  
20      we have always held our ancestral lands under  
21      restricted fee, and the same way other tribes hold  
22      their land in New York State. We predate the  
23      treaty and trust process with the united states.  
24      Our treaties were from colonial era times.

25             The United States only enters into treaties

1 to take land, not give it back. There should be a  
2 New York State carveout allowing tribes to  
3 continue to put their reacquired lands into  
4 restricted fee just as there are other state  
5 carveouts across Indian country for Indian tribal  
6 situations.

7 This carveout should apply to any tribes in  
8 New York who have not extinguished their  
9 historical land rights in their aboriginal  
10 territories. There should be a policy for a newly  
11 acquired land within our historic area which was  
12 stolen, that should restore those lands to  
13 restricted fee, just as all the lands that we've  
14 had control over since first contact.

15 We look forward to further consultations and  
16 considerations in this subject as it is a matter  
17 of extreme importance to the landless and small  
18 land-based tribes here in the northeast.

19 Thank you very much for allowing me to submit  
20 this and we will have additional testimony, that  
21 we will send in written testimony.

22 Thank you.

23 THE HEARING OFFICER: Thank you, Councilman. Thank  
24 you.

25 CHERYL ANDREWS-MALTAIS: I'm Cheryl Andrews-Maltais.

1 I'm the Chairwoman of the Wampanoag Tribe of Gay  
2 Head, Aquinnah. And I'd like to thank our hosts,  
3 the Mashantucket Pequot tribal Nation for hosting  
4 this forum for us. And I'd like to thank you,  
5 John and Paula for being here and listening to our  
6 concerns.

7 However, as Councilwoman Harris stated, this  
8 is a consultation and not a listening session. So  
9 I'm assuming that once everybody has had an  
10 opportunity to speak and provide their comments,  
11 that we begin a dialogue and consult in the true  
12 meaning of consultation, and not just create a  
13 listening session for us.

14 Part of my first comment and my first  
15 explanation is that, as several people have said,  
16 there really hasn't been a call from Indian  
17 country for these changes and these rules and  
18 these regulations.

19 And I also believe that we are expending  
20 really valuable resources on this subject matter  
21 that was not requested, as opposed to investing  
22 our resources in the reorganization that was being  
23 planned for the Department of the Interior and  
24 Indian Affairs. That in itself could probably  
25 assist in how to streamline these regulations as

1       opposed to make them overburdensome and would  
2       encumber tribes with more responsibility and more  
3       outlay for these considerations.

4             In reference to all the questions that were,  
5       you know, put out there that were asked, it's very  
6       troublesome or troubling how they're developed,  
7       because a lot of them seem to be leading and  
8       leading down a path that Indian country should not  
9       even be looking because of the way that they're  
10      structured. And there's a lot of weight being put  
11      into these questions that are very disturbing to  
12      us.

13            But basically in reference to them I'll just  
14      give some brief answers. You know, in question  
15      number two, it's not very well. You know, these  
16      proposed regulations and the ones that we have now  
17      are, you know, are just really not addressing the  
18      true nature of Indian country, the true  
19      responsibility of the Department of the Interior  
20      and the obligation of the federal government to  
21      restore lands to tribes.

22            That was the whole intent, is giving the  
23      lands back to the tribes because we know that the  
24      taking away of tribal lands, the dismantling of  
25      tribes, tribal heritage and culture is not what's

1 in the best interests of Indian people. And the  
2 way that this is set up is contrary to what was  
3 the intent of the Reorganization Act.

4 And onto number three, what circumstances  
5 should the department approve or disapprove? This  
6 is -- and there should be no circumstance unless  
7 it's egregious that the department should ever  
8 consider disapproving land when the tribe  
9 demonstrates its need.

10 And like everyone of my brothers and sisters  
11 have already said, all tribes need land. Our  
12 peoples need our lands. These lands were taken  
13 from us. We didn't give them away.

14 You know, there isn't any instance that,  
15 particularly in the Northeast here, that by the  
16 time there was a United States government our  
17 lands were already taken from us, stolen from us.  
18 And we've had to fight for every square inch back.

19 We've had to pay for our own lands. We've  
20 had to pay for the lands that contain the remains  
21 of our ancestors. These are the lands that our  
22 blood was spilled to defend, and yet we're being  
23 asked to make decisions and try to help exterior  
24 or outside forces continue to keep us oppressed  
25 through that.

1           There shouldn't be any different criteria  
2       used in any circumstances. Restoration of the  
3       land is restoration of our tribal lands. The  
4       tribes have the right, the sovereign right to have  
5       the jurisdiction to determine what it is that we  
6       would choose to do with our land, and therefore  
7       there's no circumstance under which that a  
8       tribe -- if a tribe needs the land and the tribe  
9       requests the land to be in trust, whether it's for  
10      health facilities, whether it's for housing,  
11      whether it's for economic development, no matter  
12      what that economic development is, it's the  
13      tribe's right to make that determination.

14           And tribes have the ability to create zoning  
15      codes and ordinances. We have the ability to  
16      exercise our jurisdiction. We have the ability to  
17      enter into negotiations with our local communities  
18      and/or the states if we choose, if we need, if it  
19      makes sense and if it's a benefit to the tribe.

20           However it should not be a reason or a  
21      condition under which any tribe's application  
22      would be considered, more favorably considered.  
23      Because frankly, as our brothers and sisters have  
24      already said, the local communities sometimes are  
25      helpful, but for the most part the only reason why

1       they're looking to deny tribes' rights to be able  
2       to have the land and have jurisdiction over it is  
3       simply because control, or simple greed and  
4       economics.

5               They don't want the tribes to have the land  
6       and the jurisdiction out of taxable income for  
7       them, and that's not fair to the tribes. And  
8       that's unconscionable to think that we would be  
9       subjected to having to have agreements where local  
10      communities and states are extorting tribes for  
11      funding because they cannot tax us. And that  
12      small amount of tax dollars that they would be  
13      losing is nothing compared to what we offer with  
14      regard to what it is that we contribute to the  
15      local and the regional communities.

16             What we're talking about is sovereignty for  
17      tribes and tribes rights. Trying to balance the  
18      State's concern has nothing to do with the  
19      obligation of the Department of the Interior and  
20      Indian Affairs' responsibility to support and  
21      protect the tribes. The ways that we can deal  
22      with or work better for tribes and for the agency  
23      is to waive some of these requirements, lighten  
24      the burden of the environments to the tribes.

25             There are so many other departments and

1 agencies that have categorical exclusions to  
2 processes. Why is that option not afforded to  
3 tribes? We're governments, not government arms,  
4 branches or entities. We have full governments.  
5 So why should we be subject to other things?

6 You do not see these types of regulations  
7 imposed upon the military reserves, or any other  
8 government installation property. Those are not  
9 subject to the same things, and they have  
10 categorical exclusions. Why are tribes not  
11 afforded that same respect?

12 Overall it seems like we have a rush to  
13 change something and it's really troublesome, the  
14 component that is speaking to taking land out of  
15 trust. As my brother Cedric said, it's a scary  
16 proposition and it looks like there's one tribe  
17 being singled out, but while it might be one tribe  
18 being singled out now it will put all of us in  
19 jeopardy.

20 We all know how often and how zealous the  
21 Indian haters are up there. Like my brother from  
22 Shinnecock said, he's got very expensive real  
23 estate holdings around him, as do we on Martha's  
24 Vineyard. The problem is, is nobody asked us  
25 whether we wanted these people to move in, whether



1 we wanted them to put their multimillion dollar  
2 homes around our homes, our modest living.

3 Nobody asked us if they wanted our real  
4 estate taxes to go so high up the chain that we  
5 can't afford to move home, or keep our people  
6 anywhere near home. Nobody asked us if we wanted  
7 them to move around, come into our communities and  
8 make it so that there's no way for employment,  
9 that people just simply can't afford to live in  
10 our own homelands, that we're forced to move for  
11 economic development, for education, or just the  
12 ability to make ends meet.

13 Nobody asked us, but yet we deal with it and  
14 we live with it. And now we're forced to have to  
15 purchase property to be able to provide housing  
16 for our community, economic development and jobs  
17 for our people, but yet we can't even do it in our  
18 own backyard. We have to look to another area.

19 When Mr. Cason talked about the ability  
20 for -- or the consideration for the Department of  
21 the Interior in buying land in the Cobell. They  
22 look to the least expensive real estate.

23 Well if your real estate is not inexpensive,  
24 where does that leave us? Where does that leave  
25 tribes like us that are not out in the desolate

1 or, you know, the open areas of the country?  
2 Those of us that are in areas that are well  
3 populated, that are more industrialized, that  
4 we've had more contact for centuries, that we've  
5 been displaced in our own homelands, where does  
6 that leave us?

7 And what is the Department of the Interior or  
8 Indian Affairs doing to help us, to protect us,  
9 doing to help us regain some of those lands?

10 Our populations will always continue to grow.  
11 Our needs will never be fulfilled and diminished  
12 as long as we breathe and continue to be a  
13 peoples. So what is the plan to help us expand,  
14 not reduce our landholdings?

15 What I also want to do is, by reference, I  
16 would like to echo, and for the record support and  
17 reiterate each one of the comments and the written  
18 statements that have already been given to you  
19 already. And I'd like them to be incorporated as  
20 part of my statements as well, and of course in  
21 full support of those comments.

22 When we talk about these challenges that we  
23 face, the bureaucracy that's internally -- is what  
24 the problem is. The lack of funding, the lack of  
25 resources to the individual regions is what the

1       problem is.

2               We have a mandatory land acquisition that was  
3       part of a statutory congressional mandate, and yet  
4       we still had to wait over a year and a half for it  
5       to be put into trust. It still went through a  
6       Cochere review internally before it could be put  
7       into trust. And on top of that our deed went into  
8       a local land bank for some sort of review, and  
9       that's just extortion for a fee, and that had no  
10      business going there.

11              So we have a process that should have been  
12      cleared. It should have been a slam dunk. It  
13      should have taken no more than a minor review  
14      because it was a congressional mandate. It was  
15      the law, and yet it took over a year and a half  
16      with 19 whatever levels of review that were  
17      unnecessary, costly not only to us. It was costly  
18      to the department.

19              A waste of time, a waste of resources and a  
20      waste of money, but it did cost us because we paid  
21      property taxes. And we continue to pay property  
22      taxes on Martha's Vineyard for land that should  
23      have been in trust over a year ago. There's no  
24      reason for it.

25              That's not that process. That's not the land

1       into trust process that we're talking about here.  
2       That's an internal problem. That's where the  
3       focus need to be. Provide the regions with the  
4       human resources, with the financial resources,  
5       with the legal expertise, mind you, to be able to  
6       read a congressional act, to follow it.

7               To be able to read through the regulations  
8       and put them through, to be able to provide  
9       support to the tribes and not hurdles for the  
10      tribes to be able to overcome in order to get  
11      their land into trust.

12             It's all about the restoration of the tribal  
13      lands. It's all about the sovereignty of the  
14      tribes. It's all about respecting the tribes and  
15      who we are. And these regulations as proposed are  
16      not wanted. These regulations and changes are not  
17      helpful. It does not expedite or streamline the  
18      process. It makes it over cumbersome, it makes it  
19      over burdensome and it makes it more expensive.

20             And clearly, the way to look at it is to look  
21      at the reorganization, and then look at how we  
22      streamline it for tribes and waive those  
23      cumbersome regulations as opposed to adding  
24      extras.

25             And with that, I'd like to ask other people

1 to speak. And then maybe we can sit and have a  
2 dialogue and talk about ways to get there.

3 Thank you.

4 THE HEARING OFFICER: Thank you, Chairwoman.

5 SARAH E. HARRIS: This is Sarah Harris with the Mohegan  
6 Tribe, and I'm going back to Chairwoman Maltais,  
7 Andrews' comments and Chairman's Cromwell's  
8 comments on the provisions with respect to  
9 judicial review decisions.

10 I guess, the provision itself, I mean, I  
11 wonder whether or not the department thinks of it  
12 as -- currently has the discretion to, you know,  
13 comply with court orders. But to cabin the  
14 department's discretion with respect to taking  
15 land out of trust and specifying that in this  
16 provision just seems really unnecessary and seems  
17 to lean against the trust relationship.

18 And I wonder, sort of, what your thoughts are  
19 on -- I mean, it reads, the provision reads that  
20 if land has been acquired in trust before judicial  
21 review, and the decision to take the land in trust  
22 has concluded in a court and ruled the department  
23 erred in making the trust acquisition decision,  
24 and the department will comply with a final court  
25 order and resulting judicial remedy including, for

1       example, taking land out of trust.

2           I mean, to say, a court and a final court  
3       decision. I mean, a court? Does that mean any  
4       court? Does the department feel that they have to  
5       comply with state court orders? Would they comply  
6       with state court orders?

7           I mean, there are arguably only certain  
8       courts that have jurisdiction over the Department  
9       of Interior. And to say that you comply with, you  
10      know, any court order and presumably the  
11      department has taken land into trust for a tribe.  
12      The department should be defending that decision  
13      and not, you know.

14          And if a lower court rules that that decision  
15      was improper, then the department, the Department  
16      of Justice should be appealing that and defending  
17      that trust acquisition, and not saying that they  
18      will comply with a final court order which could  
19      be a lower court order or a circuit court order.

20          I mean, unless the Supreme Court of the  
21      United States rules that the department has to  
22      remove the land, you know, take the land out of  
23      trust, I'm not sure that there's any other  
24      court -- or the Department of Justice would say  
25      that any court except for the Supreme Court itself

1 has jurisdiction to rule the department has to do  
2 something.

3 So I just wonder what the thoughts are here.  
4 I mean, does the department think that it can be  
5 any court order? Does the department have to  
6 disagree, I guess, with its own logic and the  
7 reasons why they took the land into trust in the  
8 first place -- in order to say that they have to  
9 comply with the court order to remove it?

10 And when you say, a final court order, does  
11 that mean any final court order? Or does that  
12 mean the Supreme Court?

13 THE HEARING OFFICER: Well, so I think you probably  
14 answered your own question there. But -- so the  
15 department vigorously defends its decisions. The  
16 Department of Justice defends us when we go into  
17 federal court.

18 And I mean, there are some cases in which we  
19 have to appear in state court. Water. Water  
20 litigation is one of those, but I think the  
21 preference here with the federal government is to  
22 be in federal court.

23 And an order, again in vigorously defending  
24 our decisions, I mean, an order would be a final  
25 order at the highest court, you know, that makes

1       that decision, whether it's appeals, court of  
2       appeals or whether it's the Supreme Court.

3               I mean, there are decisions obviously that  
4       are made in litigation by primarily the Department  
5       of Justice about when to appeal and not to appeal  
6       certain decisions. I mean, those are, you know,  
7       sort of decisions that are made in context of, you  
8       know, litigation and precedent, but whatever is  
9       the final, you know, highest court that challenge  
10      has ended in, you know, that would be the court  
11      order we would follow, I would presume.

12   SARAH E. HARRIS: Right. Well, I guess that's not what  
13      the proposed regulations says, though. I mean,  
14      the court -- the proposed regulation says, a court  
15      rules the department erred, and that you will  
16      file -- you will follow that order.

17              And so I just wonder why the department would  
18      cabin their discretion in this way, in a way that  
19      leans against, you know, uphold the decision that  
20      they've made in favor of, you know, the tribe  
21      because the department has a trust relationship to  
22      the tribe and the IRA dictates that these are the  
23      types of things that we should be doing, acquiring  
24      land, or the department should be acquiring land  
25      for tribes.



1           And so this regulation really cabins -- as  
2           written really cabins the department's discretion  
3           and mandates that the department will follow any  
4           court order, or at least -- and then specifies the  
5           taking land out of trust as something that you'll  
6           do.

7           So unless it's the department's intent to  
8           cabin their discretion in a way that forces the  
9           department to have to comply, I mean, this just  
10          doesn't -- this provision I don't think really  
11          does what you're saying. And I think it cuts  
12          against the trust relationship to tribes.

13          And I think it's ultimately completely  
14          unnecessary because the department could do this  
15          anyways. It seems like it's an attempt to ensure  
16          that the department does this under -- in every  
17          circumstance.

18   THE HEARING OFFICER: So I'm not sure what you're  
19          reading. I think that is from the original  
20          consultation notice that went out before we even  
21          started the consultations. Right? It's not on  
22          the, sort of, current list of questions we have.

23          So I'm sorry. I was spacing for a minute  
24          what you were getting at.

25   SARAH E. HARRIS: Yeah. No, I'm sorry. I mean, I know

1       that there's a current list of questions, but this  
2       is -- so this is no longer the proposed?

3   THE HEARING OFFICER: Well, it's not on the list of  
4       questions that we're talking about.

5   SARAH E. HARRIS: Right, but you did release this as  
6       your proposed regulation?

7   THE HEARING OFFICER: I mean, there's sort of a  
8       technical question to be answered whether it's  
9       part of this regulation or not. So when we get a  
10      final order from a federal court, you know, if it  
11      directed us to take land out of trust we don't  
12      have anything, you know, we don't have a process  
13      to follow what that is. Right?

14         And a federal judge doesn't tell us, now you  
15      go to this place and do that. And you go to your  
16      regional office. They just say, don't take the  
17      land out of trust.

18         And so the thought on that is just to say  
19      maybe we should have, you know, we should do a  
20      regulation to say, what would be the process we  
21      would do if we got a final court order, as opposed  
22      to us making it up after we got the order -- kind  
23      of thing. You know what I'm saying?

24   SARAH E. HARRIS: Yeah, I do.

25   THE HEARING OFFICER: It's really kind of a technical

1 question.

2 SARAH E. HARRIS: Well, it is a very technical  
3 question, but I mean, these things are very  
4 technical. I mean, you know, when it comes down  
5 to if the department is saying that it wants to  
6 specify that they're going to comply with the  
7 court order that, you know, any court order about  
8 taking land out of trust, I think that's different  
9 than to say if you had a court order this would be  
10 the process that you would do.

11 This is saying that the department will do  
12 that for any court order, so a lower court order  
13 or a circuit court order. I mean, I can see if  
14 you reached the Supreme Court and the Supreme  
15 Court mandates you do it.

16 But short of that, I mean, it seems like the  
17 department should be defending their decisions.

18 THE HEARING OFFICER: Right.

19 SARAH E. HARRIS: And there is -- I mean, there are  
20 processes. The department does take land out of  
21 trust, you know, for individual Indians that  
22 petition to have the land taken out of trust. And  
23 I don't know that there's a process written for  
24 that either, other than to say you can do it. I  
25 don't know. You'd have to ask the regions, I

1       guess, what their specific policy is.

2   THE HEARING OFFICER: Right. So there's processes in  
3       the region. We also have a slightly different  
4       process for taking land into trust for individuals  
5       as well.

6       So we don't have one as far as tribes go, and  
7       we don't have one that would direct, you know,  
8       that would be implemented upon direction from a  
9       final court order.

10   SARAH E. HARRIS: Right. And I would not suggest that  
11       you develop one either, but I do think that if the  
12       department is thinking about doing something like  
13       this, that we would be adamantly opposed to  
14       anything that resembles that. So I just wanted to  
15       go on the record with that.

16       Thank you.

17   THE HEARING OFFICER: Understood. Thank you.

18   CEDRIC CROMWELL: Thank you.

19       Cedric Cromwell, Chairman Mashpee Wampanoag  
20       Tribe.

21       Sarah, thank you so much for touching on that  
22       point, because at Mashpee we're experiencing that.

23       I would like to see regulation that says that  
24       the department will vigorously uphold and support  
25       its decisions. John, you said that the department

1 does that. No, the department does not.

2 Mashpee is an example where the department  
3 ran away from the tribe. We got a record decision  
4 and the department just ran away from us -- and  
5 the DOJ did. And I don't know if that's happened  
6 to any other tribe, but we're experiencing it  
7 where the department is not supporting the Mashpee  
8 Wampanoag tribe.

9 And so what Sarah is talking about is the  
10 fact that if the DOJ stood by the tribe all the  
11 way up until the Supreme Court -- and I agree if  
12 it happened at that level.

13 But here's an example where the DOJ did not  
14 stand with the tribe and ran away from the  
15 department's decision, leaving the tribe to move  
16 to intervene without the department's support  
17 whatsoever. We've got a problem, a major problem  
18 and I'm very disgusted that the fact the IRA did  
19 that.

20 So I put that on record, that the department  
21 should create a policy as to how the department  
22 stands by a tribe with the Department of Justice  
23 all the way up to the Supreme Court versus putting  
24 their reg in place that says, hey, here's how we  
25 take land out of trust -- when you don't stand up

1 to your trust responsibility, fact.

2 JESSIE LITTLE DOE BAIRD: Thank you, Chairman Cromwell.

3 And thank you so much for those comments, Sarah.

4 And I'd just like to offer, Brother Tahsuda, just  
5 to echo the Chairman's comments. It is our  
6 experience in Mashpee right now that the  
7 Department of Justice is defending the decision  
8 made by the Department of Interior.

9 But I do want to make the point, too, that  
10 the proposed changes to the regulations are about  
11 how land is taken into trust. So this whole  
12 discussion about how to take it out of trust  
13 should not be included in these regulations. This  
14 is supposed to be how land goes into trust.

15 And the fact that there's a provision in here  
16 about how to take land out of trust -- and it has  
17 never happened in the modern era until 24  
18 non-native people that do not want Indians in  
19 their backyard sued the Department of the Interior  
20 has the question come up.

21 So I cannot help but feel that it is  
22 specifically targeted at my people's back, and I  
23 don't appreciate it when we have to defend us  
24 under the 1790 -- beginning with the  
25 Nonintercourse Act, is this department.

1           We're relying on you, and to that point I  
2       would like to note that there is a reason why  
3       there's not a process in place to take land out of  
4       trust. Because the spirit of that act was never  
5       to take land out of trust. It was to return  
6       homelands to tribes.

7           How in the hell did we get to this place  
8       right here, when it has taken Mashpee 400 years to  
9       get trusts under our feet -- in less than one half  
10      of 1 percent of our damn territory? We can't even  
11      have that. Are we not owed that much respect by  
12      this department and this administration?

13          These are very serious things. We have  
14      housing for a family that we've never had that  
15      will not go forward in June if something happens.  
16      We have an immersion language school that is  
17      educating children right now that will have to  
18      close. I would just like you to think about the  
19      people's lives we're talking about and not  
20      regulations.

21          Thank you.

22      THE HEARING OFFICER: Should we take a short break  
23      here?

24          We'll take a five-minute break.  
25

1 (Whereupon, a recess was taken from 10:53  
2 a.m. to 11:19 a.m.)  
3

4 KITCKI CARROLL: I'll keep my comments brief. It's  
5 more of a request, more than just comment. Kitcki  
6 Carroll, Executive Director United South and  
7 Eastern Tribe, Sovereignty Protection Fund.

8 The first point I wanted to make, and it's  
9 been repeated through various consultations that  
10 I've attended is what we understand -- even what  
11 you've heard this morning so far is the question,  
12 where this is all coming from. Part of the answer  
13 that we've heard from the department on that is,  
14 this is an effort to achieve some efficiencies.

15 So if that is true one of the things that I  
16 would like to make a formal request for is a  
17 report from the department on what it's trying to  
18 fix. What challenges did it identify? What  
19 delays in time did it find? What inadequate  
20 resources were there? Something that tells us to  
21 validate what it is that you are actually fixing,  
22 because what you've also heard this morning is  
23 that we're not saying that the process couldn't  
24 use some improvements and improved efficiencies,  
25 but there are ones that need to be pro-tribal from



1 our perspective.

2 So what we have not had in this conversation  
3 still, though, is a report that speaks to what it  
4 is specifically that the department is trying to  
5 fix. The other challenge that we're having -- and  
6 this ties back to the comments that Councilwoman  
7 Harris made before the break, was up to this point  
8 we have received no exact clarity on where this  
9 administration is with its fee-to-trust goals.

10 So I'm not standing here suggesting that the  
11 Trump administration should adopt the Obama  
12 administration's approach and set a 500,000-acre  
13 goal -- even though that would be great. But the  
14 Trump administration should be responsive  
15 enough to identify what its goal is so we know  
16 what its target is.

17 Because also laced in that conversation was  
18 even though that the conversation has evolved to  
19 be about the stated ten questions, it's the  
20 initial thing that gave us a glimpse of where this  
21 administration was on the proposed amendments.

22 So that's where everybody's thought processes  
23 start. So we have no idea where the  
24 administration really is, because absent that and  
25 absent these questions we really don't know where

1       you stand.

2               The third point is, through any effort to  
3       achieve efficiencies you could propose the best  
4       new process out there, but if you don't have  
5       adequate resources to implement that it's still  
6       going to be problematic. And within the eastern  
7       region here we know that there are resource  
8       deficiencies already that are part of the reason  
9       behind the delays. Okay?

10              So the reason why I raise this is we just  
11       presented yesterday, and to the Indian Affairs  
12       Committee on the fiscal year '19 Trump budget --  
13       which we feel is shameful -- but if you are not  
14       accounting for the federal resources to implement  
15       the processes you're proposing. You're still  
16       going to have a problem. So I don't know what  
17       steps the administration is taking to make sure  
18       that it's resourcing itself in a way that it has  
19       proper resources to carry out these fee-to-trust  
20       requests.

21              The fourth point is the reorganization plan  
22       as it relates to this fee-to-trust process. And I  
23       don't want to turn this into a reorganization  
24       discussion, but the failure of that proposal --  
25       even though we don't have a DTL issue on that --

1 is that it suggests this rotation of leadership  
2 across the region, across bureaus. Well, as  
3 you've already heard the fee-to-trust process is a  
4 specialized process. It takes years of expertise  
5 to do that efficiently and effectively. And if  
6 you're constantly rotating leadership out every  
7 couple of years you are never going to achieve  
8 that.

9 So it seems that the department in many ways  
10 is operating in a very narrowly -- a narrow-minded  
11 focus way and not connecting the dots between what  
12 it wants to do with fee-to-trust regulation  
13 changes, what it wants to do with the budget, what  
14 it wants to do with reorganization, because  
15 they're not matching up. They're not lining up in  
16 any way that makes any rational sense from the  
17 outside observation position.

18 And then you add on top of that -- if we're  
19 going to talk about delays, we're also operating  
20 under an administration that has a staffing  
21 freeze, or put a staffing freeze in place that  
22 further delays the process.

23 So again to my initial point, we really need  
24 to see a report from the administration that  
25 speaks to the inadequacy of the process in terms

1 of some quantitative data. That's something  
2 that's always demanded of us when we're making our  
3 case. Give us the data. Give us the data. Well,  
4 give us the same thing. Just tell us what you are  
5 exactly trying to fix.

6 The last point I want to make on behalf of  
7 the organization is on this broader land issue,  
8 because land affirmation is part of our land  
9 objective. It is despicable and shameful what's  
10 going on with Mashpee right now, and this  
11 administration needs to do better. Mashpee  
12 deserves better.

13 Thank you.

14 THE HEARING OFFICER: Thank you.

15 LAWRENCE WALKER, JR.: [Ho-Chunk greeting.]

16 Relatives, I greet each and everyone of you.  
17 I want to say thank you to our hosts for opening  
18 up their doors and their lands to welcome us here  
19 today.

20 Lawrence Walker, Jr., Ho-Chunk Nation,  
21 Wisconsin. Just a little bit of history of the  
22 ramifications of the changes that the department  
23 is talking about today.

24 For those of us here in Wisconsin, where back  
25 in the days we were called Winnebagos and from

1       that time on we started being relocated to other  
2       areas outside of the state of Wisconsin. And for  
3       those of you that don't know, there are numerous  
4       times that we were relocated and continued to come  
5       back to Wisconsin and settled back in our  
6       aboriginal lands.

7             It came to a point where the government  
8       allowed -- allowed us to stay in the lands that we  
9       returned to. And it ended up being that we are  
10      noncontinuous. We are in communities, in villages  
11      throughout the middle of the state of Wisconsin.

12            And at that time when you look at what  
13      actually really, really applies to us is  
14      checkerboard, because that's the way that it is  
15      for us today. We take as much opportunity as we  
16      can we reobtain our own lands, use the  
17      fee-to-trust process and how it exists today.

18            And unfortunately some of the lands that we  
19      would choose to acquire are not available to us.  
20      So we remain checkerboard today.

21            So when we look at those, the changes that  
22      we're talking about, our comments were already  
23      given at previous consultations. We would choose  
24      to resubmit those for this consultation here  
25      today, the comments that were presented by the

1 Ho-Chunk Nation, by the president, and previous  
2 legislators in other consultations.

3 So we look at this time as how it would be of  
4 benefit to us in the process. We do have our  
5 homelands division that works with this  
6 fee-to-trust process today, and as it exists today  
7 we have a really good understanding of it. The  
8 changes that are being considered are of no  
9 advantage to us at all, how it could help us to  
10 obtain those lands because of our status -- and we  
11 don't have a reservation.

12 So many of the lands that we actually do end  
13 up buying back initially are not connected to the  
14 federal lands that we already own. So we would  
15 state for the record that we are in opposition to  
16 any of the changes.

17 I'm going to defer to Rep White Eagle who  
18 will be speaking also on the analytical aspects of  
19 our Ho-Chunk Nation's position on the changes.

20 Also something to consider is that when there  
21 are changes in the consultation, that you would  
22 let us know way ahead of time next time. We  
23 actually ended up here last month and found out a  
24 half hour after we got here that it was changed.

25 So the department will be receiving a

1       3,000-dollar bill from the Ho-Chunk Nation. We  
2       can get that in either hundreds, or black chips  
3       and we would appreciate that.

4       THE HEARING OFFICER: Offset that with any winnings, of  
5       course.

6       LAWRENCE WALKER, JR.: We appreciate the comments that  
7       are being made. In the future for the proposed  
8       consultation that will be coming up, that we would  
9       be hopefully improving on the comments that have  
10      already been submitted on behalf of the Ho-Chunk  
11      Nation -- because of the comments that were also  
12      being made here by all the relatives.

13             And we appreciate each and every aspect that  
14      you're talking about, not only the analytical, but  
15      how it effects people individually. Because the  
16      changes here that are etched in stone eventually,  
17      you know, that they affect each and every one of  
18      us in our own unique way, because it isn't always  
19      the same for each and every grouping of people out  
20      here, and how it affects them.

21             And so what I'm speaking about is just one  
22      grouping of people, our Ho-Chunk people in  
23      Wisconsin and how it is that it works with us.  
24      And taking back the comments that were being made  
25      will also help us to better define what it was

1 that was written down in proposed regulation  
2 changes.

3 Because the uniqueness for us -- and  
4 specifically is that checkerboard. I keep coming  
5 back to that, and that's the biggest word in there  
6 that affects us. And unfortunately we're not the  
7 only tribe, though. I mean, it isn't unique  
8 because there are other tribes out there that are  
9 having the same problem.

10 And so I appreciate the efforts that are  
11 being made by each and every one of the relatives  
12 to take time out and make their way over here and  
13 let their comments be known.

14 I would also request that the comments that  
15 are being made for or against that, the  
16 consideration would be in the decision-making  
17 process, whenever you get that far, that you would  
18 give weight to the comments that are being made  
19 here, and that we would -- let it be known what  
20 kind of weight each and every one of these  
21 comments carried.

22 So that when we come to the, quote, unquote,  
23 consultation process that we know that it is also  
24 in our favor, that we would be here. That we  
25 would be heard and that you would also take those



1           into consideration as well.

2           Thank you.

3   THE HEARING OFFICER: Thank you, Chairman.

4   ERNIE STEVENS JR.: I want to thank you for the  
5           opportunity here. Mr. Cason invited me to write a  
6           letter which we will draft and answer all the  
7           questions, and way beyond and then some.

8           We also -- I also wanted to mention that  
9           we're going to be in Las Vegas next week for the  
10          National Indian Gaming Association Annual  
11          Tradeshow and Convention. We hope to break our  
12          records, and have one of the largest gatherings of  
13          tribal nations in history. So if anybody is not  
14          registered yet -- that's a tacky announcement.

15          And on a serious note we're at the phones  
16          working hard on our Tribal Labor Sovereignty Act.  
17          It's hitting the wire. We were hoping we could  
18          just go right back to D.C. after NIGA. It sounds  
19          like we're going to have to split up our forces.  
20          We've done that before, too. And I know I'm  
21          speaking to the choir there.

22          So I wanted to just, again echo the comments  
23          of the leadership here today. The comments that  
24          are made today are very powerful and with much  
25          substance. So hopefully that will require that I

1 don't take a whole bunch of your time this  
2 morning.

3 So I've just got a few points I would like to  
4 make. Joining me today, if I have any technical  
5 questions, I have our lawyer from the PMC Group  
6 Mr. John Hart. Mr. John Hart is a former  
7 legislative director for NIGA many years ago  
8 formerly with the Department of Justice, the  
9 Senate Committee on Indian Affairs as well, and we  
10 can go right down. He's a Pueblo member as well,  
11 so a long-standing veteran in D.C.

12 THE HEARING OFFICER: Just I would note for the record  
13 that I set John's office up for him before he came  
14 to it at NIGA.

15 ERNIE STEVENS JR.: Well, we're looking forward to  
16 seeing you in Las Vegas. Before I used to set the  
17 schedule. Now you set the schedule, but we  
18 appreciate both you and Paula, and the hard work  
19 that you guys do.

20 I just wanted to make sure that everybody  
21 knew that we've been in attendance at all the land  
22 into trust consultations, monitoring the  
23 discussion on behalf of our member tribes.

24 And I'm Ernie Stevens, Jr. I'm a member of  
25 the Oneida Nation, and I have the honor of serving

1 in my 17th year as Chairman and Chief Spokesperson  
2 for the National Indian Gaming Association. I  
3 apologize. That's probably how I should have  
4 started.

5 But I wanted to make sure you know that we'll  
6 supply a very extensive letter, as Mr. Cason  
7 invited us to do.

8 We do have our recommendations and we've  
9 heard a lot over the time. Like I said, we've  
10 been in almost every one of these sessions, or  
11 NIGA has been at every one. I've missed a couple,  
12 only a couple.

13 And one of the things that we recommend, that  
14 you maintain the 151 regulations as they are  
15 currently articulated and work to improve the  
16 speed and efficiency of the approval process. We  
17 want to make sure that we make sovereignty mean  
18 something and support the restoration of our  
19 homelands with the least amount of restrictions  
20 possible. We need support from the secretary for  
21 land in the trust.

22 There are many bearing circumstances that  
23 tribes face with regard to their historical  
24 homelands, their treaties, their relations with  
25 the United States and a one-size-fits-all approach

1 will not work. The department should update to  
2 you so that its categorical exclusions under the  
3 National Environmental Policy Act apply to all  
4 on-reservation land acquisitions that have an  
5 acceptable containment survey.

6 The original intents of the Indian  
7 Reorganization Act need to be followed. Your  
8 trust responsibility is to the tribal governments,  
9 not local and state governments. Your policies  
10 and your regulations should reflect that.

11 And I just want to add I'm an old-school  
12 pioneer, but I learned from an even more  
13 old-school pioneer who spent many years in  
14 Washington D.C. His name is Ernie Stevens, Sr.,  
15 who lives in our nursing home in Oneida,  
16 Wisconsin. He was very much a part of the Nixon  
17 administration and helped that administration be  
18 one of the most effective in dealing with tribes.  
19 The work they did continues to support us to this  
20 day.

21 My father taught me about land in the trust,  
22 about TLSA. He taught me about the rights of  
23 tribes as governments and also taught me, a fiery  
24 young councilman more than 20 years ago, how we  
25 extend ourselves to local communities to make sure

1       that we're fair in that process. To that point,  
2       while he rested in our nursing home I'm a pioneer  
3       as it relates to negotiating service agreements  
4       and municipal agreements with local fire, police  
5       and governments.

6             And we do that, and we do a great job of it  
7       and we've spent millions of dollars doing it for  
8       the ones that -- the few that are out there,  
9       hanging out there, that's because they choose to  
10      continue to take an unfriendly and negative  
11      posture towards tribes for no other reason other  
12      than that in itself.

13            I'm not going to use the "R" word today. I'm  
14      not going to be angry or disrespectful today, but  
15      we do this and whoever wants to respectfully  
16      interact with tribes, we're prepared to do that  
17      and have a long-standing record.

18            I used to fuss with the local municipal guy  
19      and my dad said that this guy is a good guy. You  
20      just have to sit down and give and take with him,  
21      and we'll get it done. And that agreement is  
22      standing to this day over 20 years, because we sat  
23      down, me and this old guy. I won't state his name  
24      for the record because he might call me up. He's  
25      very much retired now, but we went to Las Vegas to

1 the biggest gaming show in the world and told the  
2 world about what it takes to sit down and make  
3 agreements. This is 20 years ago, and here we  
4 sit.

5 So again, I want to state that one more time  
6 and I'll move on. The trust, your trust  
7 responsibility is to tribal governments, not local  
8 and state governments, and your policies and  
9 regulations should reflect that. And that's why I  
10 choose to emphasize that.

11 The 151 section 20 process needs to say,  
12 separated by law, and really that's not what  
13 really -- I don't think that's the giant issue.  
14 It's 1 percent. One percent. Anybody want to  
15 correct me on that number? You know, it's not an  
16 explosion. It's something that's essentially  
17 something we stand by in the law, but the gaming  
18 aspect is 1 percent.

19 The tribes have stressed the need to have  
20 more resources at the bureau regional level to  
21 expedite land, land trust decisions. The proposal  
22 did not come from any country, and it should be  
23 withdrawn.

24 It is our hope that the department will take  
25 the comments that you have received over the past

1        few months and continue to work with Indian  
2        country to improve the land into trust process.

3            In closing -- I can't read my own scribbling  
4        here, but I say -- dad's stories. You know, my  
5        father told me how Oneida lost so much land. They  
6        used to tease him in DC. An older tribal leader  
7        or tribal lawyer said, I personally owned more  
8        trust land than your whole tribe. You know, I  
9        don't think that was true, but that's what they  
10       did. They badgered one another, but the lack of  
11       land was serious.

12           When my father retired he spent his  
13       retirement, every single dime he had to buy a very  
14       average house on 65 acres. And he said, don't you  
15       understand, son, that we increased the tribe's  
16       land base by 65 acres today?

17           And I looked over at his house. He said, you  
18       need to buy land, son -- and I bought a Trans Am  
19       and it lasted two years. My father had foresight.  
20       That land is in trust and now has four homes on  
21       that property, and he was very much a part of  
22       trying to recover.

23           The stories he told me about how we lost this  
24       land I don't have time to tell you, and I don't  
25       want to, because then I'll get angry whether it

1 was manipulation, land companies, maybe religious  
2 affiliations. You know, I'm not going to state  
3 any of that for the record, but that land was  
4 taken from our people in terms of hundreds of  
5 thousands of acres.

6 It's important that we understand that in  
7 order to recover from something like that -- we  
8 don't blame you. We don't blame the department.  
9 I even struggle with that because I know where you  
10 guys come from. I know you folks professionally  
11 and personally, but you work for the government  
12 and we're not sitting here, or standing here  
13 trying to blame. We're asking you to help us  
14 recover.

15 You're the message to the big dogs that need  
16 to understand that this is recovery, and it's not  
17 about gaming. One percent of it. It's about  
18 having an opportunity for our children and for our  
19 grandchildren. This is their life. This is their  
20 future, our ability to recover our land. That's  
21 what this is about. It should never be what it  
22 is.

23 And while we don't blame you personally it  
24 was the government's job to protect us then -- and  
25 they didn't -- it's the government job to protect



1 us now, and we're asking you to do that. That's  
2 the bottom line in this process.

3 So with that, unless you have any other  
4 questions I give you greetings on behalf of 184  
5 tribes, on behalf of my father who was an icon,  
6 who many years ago rattled this off.

7 And every time I go to the nursing home -- he  
8 can't talk much anymore, but he looks me in my eye  
9 like, you're doing your job, boy? That's how he  
10 looks. He always called me boy. I call myself,  
11 boy.

12 And I'm trying, but my father knew exactly  
13 what he was talking about as it relates to these,  
14 and I think that these folks here, they know  
15 exactly what they're talking about. We ask you as  
16 native people, as professionals in this world that  
17 we live in appointed to protect us. They didn't  
18 do it then. It's our job. It's your job to do it  
19 now. Thank you.

20 My name is Ernest Stevens, Jr., National  
21 Indian Gaming Association. I'm an Oneida from  
22 right outside Green Bay, Wisconsin. I don't know  
23 if anybody ever heard. We had a football team  
24 over there.

25 KRISTEN WHITE EAGLE: [Ho-Chunk greeting.]

1           I just wanted to greet you all. Good  
2 morning -- and introduce myself. My name is  
3 Kristen White Eagle. I'm also known in my  
4 Ho-Chunk language, my name is Rainbow. So I come  
5 from the Ho-Chunk Nation. It's a federally  
6 recognized tribe in the state of Wisconsin, and my  
7 esteemed colleague Brett Walker also presented  
8 here and provided some very great comments.

9           I want to thank you for that, and excuse me  
10 for speaking in front of my elder here -- but I  
11 want to greet you all. Thank you for the time  
12 that you've taken to be here today. I'm a  
13 representative with the Ho-Chunk nation  
14 legislature, newly elected in July. And this is  
15 one of the very important, I guess, issues that  
16 have come across that I've become aware of.

17           And I really feel wholeheartedly that the  
18 tribal consultations occurred the way they did,  
19 that so many tribal leaders came together. So I  
20 appreciate the time that I have to be able to sit  
21 here amongst you, and to also be able to stand  
22 here and speak.

23           Some of the background of the Ho-Chunk  
24 nation, Brett Walker was able to provide a lot of  
25 that, but I also wanted to speak on behalf of what

1       our president, the esteemed Wilfred Cleveland had  
2       stated. Mr. Cleveland, our president was at the  
3       Mystic Lake consultation and I had the opportunity  
4       to join him there, and I heard a lot of the  
5       comments that were stated.

6             At that point we had a very good turnout, and  
7       I feel blessed that I was able to hear as much as  
8       I did, and participate in that, and want to share  
9       in the remarks that he stated at that time just to  
10      give a little more of a background.

11            President Cleveland's remarks at Mystic Lake,  
12      he mentioned our location in Wisconsin and how he  
13      grew up as a tribal member. It was a struggle for  
14      my ancestors to live there and we've been removed  
15      time and time again from our homelands there. We  
16      originated up in the Green Bay area and what was  
17      referred to as Red Banks. We've been living in  
18      those lands since the beginning of time.

19            Until the coming of the white man and the  
20      removals that began to happen -- because they saw  
21      how beautiful and how valuable the land was -- but  
22      our people, we have a stewardship responsibility  
23      over these lands. So every time that there was a  
24      removal there was a time of returning back to our  
25      homelands.

1           So the federal government finally gave up,  
2           gave us trust lands. We don't even have a  
3           reservation. Everything that we do acquiring  
4           lands is off reservation, because we don't have a  
5           reservation.

6           And then to add for our bearing of this  
7           history, the United States Congress passed the  
8           Indian Reorganization Act of 1934. We're all  
9           aware of that. This act brought an end to the  
10          allotment era. Through certain language in the  
11          act Congress gave the Secretary of the Interior  
12          the ability to place lands in trust status for  
13          tribes.

14          And let me read this and reiterate this. The  
15          secretary of the Interior is hereby authorized in  
16          his discretion to acquire through purchase,  
17          relinquishment, gift, exchange or assignment any  
18          interest in lands, water rights or surface rights  
19          to lands within or without existing reservations,  
20          including trusts or otherwise restricted  
21          allotments, whether the allottee be living or  
22          deceased, for the purpose of providing land for  
23          Indians.

24          The language in the act was intended to allow  
25          tribes with no reservation, much like our Ho-Chunk

1 Nation, apply to have lands taken into trust. The  
2 new administration had signaled it is looking into  
3 adding new hurdles for tribes seeking  
4 off-reservation fee-to-trust acquisitions.

5 Our current fee-to-trust process is already  
6 cumbersome and time consuming. The fee-to-trust  
7 process is already highly regulated with its own  
8 CFR and extensive handbook with a 16-step process  
9 that it already gives outside entities time to  
10 comment.

11 The Nation would be one of the tribe's most  
12 impacted if these regulations are amended. A  
13 large majority of our applications are considered  
14 off reservation. The nation was never given an  
15 established reservation in Wisconsin. We do  
16 target a lot of contiguous properties for  
17 acquisition, but the nation owns lands in very  
18 rural areas. A lot of our lands are surrounded by  
19 state-owned properties.

20 Although the nation is going to provide  
21 written comments by the deadline of June 30,  
22 2018 -- and thank you for extending that, I do  
23 want to offer a few thoughts and some of the  
24 highlights and concerns that we have on some of  
25 the questions, and just reiterate that from what

1 was stated before.

2 And I do want to state that we agree with the  
3 comments that were stated here for the record.  
4 Representing the Ho-Chunk nation, I do want to  
5 state that as well here.

6 The Ho-Chunk Nation has concerns with the  
7 Department of Interior's consultation process.  
8 First, the Department of the Interior issued  
9 proposed changes to the fee-to-trust regulations  
10 in 25-CFR, part 151, and held a listening session  
11 in its CAI in Milwaukee. Then the department  
12 revised its consultations schedule with a  
13 dear-tribal-leader letter on December 26, 2017,  
14 sending their locations and dates for  
15 consultation. Ten questions were also asked of  
16 tribes.

17 The president of the Ho-Chunk Nation, Wilfred  
18 Cleveland and elder officials attended the  
19 department's consultation on January 18, 2018, at  
20 Mystic Lake Casino, in Prior Lake, Minnesota. The  
21 format was structured so that interior officials  
22 sat at a table who listened while tribal leaders  
23 verbalized their concerns and objections, while  
24 also attempting to answer the department's ten  
25 questions.

1           No disrespect. Out of all due respect, I do  
2           want to say I do not believe that's how  
3           consultations should work. The department should  
4           have held meetings with tribes first to discuss  
5           the fee-to-trust process, hear any concerns,  
6           obtain tribal input, then consider drafting  
7           changes to the regulations.

8           Instead it was stated at the Mystic Lake  
9           consultation that the proposed regulations were  
10          developed by the Department of Interior after  
11          receiving input in private meetings about the  
12          process, and based on challenges also to the CAI  
13          trust acquisitions filed in litigation.

14          So this was the backdrop to the first  
15          year-tribal leader letter from the department. I  
16          don't believe this is any way to develop  
17          regulations or to consult.

18          The Ho-Chunk nation at that time -- and they  
19          have also -- we've had reps and officials also  
20          attend other consultations. We still would like  
21          to know who asked for these proposed changes?  
22          What litigation did the department rely on in  
23          developing its proposed changes?

24          The nation has yet to encounter a tribal  
25          leader that has asked the department for these

1 changes or supports them now.

2 Then in terms of format there should be a  
3 government-to-government consultation, rather than  
4 department staff simply listening to tribal  
5 leaders, and I've heard that reiterated a few  
6 times today. It should be more than one side  
7 talking to the other. Meaningful consultation  
8 would involve a discussion, listening and  
9 feedback.

10 I'll refer back to question number one, what  
11 should the objective of the land-to-trust program  
12 be, and what should the department be working to  
13 accomplish?

14 Let me briefly state and go on with this,  
15 that this goes to the question of the purpose and  
16 the goals of the Indian Reorganization Act of  
17 1934. These were to develop tribal lands and  
18 resources for the benefit of tribes. And as you  
19 see from the comments of so many other tribal  
20 officials and in CAI, those purposes and goals  
21 were well documented in testimony at the time in  
22 1934 as well is in practice since that time, with  
23 over 65 percent of tribal Indian lands lost  
24 between the Dawes Act in 1887 and the IRA in 1934.

25 The effort was to restore those lands. And



1 significantly less than 5 percent of the lands  
2 lost have been restored since the enactment of the  
3 IRA in 1934. 5 percent.

4 So the purpose and goals of the regulation  
5 which is the responsibility of the department to  
6 carry out under the statutory authority of the IRA  
7 is really to acquire lands for the benefit of  
8 tribes to allow the tribes to develop strong  
9 tribal governments and economies.

10 The fact that this question is being asked is  
11 concerning, though. Is the department planning to  
12 reconsider the existence and purpose of the land  
13 into trust program?

14 Questions eight and nine, how should the  
15 department recognize and balance the concerns of  
16 state and local jurisdictions? And should MOUs be  
17 required in the off-reservation application  
18 process? This inquiry is concerning in that it  
19 seems to give more weight and interest to state  
20 and local government. That to me is  
21 inappropriate.

22 The considerations of jurisdiction for state  
23 and local government where they had no  
24 jurisdiction of tribal lands, and the  
25 consideration of the impacts and the benefits for

1 state and local government are extremely  
2 concerning for us. The purpose and goal of the  
3 department under the IRA is to evaluate the  
4 benefit for tribes, period.

5 Restoring federal lands is a federal  
6 responsibility. So state and local interests  
7 should not be able to veto a tribal application.  
8 While a tribe may need to alter their application  
9 or address a concern of the state or local  
10 government, that is up to the tribe. The other  
11 governments should not be allowed to stop the  
12 fee-to-trust process.

13 And I live in an area in a county, South  
14 County where every single fee-to-trust application  
15 the Ho-Chunk nation has submitted has been  
16 opposed.

17 Question number ten, what recommendations  
18 would you make to streamline and improve the  
19 land-into-trust program. The Ho-Chunk nation  
20 objects to the department's transfer  
21 of off-reservation fee-to-trust applications from  
22 the BIA regional offices to the central office in  
23 Washington D.C. This change further delays  
24 decisions on off-reservation applications and  
25 removes the decision making from the regional

1 directors familiar with the needs of the tribal  
2 applicant, to Washington officials who will not  
3 have the same level of local knowledge.

4 Therefore, the Nation requests the  
5 department's letter dated April 6th of 2017 that  
6 centralized this function be rescinded. This  
7 would help streamline the land-into-trust program.

8 Finally, I would like to reiterate that the  
9 Ho-Chunk Nation was built on off-reservation  
10 fee-to-trust applications. We have worked hard to  
11 get to the point where we are today. Passage of  
12 these proposed amendments to CFR 151 would pose a  
13 great threat to future off-reservation  
14 fee-to-trust applications, gaming and not gaming.

15 In conclusion, the Nation's position is that  
16 the existing rules should remain in place. The  
17 reasoning of Assistant Secretary Washburn from  
18 2013 is still applicable.

19 If challengers are still allowed to file suit  
20 under the APA, referring to the six years, then  
21 there is no need to revive the BIA rule from 1996  
22 unless the BIA wants to make it easier to file  
23 challenges to trust acquisitions.

24 Reintroducing the 30-day waiting period would  
25 not streamline the process. The Nation's position

1 is consistent with that of NCAI and other tribes.  
2 Thank you for that. The Nation asks the  
3 Department of the Interior immediately withdraw  
4 and cease these efforts to amend the  
5 land-into-trust regulations, while continuing to  
6 maintain its fiduciary trust responsibility to  
7 Indian tribes and the purposes of the IRA.

8 Thank you for your kind attention. I thank  
9 you for allowing me to speak on behalf of the  
10 great Ho-Chunk Nation, my people. Thank you for  
11 those that I represent. God bless.

12 THE HEARING OFFICER: Thank you, Councilwoman.

13 CHERYL SMITH: [Choctaw greeting.]

14 My name is Cheryl Smith, and I'm a Tribal  
15 Chief of the Jena Band of Choctaws in Louisiana.  
16 And I want to introduce a newly-elected.

17 MELISSA DARDEN: I'm Melissa Darden. I'm the Tribal  
18 Chairman from the Chitimacha Tribe of Louisiana.

19 CHERYL SMITH: I didn't know whether to give her  
20 well-wishes or condolences, but I think that today  
21 we represent Louisiana here today. And of course,  
22 Paula and John, we have known y'all for a long,  
23 long time. The Jena Band, if any tribe has ever  
24 had any problems doing anything let me tell you it  
25 was my tribe, and that was from getting

1 recognition. It took almost 20 years. I was a  
2 young girl when all this started, but we kept on.  
3 We didn't give up. We were knocked down. We got  
4 up.

5 We finally got recognized in 1995 and then  
6 there were the issues of gaming. And there's four  
7 federal tribes in Louisiana, and the other three  
8 had compacts. Every governor would not give us a  
9 compact. To this day we still do not have a  
10 compact for class-three gaming, but we stuck our  
11 little necks out and we have a class two facility  
12 that we can do without the State. And it's small,  
13 but it's doing very well and I'm very proud of  
14 that.

15 And today I know all these people are here,  
16 the tribal representatives are here. And I'm glad  
17 the spiritual woman this morning prayed for the  
18 world, for the leaders. How do we know what's  
19 going to happen to any of us, whether we're brown,  
20 white, black? Who knows? When you get up in the  
21 morning we may be in a war. We don't know what's  
22 going to happen to us in the future.

23 But I think at Indian country I know now that  
24 anything we have we're going to have to fight for  
25 to keep it. It's always been that way. I think

1 people want to fight for sovereignty. It's just  
2 been that way for Indian people, and I think that  
3 that's just what we're going to have to do.

4 I do believe that when we joined USET we  
5 became part of the family. USET has become a  
6 great, strong family. Chairman Barbary was a dear  
7 friend of mine, and when we got recognized he kind  
8 of took me under his wing and he said, Cheryl, he  
9 said, we've got to do some changes -- and we did  
10 that.

11 He has been instrumental in bringing USET to  
12 the forefront of problems that all of our tribes  
13 have. And we work 26, 27 -- and I think we've got  
14 some new Virginia tribes so that we're growing,  
15 but USET is a very strong group out there in  
16 Indian country, and I'm proud to be a part of  
17 USET.

18 And in saying that I have met a lot of  
19 leaders, different tribes that I've never heard of  
20 here in the East. But then again, some people  
21 don't know there's Indians in the East out here.  
22 So there are lots of Indian tribes out here in the  
23 East. And then like I say, some have gotten  
24 recognition since we have. The Mashpee is a very  
25 good brand. We enjoyed the visit, the tour to

1       their properties, to their Indian lands. And you  
2       know, it's not fair for some tribes to be treated  
3       the way they are when they have fought so long for  
4       what they have, just as we have.

5               And I just want you to know that I don't know  
6       where all of this is coming from, but we do have a  
7       new administration. And I'm not really a fan of  
8       some of the things that they're looking at or  
9       incorporating. And I think a lot of that comes  
10      from not knowing what Indian people need, not  
11      knowing what they have.

12             So I would hope with everyone's comments that  
13      you would understand that we don't want to see  
14      these changes. They're hard changes for my  
15      people, for these people. We only have 63 acres  
16      in trust, and that was a long haul to even get  
17      that done.

18             We just submitted another package with almost  
19      300 acres. Now that is gaming. It should not,  
20      you know, it's not a big deal. Just put some land  
21      into trust for us for economic development.

22             Jena has gone a long way and I'm proud of  
23      that, but in the meantime I'm learning that you  
24      have to have some thick skin, and as being a  
25      tribal leader, a woman chief for the last eight

1 years that you've got to have thick skin.

2 And even though you like the people that are  
3 in the offices in the federal government, even if  
4 you're Native American, still you have to listen  
5 to us. It's not that we don't like you. It's we  
6 don't like what's going on in the world. We don't  
7 like what's going on in Indian country.

8 So I just wish that you would think about it,  
9 go back, listen to everybody's comments, make  
10 notes. And like I said, Jena would like to be on  
11 the record also as opposing all these changes that  
12 you have from the Department of Interior.

13 Melissa, would you like to say a few words.

14 MELISSA DARDEN: Well, it has been a roller coaster. I  
15 am new at this. So I've come across a lot of  
16 different issues that we have, and this is one of  
17 them.

18 And I know for our tribe, we've had a 65-acre  
19 tract that we've been trying to get into trust now  
20 since May of 2016. It's not gaming land. It's  
21 for economic development, for us to try and grow.  
22 And we have businesses out there already. We've  
23 started without it being in trust, but it would  
24 help.

25 And this is just one of the issues and we



1       were opposed to -- a lot of these changes. And I  
2       will be submitting my, I guess, formal answers to  
3       all these questions. And it's, like I said, it's  
4       something that we need to get on top of.

5       THE HEARING OFFICER: Chairwoman, I'm sorry. For my  
6       notes, can I get your full name again?

7       MELISSA DARDEN: Melissa Darden, Chitimacha Tribe.

8       CHERYL SMITH: Okay. Louisiana has spoken.

9       CHERYL ANDREWS-MALTAIS: Chairwoman Cheryl  
10      Andrews-Maltais, Wampanoag Tribe of Gay Head,  
11      Aquinnah.

12             And again, I would encourage anybody to come  
13      up and speak again. A lot of times we forget to  
14      say certain things, or as other people bring up  
15      comments it brings up new ideas and new thoughts.

16             I guess one of the first things I wanted to  
17      find out is that when we were at NCAI Mr. Cason  
18      promised that there would be a consultation in  
19      D.C. And this is really great that we have this  
20      up here in Connecticut, that it makes it  
21      convenient for us in the Northeast.

22             However, I think that we're still owed one in  
23      Washington D.C. And the other thing I was  
24      wondering is, there are 38 tribes in Oklahoma, but  
25      I didn't see any scheduled for Oklahoma. I don't

1 know why. Maybe somebody could explain why with  
2 so many tribes concentrated there that there  
3 wasn't one.

4 Another question that I have, and again as I  
5 mentioned earlier, since there are no more  
6 listening comments I hope we're going to go into  
7 dialogue, but I'm also curious again as to  
8 what was the impetus? Where did these questions  
9 come from? Who developed the questions, and for  
10 what purpose?

11 And what was the litigation that is  
12 referenced as far as you know behind looking at  
13 from a lawsuit and a court's final decision? I'm  
14 trying to wrap my head around that and find out,  
15 you know, for everything that's in here that we're  
16 looking at there had to be a reason behind it  
17 being included.

18 The other thing is, is that it was kind of  
19 troublesome what I heard that, you know John, when  
20 somebody was asking something that was outside the  
21 ten questions. The tribes dictate or basically  
22 lead the discussion. As long as it's in the  
23 subject matter it shouldn't matter, because ten  
24 questions are not what we're here to answer. Ten  
25 questions are what, you know, is what our issue

1 is.

2 Our issue is the promulgation of the new  
3 rules and regulations that were not asked for, and  
4 we're trying to find out why they're being put in  
5 front of us to be changed and/or modified when we  
6 didn't ask for this type of a modification.

7 And the other point I just want to make is  
8 that land is land, is land. And I keep hearing  
9 the distinction being made of economic  
10 development, health, human housing or gaming.  
11 Whatever the tribes need the land for is what the  
12 tribes need the land for.

13 Our rights to game are embedded in the Indian  
14 Gaming Regulatory Act, and if a tribe chooses to  
15 get land into trust it shouldn't take a different  
16 path or a different mechanism to determine that  
17 the tribe is entitled to that land back and  
18 according to trust.

19 Whether the economic development that a tribe  
20 chooses is, you know, a big-box store, a gas  
21 station or a gaming facility, it shouldn't matter  
22 because it's the tribe's right and it's the  
23 fundamental component of being able to redevelop  
24 and reestablish ourselves as governments, provide  
25 for our peoples jobs and opportunity, and provide

1 for the welfare and the well being of our  
2 committees. So it should be irrelevant what the  
3 end purpose is as long as we have strong  
4 government and governance over our own lands over  
5 which we have jurisdiction. It shouldn't have a  
6 tract, this tract for these purposes and this  
7 tract for that purpose.

8 But if we could get some answers and maybe  
9 bring this non-Indian way of sitting into a more  
10 Indian way of sitting and, you know, maybe bring  
11 us closer so that we can have a dialogue I think  
12 in our last 45 minutes, that might be more  
13 helpful.

14 Thank you.

15 THE HEARING OFFICER: Let me just -- real quick. I  
16 wasn't aware, I guess, that Jim promised a  
17 consultation in D.C. Do you have that in your  
18 notes from the talking session? Okay.

19 So I know that coming out of that we talked  
20 about -- and we haven't sent a letter out yet, but  
21 we are looking at scheduling an additional  
22 consultation in probably Rapid City. Without the  
23 Great Plains -- they specifically asked us, you  
24 know, we had originally intended to go out there  
25 as well -- and we're looking at the end of May.

1       So we have that.

2               In Oklahoma, didn't get strong requests to do  
3       it there, and I'm from Oklahoma. And maybe that  
4       colored my thinking as well. But we don't really  
5       have off reservation. And again, the focus of,  
6       you know, these consultations was intended to be  
7       the off-reservation acquisition process.

8               So we don't really have much in the way of  
9       off-reservation acquisitions in Oklahoma -- since  
10      a pretty good chunk of Oklahoma is Indian country,  
11      you know, the state.

12              And the only thing -- the only one that we've  
13      really had in quite a while -- we actually did  
14      just take the land into trust for the Shawnee  
15      tribe out in the panhandle. And I think that's  
16      proof that when you have a unique situation, you  
17      know, that those require unique consideration.

18              And they had both legislation that had some  
19      challenges working through to figure out, you  
20      know, what we can do for them. And at the end of  
21      the day -- and again, the tribe decision, they  
22      found this place out there. They worked with the  
23      local community. They had the support of other  
24      tribes in Oklahoma, you know. It ultimately  
25      became a great situation, and unfortunately it

1       took them a long time to get there.

2               I was actually on the hill, I believe,  
3       whenever the Loyal Shawnee Act was passed that  
4       separated them out from the Cherokee nation and  
5       provided them opportunities to go outside of the  
6       Cherokee reservation, which is where they had  
7       lived for 150 years -- and to do this. And it  
8       took them almost 20 years, you know, to get there.

9               So that's why, you know, we didn't at least  
10      have the perception that we needed to have one in  
11      Oklahoma. And again, the Oklahoma tribes -- a  
12      couple of them asked the question and I said,  
13      well, I don't think we have that big of an  
14      off-reservation issue there. And they agreed with  
15      me.

16              So if there's no other comments?

17   CEDRIC CROMWELL: Cedric Cromwell, Chairman of the  
18      Mash-Wampanoag tribe, and Vice Chair Jessie Little  
19      Doe Baird. And I gave my submission earlier.

20              In the spirit of consultation, John, I just  
21      want to ask you question. I mean, Sarah brought  
22      up the potential, you know, what is the proposed  
23      policy? I don't think that was your question. It  
24      was like, why is there language in here about  
25      removing land out of trust?

1           And I countered that by saying that there  
2           should be proposed language in there talking about  
3           how the department supports the tribe throughout  
4           the litigation process.

5           Now Chairwoman Maltais asked the  
6           question about litigation. It's clear it's about  
7           Mashpee. And so my question to you, John. You  
8           had made a comment to Sarah about you  
9           vigorously -- the department vigorously stands by  
10          tribes throughout the litigation process. I kind  
11          of missed that. What did you mean by that?

12          Because in our case the department is not  
13          standing by the tribe through the litigation  
14          process. You said that, and I'm trying to  
15          understand what that means.

16   THE HEARING OFFICER: So it's incumbent upon us to have  
17          a good decision-making process and you know,  
18          that's part of what these questions are aimed, is  
19          you know, are we doing a good job of that? Is  
20          there a better way we can build a record,  
21          particularly in the off-reservation context?

22          And so our intent always is to have a  
23          decision for the tribe that we can defend, and  
24          then when it gets challenged -- and these days  
25          they're challenged a lot, you know, we then have a

1 responsibility. We've made the decision, we have  
2 a responsibility to defend it.

3 Now at the end of the day we don't go into  
4 court ourselves. The Department of Justice goes  
5 in and represents us, and at some point, you know,  
6 there have to be decisions made about the  
7 litigation itself. And you know, what elements of  
8 the case are, you know, more or less easily  
9 defended and where you kind of point your  
10 arguments? And that's something sort of outside  
11 of the policy realm. That's really sort of a  
12 litigation strategy by the United States, again  
13 all aimed at trying to defend its decisions.

14 And at the end of the day, there is a  
15 litigation decision making process by the  
16 Department of Justice. I don't want to go  
17 overboard in trying to defend them where I don't  
18 work for them, but you know, they do also have to  
19 consider -- when we look at policy, right? We  
20 also have to look back and forward. At the end of  
21 the day how is policy to try to keep some kind of  
22 continuum? Right?

23 And they also do that on the litigation front  
24 because, you know, they're the nation's lawyers.  
25 So in a certain sense, you know, they have to be



1       aware of, you know, what the United States'  
2       positions have been in years past, where are  
3       things going that they can be in a good position  
4       to defend the United States in the future? And  
5       that impacts current day litigation, I think.

6               So that's part of their process as far as the  
7       litigation goes. And so I think that -- and I  
8       would guess that's kind of where they are in your  
9       case right now. And they have to make some calls  
10      on that. I don't know what those are. I'm not  
11      really -- I have to be honest with you. I'm not  
12      really that involved with that. Again, that's  
13      really the, sort of the --

14   CEDRIC CROMWELL: I'm just kind of -- to your point  
15      around when you responded to Sarah Harris, the  
16      councilwoman from Mohegan, that the department  
17      vigorously stands with the tribes throughout the  
18      litigation process. And that's not accurate.

19              And while there's a decision-making process  
20      by the DOJ which is the BIA's lawyer -- is the  
21      fact of the matter is the BIA should have a policy  
22      in place, a regulatory policy that says, you know,  
23      we will stand vigorously, as you said, with tribes  
24      throughout the process of the court decision.

25              I just want to be very clear with everybody,

1 and as I've said before, that we Mashpee are in a  
2 situation where the department is not standing by  
3 the tribe in litigation whatsoever. You left us  
4 up there hanging.

5 In fact, recently there was a negative draft  
6 released by the department which was an illegal  
7 activity. So it's unfortunate and hurting the  
8 face of American policy, especially the 1994  
9 amendment that talks about all tribes should be  
10 created and supported equally, and we see that's  
11 not the case here.

12 So I want to be very clear with the  
13 department and all tribes in this room, that the  
14 litigation is about Mashpee. That's a fact. And  
15 in fact, Congress has stepped up to the plate and  
16 submitted two bills, especially the committee of  
17 jurisdiction over the BIA to say, hey. Listen,  
18 you know, we see what's going on with the  
19 Interior, and these bills have been placed out  
20 there to support the tribe because the  
21 administration is not supporting our tribe.

22 So it's very sad that Congress' intent, which  
23 is important here on the IRA -- since the  
24 Termination Era to ensure that tribes have trust  
25 lands. Category one, two and three in the IRA are

1 very explicit. And our record of decision is  
2 about category two -- in the decision-making  
3 process that should be really supported by the  
4 department.

5 To the DOJ is that we stand by our decision,  
6 and that decision was reviewed by the DOJ as well  
7 before it was released. So it's not good, and I  
8 just want to call you on this statement that you  
9 said that we vigorously stand by our decision  
10 because that's the case -- the department isn't.

11 And so it's very upsetting. We are releasing  
12 a dear-tribal letter. And I'm asking all tribes  
13 in this room to support us on this with these  
14 congressional bills, because as most tribes in  
15 this room do have trust lands, ours is really  
16 being threatened. And Chief Smith, thank you for  
17 your support, by the way.

18 And I would hope that there's no tribes in  
19 this room or across America that's going to be  
20 working against Mashpee as these congressional  
21 bills are filed. Thank you for your time.

22 Vice Chair?

23 JESSIE LITTLE DOE BAIRD: And just finally I would like  
24 to say that I don't think anybody will disagree  
25 that the department has to have a process that can

1 be vigorously defended, and that is thorough and  
2 thoughtful, and I think it does.

3 Mashpee's application, for anyone who's not  
4 aware and to remind everyone in the room, is  
5 14,000 pages. Our application for trust is 14,000  
6 pages. It's very extensive.

7 So when the department was asked whether or  
8 not it wanted to defend its decision or if it  
9 wanted to find trust lands under a different  
10 category, the department had plenty, ample, ample  
11 support under either a one or two category, one or  
12 two -- and really should have gotten my people's  
13 back.

14 And during the process the department ensured  
15 us -- ensured us we will work with you and we will  
16 stand with you shoulder to shoulder if this  
17 decision is challenged. We were told that. And  
18 nobody is standing shoulder to shoulder with us  
19 right now from the department and that's really,  
20 really disappointing.

21 Thank you.

22 THE HEARING OFFICER: Thank you.

23 I'm not sure -- oh, do you have a comment?

24 Go ahead.

25 SCOTT SPRAGUE: [Pottawatomi Greeting.]

1           It's an honor to stand before you. I am  
2       Scott Sprague from the Match-E-Be-Nash-She-Wish  
3       Band of Pottawatomi Indians.

4           We don't disagree with what's being said here  
5       at all. In fact, we support what's being said.  
6       We know full well what millions of dollars of  
7       litigation can do to an Indian tribe, because we  
8       came that close to being wiped out. So what these  
9       good folks are going through, we're going to jump  
10      behind them as much as we can up in Michigan.

11          We don't want to see rules come into play  
12      that's going to make it harder and more difficult  
13      for our tribes to regain -- to hold onto their  
14      aboriginal lands. We've got a culture to defend,  
15      we've got children to raise, we've got a language  
16      to uphold.

17          Every bit of tribal land that we try to  
18      achieve, acquire is for that purpose, not --  
19      sometimes it's gaming. That's fine, but for the  
20      most part hunting, fishing, trapping, raising  
21      children, speaking the language. That's a  
22      beautiful thing. We love that and want to see  
23      more of it, and I know that's what's going on here  
24      today as well.

25          The question has been asked today, and I'm

1 going to ask it again myself. How long have these  
2 changes been contemplated? I'm guessing some  
3 bureaucrat was taking notes over the last five,  
4 six, seven years and saying, some day we're going  
5 to bring these back up.

6 Okay. Fine. What's causing the push now?  
7 And the next question is, do we have a date when  
8 these are going to potentially be implemented or  
9 rolled out? Is there a date in mind by the  
10 administration?

11 And that's a question.

12 THE HEARING OFFICER: We have no firm plans, dates.

13 This is part of the process of just determining  
14 whether there's a reason to go forward.

15 SCOTT SPRAGUE: Okay. And I appreciate you saying  
16 that, because I would certainly hate to think that  
17 these activities are just a box that's being  
18 ticked off saying, yeah. We talked to the  
19 Indians. Let's proceed with the changes anyway.  
20 That would be very disheartening.

21 I can tell you what's causing opposition when  
22 we put in applications for land in trust. That's  
23 all economics on behalf of the townships and the  
24 cities. And it all boils down to the same battle  
25 we fight with the local governments, the state

1 governments and even the feds, for the most part.  
2 It's a lack of education, a knowledge of what  
3 Indians are, why we're here.

4 The fact that we've always been here escapes  
5 everybody. There's nothing more disheartening to  
6 realize that people don't even realize that we  
7 lost our own homeland forcibly. We lost it  
8 because we didn't understand the European way of  
9 paying for land taxes -- and what was that? Guess  
10 what? You just lost your land. See you later.

11 And now, guess what? We're buying our land  
12 back just to regain our homeland, and then have  
13 the opposition of the township or a government  
14 saying, we don't like you doing that. It's hard  
15 to take sometimes. Right?

16 Anyway, so this lack of knowledge of who the  
17 Indians are and why we've been here is something  
18 we've got to fight every election. We've got to  
19 fight every time we turn around, and try to say it  
20 in a nice way that doesn't offend people. You  
21 know, not using that word that everyone's  
22 avoiding, too. I'm not going to say it either,  
23 but that's exactly what it is. These Indians,  
24 what are they up to? Why are they trying to take  
25 more land back?

1 I know up there in our little community when  
2 we started buying land we heard the comment, that  
3 makes us uncomfortable because they're trying to  
4 buy their land back. What are they up to? Isn't  
5 that amazing? It's just pure ignorance up there,  
6 but we'll fight that battle.

7 One thing I did have, it's a question I saw  
8 in the proposed regulation -- is that there was a  
9 new regulation that started a request -- let's see  
10 here.

11 The new requirement for the historical/modern  
12 connection such as the, you know, the tribal  
13 government office on or near the site. Do we have  
14 a definition of the word "near?" And is that,  
15 like, one mile? Five miles? A hundred miles?

16 I'd like to know a little bit more about  
17 that, because if that's the case that could solve  
18 a lot of our problems. Maybe it's that ambiguous  
19 for a reason. That's fine. We can use it to our  
20 advantage, but a lot of times that ambiguity comes  
21 back and bites us.

22 And I know the reasoning -- the questioning  
23 that was in there originally about the need and  
24 the purpose of the land, what you guys are going  
25 to do with this land. I realize that was in there



1 from the start, but it still kind of grates you  
2 when you realize, do I have to explain why I need  
3 my own land back? It is what it is. The  
4 education continues, I guess.

5 I just want to tell -- I just want to thank  
6 Chairman Butler and the people here for allowing  
7 us onto this land. It's a real honor to be here.  
8 Thank you, folks from BIA. It's an honor. I  
9 realize you are -- many times you folks walk a  
10 tight line as well, but we appreciate your  
11 efforts. We appreciate what you do, and keep  
12 doing what you can do to help us all out, because  
13 we're all beneficiaries of good decisions.

14 Thank you.

15 THE HEARING OFFICER: Thank you.

16 TRAVIS BROCKIE: Hi, John. It was a pleasure to meet  
17 you a couple weeks ago. I came a long way, three  
18 levels to get here, thirteen hours. I read that  
19 this was you guy's last consultation in Indian  
20 country. So our Chairman Julius, Jay Julius from  
21 Lummi asked the council and said we should send  
22 somebody knowing, you know, that the detrimental  
23 effects of that could happen if these new  
24 regulations are implemented.

25 I was going to read from my notes and I'll

1 read a few from my talking points, but I'm going  
2 to try to reiterate what has been said and what  
3 has been stated over and over again. And it's  
4 working with the local communities, the local  
5 jurisdictions that other municipalities  
6 surrounding our reservation -- that we have to  
7 deal with on a day-to-day basis.

8 And we applied for land in the fee-to-trust  
9 lots. You visited our land. You visited the area  
10 where we're proposing to build a field truck stop  
11 station, and the barriers we're facing to get that  
12 under construction. As senior water rights  
13 holders, we're having these things trying to get  
14 water because we have to hook up a water main all  
15 the way to our reservation that's going to be over  
16 7 to 8 million dollars. So that will put us back  
17 there if we go that route.

18 The City of Bellingham is proposing  
19 1.5 percent more in fees than they charge other  
20 businesses. The City of Ferndale, where some of  
21 the property is, is they won't give us an easement  
22 permit to allow us to close out our loan. They  
23 won't vacate a road that leads to nowhere. And  
24 these are some of the issues that we're facing  
25 when we put land into trust and those are some of

1 the issues that we want to get addressed, and  
2 these proposed rules where we should have the  
3 upper hand in what is done with our lands that we  
4 asked to put in the trust.

5 I do this for my generations before me, our  
6 future generations just like every other leader  
7 here does. And it is my duty as an elected  
8 official to push that issue.

9 And we had a meeting recently with the City  
10 of Ferndale again in regards to getting an  
11 easement and vacating the road, and that city  
12 administrator, his name is Greg Young. He is  
13 anti-Indian. He hates Indians and he used to work  
14 for the used to work for the City of Marysville.

15 The city of Marysville is where the Tulalip  
16 Tribe is located at. So he fought those guys for  
17 years and lost and lost, and lost and lost. Now  
18 he wants to fight us because Ferndale knows what's  
19 at stake, which is nothing. They think that  
20 they're going to lose out on tax base. They think  
21 they're going to lose out on tax revenue, but  
22 they're not. We're growing as a nation and they  
23 want to stop that, the same with the City of  
24 Bellingham.

25 We have a good relationship with our County.

1       Former Chairman Kim Ballou was elected as a county  
2       councilmember recently. So we're building  
3       relationships there.

4             But I'm going to end on some of my talking  
5       points. If you are sincere in your desire to  
6       streamline and improve this process, you should  
7       give far less weight to the concern of local and  
8       state jurisdictions. Give no weight to the  
9       concerns of anti-Indian members of the general  
10      public which every tribe/nation has dealt with  
11      over the years.

12            Allow folks at the local level to do their  
13      job with as little interference from D.C. as  
14      possible. And please stop pretending that these  
15      changes are intended to improve the fee-to-trust  
16      process.

17            We're a 12-thousand acre tribe,  
18      that's including our tidelands. Forty percent of  
19      our reservation is wetlands, so we have the need  
20      to grow and expand and reclaim our lands. And I'm  
21      sure a lot of tribes in the Northwest were put in  
22      the area where there were a lot of wetlands, where  
23      nobody had the desire around the treaty signing,  
24      instead to acquire that land.

25            Thank you for your time and it's an honor to

1 be here and to be here with all these other tribal  
2 leaders. Thank you.

3 Travis Brockie, Vice Chair, Lummi Nation.

4 LANCE GUMBS: Lance Gumbs, Shinnecock Nation, once  
5 again.

6 As a consultation, you know, I do have a  
7 question. In speaking with several officials and  
8 including Mr. Cason, the discussion came up about  
9 the restricted fee land. It is in your 151  
10 regulations. There's a definition of it. So I'm  
11 not quite sure why there seems to be this, this  
12 notion that no one knows anything about it.

13 I mean, it's on the energy website. It's in  
14 your 151 regulations several times here. And I'd  
15 like to get some sort of sense of what the problem  
16 it would be with looking at restricted fee land,  
17 you know, as well as trust land.

18 You know, this is all about, you know, trust  
19 land, trust land, trust land, but you know, we  
20 have nine tribes in New York State that have  
21 what's considered restricted fee land that is  
22 owned by us. And I just want to go for a minute  
23 to some of the statements about opposition, you  
24 know, from your local communities.

25 We have a piece of land that we were going to

1 do gaming on. This land has been on no tax map  
2 since the inception of New York State. It has  
3 been labeled from the date that New York State  
4 took over as Indian land. It's not a trust land.  
5 Indian land, restricted land as the terminology is  
6 considered today.

7 And yet our local community sued us, and they  
8 not only sued us for the gaming issue, but they  
9 sued us on our very existence. Like, do we really  
10 exist? Are you really that Shinnecock people that  
11 was here in 1640 when we decided to come in?

12 We gave the Town of Southampton, the village  
13 or the colonial people at that time, we gave them  
14 eight square miles of land which became the  
15 village of Southampton, one of the oldest  
16 communities in New York State. And yet they have  
17 the audacity and the nerve to challenge us as to  
18 who we were.

19 It went beyond gaming. It went to our very  
20 existence, to the core of who we are as people.  
21 And that's disturbing when you put in these  
22 regulations, should a town or a village, or a  
23 municipality or anyone have any kind of say in  
24 what your tribe wants to do, and especially with  
25 land that we already have, that we have already

1 owned that has predated everything there. It  
2 predated their existence.

3 So I'm curious to know, you know, where? You  
4 know, because in the conversation and the  
5 listening session in D.C. that we had at NCAI  
6 Mr. Cason asked for comments how we can look into  
7 putting, you know, land into restricted fee. And  
8 I'm not sure I understood that question because  
9 it's in your documents.

10 So could you give me some insight as to this,  
11 because no one seems to be able to speak about  
12 this? And it's not going to go away, because I'm  
13 going to be at every meeting and every situation  
14 dealing with restricted fee land, because that's  
15 what we want. As the Shinnecock nation, that's  
16 what we're entitled to.

17 So can you give me some insight on this so  
18 that, you know, it helps me understand why you  
19 have it written in multiple places and nobody can  
20 discuss them?

21 THE HEARING OFFICER: I'll take a stab at it. I  
22 think -- and actually I'll let Paula see if she  
23 knows anything, too. So I think that -- so  
24 historically there's what we now recall restricted  
25 fee, or original Indian lands in New York State or

1       some other places around the country. The other  
2       big area is the Eastern Oklahoma.

3   LANCE GUMBS: And the Pueblos.

4   THE HEARING OFFICER: And the Pueblos, yes.

5               And so I think they're developed -- I mean,  
6       I've asked this question and I think they're  
7       developed over time primarily in the solicitor's  
8       office within Interior, but sort of this internal  
9       legal -- I wouldn't even call it an opinion. Just  
10      like this legal thought that that was kind of an  
11      historical oddity.

12             And that, you know, starting with the IRA  
13      really, you know, the department should be doing  
14      land into trust for tribes if they're acquiring  
15      new lands, et cetera. And I think it's only, you  
16      know, sort of in recent years there was a big land  
17      settlement. Right? With the Senecas, and that  
18      the issue sort of raised itself again.

19             And the question was, I think, posed to the  
20      department then. You know, is this a way that you  
21      could handle? You know, does it have to be in  
22      trust? Is there another mechanism for tribes to  
23      own and be able to exercise governmental authority  
24      over land?

25             And so I think that was sort of positively



1 answered in the Seneca situation. And it's been  
2 this slow turn of wheels internally at the  
3 department. And I'll keep blaming the solicitors,  
4 I guess. You know, as they've tried to think  
5 about now, okay. One, getting out of just the  
6 mindset that we're not -- that the government is  
7 not really doing that anymore, and maybe we are,  
8 and how would we do it? How would we process  
9 that?

10 Again, I think the regulations largely  
11 reflect the fact that historically there's always  
12 been some restricted fee land and how we deal with  
13 it, and so we couldn't totally ignore it. It's in  
14 the regulations, but I think again the perception  
15 for a long time was that just dealt with the  
16 existing restricted fee lands and you know, we  
17 weren't adding more to that.

18 And so I think -- and you heard from Jim. I  
19 think, you know, there's a real interest in seeing  
20 are there other, you know, ways that tribes can  
21 own land, use it for their own purposes  
22 beneficially? And certainly at least from our  
23 boss, from the secretary, he's very interested in  
24 the tribes being able to exercise their sovereign  
25 authorities. Right?

1           So are there other avenues besides purely  
2       land into trust that they can acquire the land and  
3       be able to do that? And obviously this was  
4       something that was -- this was a scheme or a  
5       dynamic that was there before. And so there's  
6       some interest in looking at it and seeing, you  
7       know, is that something we can make work again?

8           And that's kind of what Jim was trying to  
9       say. And if you've got thoughts -- you guys hire  
10      lawyers, you know, help us out with that thinking  
11      process. We'd love to hear that I think -- is the  
12      idea.

13   MS. HART: When I started at the Bureau I looked into  
14      this question because of my tribe. And what I  
15      found in the historical records at the Bureau was  
16      for the Mohawk tribe, there was a question that  
17      came up under Indian house services as to whether  
18      or not this is Indian country.

19           And they questioned whether or not the  
20      existence of our whole reservation, like how was  
21      it held? And is Indian country where the  
22      secretary has the authority to service those  
23      people that live on that property? And at that  
24      point they then acknowledged that it was in  
25      restricted fee and that it was Indian country.

1           This came up again with the Indian gaming  
2 regulatory act because it talks about Indian  
3 country and what is Indian country. So we've been  
4 looking at it like that, and I think what we  
5 haven't done is said, okay. Can we create this?

6           When we looked at in the Seneca case  
7 congress, there's a settlement act that Congress  
8 specifically speaks to restricted fee and how the  
9 tribe from this point forward can get restricted  
10 fee from that settlement.

11           When I questioned -- and I'll, a lot, blame  
12 the solicitor's office, because when I went to  
13 them and I said, you know, why should any of the  
14 New York tribes have restricted fee -- not have  
15 restricted fee, because that's all there has ever  
16 been?

17           Of course, then there was the Sheryl case  
18 that came down that addressed restricted fee and  
19 then said, okay. The land has to be taken into  
20 trust in order for the tribe to get jurisdiction  
21 back.

22           So the solicitor's office looked at that  
23 litigation and then acted accordingly, but when I  
24 go back to them and ask them, well, wait a minute.  
25 Why shouldn't we be doing restricted fee? They

1 keep coming back to me saying, there was no  
2 mechanism that creates the restricted fee like an  
3 act of Congress in the Seneca case where they gave  
4 us the authority to take the land in restricted  
5 fee.

6 So that is the -- I guess the question that  
7 we have not resolved on how -- how does it start?  
8 Who says it can be restricted fee? Or what's the  
9 legal starting point to get to restricted fee?  
10 And like I said when I looked into how restricted  
11 fee came about it was just a question that the IRS  
12 asked about the tribes in New York. Is this  
13 really Indian country?

14 And the land was in restricted fee, and then  
15 if you look at that solicitor's opinion -- I think  
16 it was in the seventies. They kind of said, well,  
17 we really don't know what else it is, but we will  
18 conclude it is Indian country for the purposes of  
19 the federal government.

20 And I can actually share that information  
21 with you. So you can see kind of how the federal  
22 government didn't know how to handle restricted  
23 fee land from the beginning. And that's an  
24 historical -- and I think we're still trying to --  
25 and then we get a case like Sheryl that's says,

1 wait a minute. You can't -- the tribes can't just  
2 purchase it and all the sudden it's Indian  
3 country. They have to take some kind of -- so  
4 that kind of blurs. The solicitor's office is  
5 thinking when they say, how do we get back into  
6 Indian country in restricted fee?

7 So you have to kind of put the pieces  
8 together to see where this all started and then  
9 you'll see how we are right now and how their  
10 position is. Okay.

11 We look at Seneca and they're creating  
12 restricted fee every day, but in their settlement  
13 act Congress said, this is what you have to do and  
14 it can be taken into restricted fee. So what I  
15 asked the solicitor's office, well, what do we do?  
16 Well, we have an act of Congress that says this is  
17 what we do.

18 So I think that's what you're looking for.  
19 What is it, or who is it that says we can make  
20 this restricted fee? And where do you get the  
21 authority to do that?

22 THE HEARING OFFICER: Does anybody want to make a  
23 statement for the record? Has everybody had their  
24 chance?

25 So I'm happy -- I would encourage you to -- I

1 know you've asked -- stated questions. I would  
2 encourage you to ask them again just because I've  
3 tried to take notes, but make sure.

4 Again, so I'm happy to ask questions and have  
5 a dialogue on your specific questions if you don't  
6 mind asking again the question, and kind of go  
7 through it.

8 CHERYL ANDREWS-MALTAIS: We started with asking where  
9 the questions came from, or at least that was one  
10 of the things that I was curious as to what was  
11 the impetus behind these questions, who developed  
12 it and where they came from?

13 THE HEARING OFFICER: So I think that my  
14 understanding -- and there's a couple of thoughts  
15 that went into this. And it started before I came  
16 into the department, but I added mine to that.  
17 So --

18 I know that several folks, including  
19 Mr. Cason, you know, had been working in the  
20 department in the two thousands. And some of  
21 these questions were asked then. There's  
22 questions about why does it take so long. There's  
23 questions about why tribes -- some tribes get land  
24 in trust off reservation when others don't. Some  
25 tribes are opposed to other tribes getting land

1 off reservation in the particular area that  
2 they're asking for, and questions about how to  
3 deal with that.

4 When I was working in the Senate, I had all  
5 the same questions asked of me. And we, you know,  
6 so when you're in the Senate you can propose  
7 actual legislative changes. Right? To address,  
8 you know, an issue if you want to. Right?

9 And so -- and we went through that exercise.  
10 So now from the administrative side, as you know,  
11 you know, you have to kind of build a record and  
12 talk about what you want to do.

13 And so part of this exercise is to say, you  
14 know, one, are there still concerns? And we still  
15 hear them from tribes. It's not understanding  
16 that tribes often don't like to publicly disagree  
17 with each other. And so it's why, you know,  
18 there's not like a public list out there of who's  
19 opposing who and whatnot. Right?

20 But they do raise issues and questions. And  
21 so then that brings us around to whether there  
22 could be a change in the regs that would address  
23 those issues. Can we do it in a way that would  
24 make the process better, because that's another  
25 complaint?

1           And you know, so is the way to do that --  
2           administratively, of course, is ultimately you  
3           have to change your regulations if you're going to  
4           do that. And how do you do that? You know, well,  
5           we start with consultation. We start and you just  
6           to try to build sort of a bank of information that  
7           you roll forward for, or roll forward with.

8           So to go through that exercise -- and I think  
9           somebody raised, you know, the point that in the  
10          last administration I think they put a number on  
11          the board. Right? Where we're going to take this  
12          much land into trust. So that's an objective of  
13          the -- you could say that's an objective of the  
14          program that they had. Right?

15          So again, the question is, so what do you  
16          think the program should be? Should it be just  
17          trying to take as much land in trust as you  
18          possibly can? Should there be some focus? Again,  
19          in trying to keep the context to the  
20          off-reservation acquisition process.

21          Or should there be focus on particular needs?  
22          And again, I know some people are of the opinion  
23          that gaming should be kept in with everything, and  
24          some tribes are of the opinion that it should be  
25          separated out. Because you have to be honest.



1 Gaming brings a lot -- it's got a whole separate  
2 statute that it brings in with it.

3 As far as the interactions with states and  
4 other jurisdictions, it brings another level of  
5 complication with it that's usually things like  
6 housing, cultural use. All these things have much  
7 less of that dynamic.

8 And so, you know, would it be helpful to do  
9 that? To have at least a slightly different  
10 process or some additional steps that you would do  
11 for gaming that you wouldn't do for other  
12 acquisition purposes?

13 So you know, these are just questions to ask  
14 and say, if the thought is that there would be a  
15 good way to do that, then you know we can have a  
16 further discussion about that. And maybe that  
17 leads to a change in the rules.

18 So that's sort of -- and at the back, of some  
19 of the questions. Right? How do you address --  
20 or are there objectives? Are there new  
21 objectives?

22 The Indian Reorganization Act is getting  
23 pretty old. And I know I've heard the comment  
24 from some tribal leaders that, you know. Well, we  
25 don't really need anything but the act. The act

1       says the secretary can take land in trust, and  
2       that's a great thought, but that's kind of not how  
3       we work the government nowadays. Right?

4               When it's a discretionary act by a government  
5       official, that official has to document how they  
6       make the decision. Right? Otherwise it's  
7       arbitrary and you automatically lose that case.  
8       Right?

9               So you know, is there a way to go about this?  
10      When you look at the history of the regs, I said  
11      at the beginning there weren't even any land  
12      fee-to-trust regulations. I think there was some  
13      kind of a checklist or something before 1980.

14              And you know, really when you think about it,  
15      the timeline, you know, so you have sort of the  
16      reengagement of tribes in the sixties and the  
17      seventies. You had the beginnings of  
18      self-determination, and so you have really the  
19      federal government becoming active again,  
20      supporting tribes and letting tribes, you know, be  
21      more active for themselves.

22              And that of course brings with it, you know,  
23      interactions positive and negative with other  
24      local communities. And so I assume by the 1980s  
25      the decision was made that we've got to have some,

1       some basis in regulation to say that we are making  
2       well-thought-out decisions.

3               And then from that point the regulations, you  
4       know again, I've gone through several iterations  
5       usually in the context of litigation. And you  
6       know, things like -- I know again, a lot of tribal  
7       leaders don't like the notion that local  
8       communities, you know, get the opportunity to  
9       comment and that we have to address those  
10      comments, but that's a fundamental aspect of  
11      United States law and regulatory action that  
12      impacted parties, you know, get to have a comment.  
13      And we have to address those comments in some way.  
14      We can't just totally ignore them.

15             So you know, we go through things and we now  
16      have, you know, these environmental laws. And  
17      those dictate again that there is a scientific  
18      assessment that there are impacts, and those  
19      include impacts to local communities and other  
20      people around there. We have to address those  
21      impacts. That's just part of the process that we  
22      have to go through.

23             And so you know, those aspects that have also  
24      sort of been made part of the regulations over  
25      time, and we've had several cases, you know, where

1 the courts have said, you haven't built up your  
2 process well enough to address, you know, those  
3 issues. And so the regs were changed to try to  
4 address those.

5 At the end of the day, you know, there have  
6 been a couple of cases in which there was a great  
7 deal of concern that if it went -- especially if  
8 it went to the Supreme Court, that the  
9 fee-to-trust statute would get struck down,  
10 because again it's an old statute.

11 In that those days they wrote them very  
12 broadly without much direction, you know, to the  
13 administrations on how to implement it. And you  
14 know, from time to time those get struck down for  
15 being vague, constitutionally vague.

16 And so you know, again some of these changes  
17 in regs were to address court cases in which the  
18 federal courts raised the concern that there  
19 wasn't a lot of statutory guidance. And the  
20 department has tried to fill that in with, you  
21 know, a regulatory structure to address the  
22 constitutional issues raised in those cases.

23 So that's, you know, part of what brings in  
24 these other aspects of the laws, and make sure  
25 we're addressing them. And I mean, the way I'd

1 look at it ultimately in the day is we have to go  
2 through all of that so that when we make a  
3 decision for the tribe we can defend it.

4 And you know, I think it's a horrible  
5 situation to be in, obviously, whenever a decision  
6 is made and we're having a hard time defending it,  
7 I mean, the federal government does a pretty good  
8 job of defending its decisions. We win the vast  
9 majority of cases, but the few times that we lose  
10 or, you know, we have to make adjustments to avoid  
11 losing, you know, it's really hard, hard on real  
12 people, hard on communities.

13 And in our context it's hard on the tribal  
14 communities, and that's a difficult thing to face  
15 for the community. And we, you know, I hate to do  
16 that.

17 So that's been a long way around to say that  
18 I feel like we have to have a commitment to making  
19 sure that we have a process for the  
20 decision-making process. Again, off reservation  
21 raises a number of other issues. They raise a lot  
22 of -- there's political concerns. You have to be  
23 realistic and understand, too, that you know, not  
24 just politics with local communities, but we have  
25 national politics.

1           And when off-reservation decisions are made,  
2           you know, we often get inquiries from congressmen  
3           and from senators about what's going on here. And  
4           it's helpful for us to be able to explain to them,  
5           well, no. This has been a pretty good process  
6           that, you know. Or to say, well, you know. It's  
7           been a difficult process. The tribe does not have  
8           a good relationship with the local community and  
9           that's why you're hearing from them. And this is  
10          what the tribe is doing to address that.

11          And you know, when we have that kind of  
12          information it helps us to address those, those  
13          concerns as well because at the end of the day we  
14          are subject to congressional oversight and you  
15          know, we do have to respond to those inquiries.

16          And so I don't know if, you know, changing  
17          the regs and, you know, if these questions would  
18          help in or not. That's part of what we want to  
19          talk about. You know, it seems like as we talk  
20          internally and we talk with some tribes that  
21          maybe, you know, if you answer some of these  
22          questions, however you want to answer them, that  
23          that can guide us down the road of answering the  
24          question.

25          So are the regs good enough as they are now?

1       Should there be some improvements made? And  
2       that's kind of where this whole process started.

3               Like I said, when I came in, you know,  
4       Mr. Cason honestly said, John, do you think it's  
5       worth asking these questions?

6               And I said, yes. I think, you know, I think  
7       it's worth going through this process to  
8       determine, do we have a good process? And, you  
9       know if we have a good process for off reservation  
10      we totally take the heat off of on-reservation  
11      process.

12              So that's a really long-winded answer.

13   MS. HART: I just want to add something. I think the  
14      other thing that happened -- and since the last  
15      time Mr. Cason was here, unfortunately like Ernie  
16      said it's only 1 percent that deals with gaming.

17              But what happened is in those gaming  
18      applications we went through the 292 process where  
19      we reached out to the communities and we said,  
20      this is what we need from you. We need to hear  
21      from you -- and those are the gaming applications.

22              But I think that the communities then, I  
23      guess, produced these, or groups like Stand Up For  
24      California and Say No To Casinos, and they said,  
25      wait a minute. If they do this for these

1 applications let's do it for all the applications.  
2 And when we didn't do it for the non-gaming  
3 applications then they went to their congressmen  
4 and senators.

5 And I do agree with what John said. We get a  
6 lot of congressional inquiries and they say, wait  
7 a minute. We didn't get a letter saying -- and  
8 we're like, it's not a gaming application. That's  
9 not part of it.

10 And so it's the communities out there got a  
11 little whiff that we can act. When it's a gaming  
12 application then they want to carry that over to  
13 everything else. Call their congressman, the  
14 congressman calling, senators calling constantly.  
15 And Mr. May and I were talking this morning where  
16 Senator Schumer is calling in, has questions.

17 So when Jim talks with them and these  
18 questions come up, and he wants the answers. And  
19 so the best thing to do is produce them for  
20 consultation like this and make sure you guys are  
21 aware of any questions that Congress is asking.

22 KITCKI CARROLL: If I may? So on your last point about  
23 the congressional members, the honest part of that  
24 conversation is well more than half of those  
25 congressional members making those inquiries don't



1 have any regard, understanding, respect for their  
2 responsibilities to these charged relationships.  
3 Let's just have an honest conversation about this  
4 whole thing.

5 But three points that you made that I want to  
6 respond to. One is about this didn't start out  
7 instantly with ten proposed questions. So that  
8 comment that Cason and yourself posed these  
9 questions to think about the process as the start  
10 of this engagement, that's not where this started.

11 This started with something else that  
12 eventually got pulled back because there was a lot  
13 of pushback from tribal leadership, and it evolved  
14 into ten questions. So even the messaging around  
15 this since this initially started has changed over  
16 the course of time.

17 THE HEARING OFFICER: Can I, just real quick?

18 So I think that's yes and no. So the initial  
19 thought was just to say, are there changes in the  
20 regs that would be beneficial? And we have this  
21 process in which we have a hard time judging,  
22 frankly, with the tribes what's the right time to  
23 go to consultation, or not.

24 And sometimes we can go out and say we want  
25 to talk about kind of this big idea and the tribes

1 are like, well, you don't really need to come talk  
2 to us until you've got a more concrete idea of  
3 what you want to do.

4 At other times we come out with something and  
5 say, okay. Here's a little more concrete piece.  
6 It's not set in stone. Let's just start the  
7 discussion with this. And the tribes go, wait.  
8 Wait. You acted way too fast, which is what  
9 happened in this situation.

10 So what we did is took a step back and, you  
11 know, Jim and I sat down and said, what were the  
12 fundamental questions that we were looking to get  
13 answered by putting the first piece out? Okay.  
14 Well, let's put them in question form and we'll go  
15 out to the tribe. So that's what the process was.

16 KITCKI CARROLL: Okay. Fair enough, but listen. This  
17 issue is land. There isn't a single more  
18 important one than land because it permeates  
19 through every other issue that we talk about. So  
20 if that's true, there should have been more  
21 thought behind we're going to roll something out  
22 that's fundamental to tribes, the foundation to  
23 their existence of land. We better be very  
24 careful about how we proceed forward as not to  
25 create a misperception about what our intentions

1 are.

2 Because part of the blowback that you were  
3 feeling months into this process is blowback over  
4 perception, because we're in a seat right now  
5 where we don't have a clear picture where this  
6 administration stands on things. So we're in a  
7 position left to kind of fill in the blanks about  
8 what the intentions are behind this coupled with  
9 on the congressional side things that have been  
10 going on in the congressional side as it relates  
11 to land and pushback that we had to do in that  
12 space. So we're in our shoes piecing all these  
13 things together trying to come to an understanding  
14 of why these things are happening. Okay?

15 The second point, though, you mentioned a  
16 recognition that tribes don't like the notion of  
17 having to give local communities, states  
18 consideration in these processes. I'm not an  
19 expert on the other side, but I would sure hope  
20 that that same concept is reciprocated on that  
21 end, because to my knowledge I don't know if  
22 whether that's the truth.

23 So whether a state or a community is taking  
24 actions, or whether those same sorts of  
25 considerations are given to tribal leaders to be

1 engaged in those processes, to chime in about  
2 something that's going to impact them, I'm curious  
3 as to whether those same sorts of considerations  
4 are part of statute, or part of the process in the  
5 same way that you're framing them about why we  
6 have to accept them from this perspective.

7 The third thing is, it's interesting because  
8 one of the things the organization that we are  
9 involved in -- because we organizationally take  
10 the position that the current trust model is  
11 systemically flawed. You will never hear our  
12 organization say that it's perfect. It's littered  
13 with problems at its very core. Right? So let's  
14 just start there.

15 But one of the things that we got pushback  
16 from on the administration within that space to  
17 kind of redefine things was a cautionary tale of,  
18 be very careful to not overly define things so you  
19 lose the advantage of ambiguities in your favor.  
20 So that's what we're being told in this space, but  
21 then what I'm hearing you in this space say is,  
22 there's too much ambiguity and therefore we've got  
23 to define this in a much sharper way, because what  
24 I was taught -- and I'm not a lawyer. I'm not  
25 claiming to be one. I thought ambiguities were

1       supposed to be in our favor.

2               So it's the language that's being used that's  
3       causing all these red flags to be thrown up,  
4       because they're not jiving with one another. So  
5       if that's your intention, that's really where  
6       there needs to be some conversation of where those  
7       intentions are going.

8   SARAH E. HARRIS: And I just want to pick up where  
9       Kitcki is -- Sarah Harris from the Mohegan Tribe.

10              I agree that the department has, you know,  
11       the authority to cabin off its discretion and make  
12       cuts, like, within the IRA where there are  
13       ambiguities.

14              That being said, it feels like those  
15       ambiguities are being resolved in ways that are  
16       not ways that favor Indian country at all. And it  
17       seems that the department is trying to cabin off  
18       its discretion in a way that gives more leverage  
19       to, you know, states or local governments or third  
20       parties, or however. I mean, that's what it feels  
21       like.

22              So if the department is seeking -- and, I  
23       mean, the department does have discretion in some  
24       areas which is the point that I was getting at  
25       earlier with, you know, you're going to follow

1 court orders. Well, of course the Department of  
2 the Interior, if it chose to follow a court order  
3 could follow a court order. But why would the  
4 department in this context memorialize that in a  
5 regulation in a way that seems like it's always  
6 going to cut against Indian country.

7 So I don't -- I guess that's where -- when I  
8 see what -- I mean, I'm not going to say that the  
9 trust process is perfect, or that it doesn't, you  
10 know, have its issues or anything like that, but  
11 it feels like the way that things that are trying  
12 to be resolved aren't the problems that Indian  
13 country has with the trust process. It's problems  
14 that other people have with the trust process.

15 THE HEARING OFFICER: Understandably. Right? It's --  
16 other than length of time and cost, we don't find  
17 the tribes complaining a lot about us taking land  
18 into trust for them. So right. We have to  
19 address the other folks. I mean again, we're a  
20 government agency. And we have this, you know, we  
21 have constitutional and statutory framework that  
22 we have to --

23 SARAH E. HARRIS: But addressing them is different than  
24 giving them -- than the department cabining their  
25 way, like, cabinet-ing off their discretion in a

1 way that favors them that I think inappropriately  
2 considers their -- gives inappropriate weight to  
3 their concerns.

4 The department can say where they're going to  
5 put the weight. You need to consider them and  
6 address them, and I think that there's ways within  
7 the existing law and the treaty and the trust  
8 relationship with tribes to explain that.

9 THE HEARING OFFICER: Okay, but I think we try to. And  
10 maybe this bleeds over. I did want to address  
11 Kitcki's point about the ambiguities.

12 And so yes, it's one of the fundamental  
13 tenets of Supreme Court jurisprudence that  
14 ambiguities in treaties and statutes are read in  
15 favor of the tribe, because the tribe was  
16 considered the weaker party in that negotiation,  
17 sort of historically.

18 I think though -- so one is that doesn't  
19 apply to us trying to apply our own laws to  
20 ourselves. Right? And trying to interpret them  
21 ourselves. In fact, I think the courts are pretty  
22 impatient with the agencies when they don't try to  
23 clearly implement statutes in particular. And you  
24 know, they want us to be as clear as possible.

25 It's also -- you know, I think it's incumbent

1       upon us when we talk about, you know, so when you  
2       get down more granular to regulations that direct  
3       action by officials, that it be very specific  
4       about what they have to do to meet our statutory  
5       requirements and other legal requirements, and  
6       that there not be any ambiguity in that, because  
7       those ambiguities ultimately can lead to bad  
8       decisions and bad, bad court cases.

9               So I think the ambiguity is great on the  
10       tribe's side, but it's not our job to create  
11       ambiguities. It's our job to try to clear up  
12       ambiguities to the extent that we can.

13              And I don't know where -- who may have told  
14       you that. It sounds like somebody told you  
15       something different, but I don't think that's --  
16       that's not the way that we are trying to operate  
17       it in the department.

18              We're trying to strictly follow the law and  
19       make sure that we have covered our decisions with  
20       both a legal and a factual basis that supports  
21       those decisions and doesn't leave room. I mean,  
22       if we've done our job well there is no ambiguity.  
23       We've made a positive decision for you that is  
24       defensible with no ambiguity. And so --

25   KITCKI CARROLL: So I'm not criticizing the guidance,



1 because actually I find it to be a good insight,  
2 that we have accounted for that suggestion in the  
3 work that we're doing. What I would, though, do  
4 is follow Chairman Cromwell's comment that he made  
5 about litigation support expectations.

6 So if the ambiguity exists on the statute  
7 side, then on the regulatory and communications  
8 side you guys have the flexibility to implement  
9 regulation that's to our advantage. Not to  
10 sharpen it in a way that moves away from ambiguity  
11 existing in statute to something that works  
12 against our favor on the regulatory side.

13 Because then, what your job then is -- to the  
14 Chairman's point, is to defend us to the end.  
15 That's what a trustee is supposed to do. They're  
16 supposed to defend us to the end, and it shouldn't  
17 be on the tribe's back to be paying millions of  
18 dollars to defend decisions that you guys are  
19 making, which are done in a way that uses those  
20 ambiguities to our favor.

21 And it's not even -- the only thing I'm going  
22 to push back on is it's not a weaker position and  
23 that may be the way the Supreme Court spoke of it.  
24 It's a recognition this was European law being  
25 imposed on tribes and we didn't have that same

1 level of knowledge about European law. It's not  
2 about weakness as sovereigns, or weakness as  
3 individuals, it's two worlds crashing together  
4 that we didn't understand how that was being  
5 implemented against us upon us, but that's not  
6 even my point.

7 The point is those ambiguities should be  
8 working in our favor, and as the administrative  
9 side of the equation our expectation is as you are  
10 propagating regulations that that carry forward to  
11 our advantage. That's the way it should be  
12 working.

13 THE HEARING OFFICER: And I think we in good faith do.

14 So you know, it's just going over six months now  
15 I've been in the department, but my observation,  
16 you know, in our process now, I look at  
17 regulations, you know, that are in place that  
18 we're taking actions under.

19 My observation is that if there is a question  
20 there we interpret the statute consistent with  
21 Supreme Court precedent, which you know, would say  
22 that we will interpret it in light of the best  
23 interests of the tribes. That is our role as a  
24 trustee and we do that when we're putting that  
25 into a regulation to take action.

1           And so I don't know how else -- so again, I  
2           don't know how else we would address that. I know  
3           when the regulations have been developed, if there  
4           is -- I've have seen a couple of times. We have  
5           an express statement, you know, the statute could  
6           be interpreted a different way.

7           If we're interpreting this way it's because  
8           it's consistent with our role as trustee. It's  
9           consistent with our sort of long-standing  
10          precedent, similar or the same issues, et cetera.

11       SARAH E. HARRIS: I think that, to me, what it really  
12          is, is that you're interpreting the statute in a  
13          way that's consistent with this administration's  
14          policy, and you're trying to get in a regulation  
15          that will last much longer. And that ultimately,  
16          I mean, is the way that it is. I mean, that's  
17          what it is.

18       THE HEARING OFFICER: I'm sorry. I would disagree with  
19          you on that. I mean, I think that -- so you know,  
20          you have, as a government official, you have a  
21          requirement to faithfully interpret the law.

22       SARAH E. HARRIS: Agreed.

23       THE HEARING OFFICER: And it doesn't -- ultimately, you  
24          know, I'll just express this as my personal view.  
25          It doesn't do you a lot of good to take a sharp

1 left or right turn on policy when it comes into  
2 regulations, because regulations are changed by  
3 the next administration. Right?

4 What is effective is to have, you know, sort  
5 of a continuum of policy. And you stay, you know,  
6 and if there needs to be adjustments made you make  
7 those, but you try to stay consistent over time.  
8 It's the best legally defensive position for the  
9 government. It's the best policy position  
10 ultimately for the government.

11 You know, unless there is some crisis that  
12 there needs to be a major change made, my  
13 observation is that, you know, administration to  
14 administration rarely is these huge, you know,  
15 sharp turns on regulations.

16 SARAH E. HARRIS: Well, then I guess I'm just wondering  
17 what the crisis is here.

18 THE HEARING OFFICER: Well, I think there's no crisis.

19 I mean, this is a question of, you know, can we do  
20 this better? And again, looking at off  
21 reservation in specific, is there a better way to  
22 do it?

23 SARAH E. HARRIS: Yeah. I mean, there are different  
24 criteria for on reservation and off reservation  
25 currently. There's a separate process for gaming

1 regulation that doesn't sort of let the gaming  
2 piece bleed into the fee-to-trust land acquisition  
3 piece.

4 So those things exist currently. I mean,  
5 maybe the department could do a better job of  
6 building up its record in support of a particular  
7 case for when it does hit litigation.

8 THE HEARING OFFICER: But there is bleed over. Right?

9 I mean, we have separate EIS's that are done for  
10 the land into trust and for the gaming piece. I  
11 mean, why wouldn't we do the same -- I don't know.

12 SARAH E. HARRIS: Fine, practice-wise. But I mean, the  
13 criteria, I guess, is just -- I mean, where there  
14 are efficiencies like that to be had, like, fine.  
15 I don't think anyone would argue with that.

16 THE HEARING OFFICER: I think Chairman Stevens talked  
17 about the categorical exclusions?

18 CHERYL ANDREWS-MALTAIS: Not only were they exclusions,  
19 but also with being able to -- I've lost my train  
20 of thought, but you know, going back to the  
21 exclusions and also being able to look at  
22 streamlining the process in favor, because of the  
23 discretionary authority that you have.

24 And part of the other point that I was making  
25 was that instead of using those resources to more

1 fully supplement the offices that need to do those  
2 things and do those reviews, as opposed to  
3 expanding the resources in other areas.

4 And the other thing that, you know, we're  
5 sitting there and looking at is we've got all this  
6 work and talk going around these things, and again  
7 where's the urgency for having this being brought  
8 here? Because there is a structure in place that  
9 can just be tweaked internally by reinvesting in  
10 what it is that we need versus not investing in  
11 it.

12 And it goes back to the reorganization and  
13 how we look at, you know, the way that the  
14 structure is. People agree and disagree on where  
15 these particular responsibilities should and may  
16 lie, but I think ultimately when we're looking at  
17 how to make this better it doesn't come with  
18 throwing out the baby with the bathwater, and  
19 that's what it looks like from here.

20 The other thing is, is because as Kitcki  
21 said, we don't know what that impetus is and  
22 because it appears that it is negative or it's  
23 being weighted against tribes' rights, as opposed  
24 to be reinforcing and setting up policy that is  
25 going to be more supportive of the tribes' rights,

1 and given the agency their deference with those  
2 litigations.

3 So that is your job and that is your job to,  
4 you know, be the subject matter expert for the  
5 interpretation of these things, and it all is  
6 supposed to be weighted in favor of the tribes,  
7 but we're not seeing that and it's not following  
8 through. But I think that, you know, looking at  
9 when you're doing your EIS's and all the rest of  
10 it, I think it's unconscionable to have to have  
11 14,000 pages to demonstrate your connection to the  
12 land.

13 I mean, I can't tell you how -- there's no  
14 better documented nation than the Wampanoag Nation  
15 including Mashpee and Aquinnah about our  
16 relationship to the lands upon which these  
17 pilgrims landed. There's nobody else that's got  
18 that much documentation.

19 But to have to sit there and have any tribe  
20 spend 14,000 pages to document a relationship to a  
21 land parcel that has been known worldwide is  
22 insane.

23 The money and anything else that's going in,  
24 and when you talk about the responsibility of the  
25 agency to take into account, you know, the impact,

1 the environmental impacts on the other human  
2 element, that's fine. But that's taken into  
3 account -- they should get the box checking this  
4 off, and like we get. Yeah, we heard you. Thank  
5 you very much. Sit down. Shut up. Go away,  
6 because the project is going through anyway.  
7 That's what we get, but we don't get the same  
8 respect when it comes to our projects to have that  
9 deference addressed.

10 Yes, we hear you. Unfortunately for you the  
11 federal government has a responsibility to these  
12 tribes and part of that responsibility is the  
13 restoration of tribes' homelands, and we are going  
14 to do everything we can to support that, but this  
15 is not what's coming through.

16 THE HEARING OFFICER: So I don't know -- let's see if I  
17 can address part of what you said, at least.  
18 Well, you're talking about the other communities.  
19 I mean, so there are just as often -- I guess, our  
20 effort is to address. Right? To address those,  
21 and sometimes local communities aren't happy. And  
22 might have to persist with the decision making  
23 anyways.

24 And so Jim Cason has a great story that talks  
25 about Oneida. Right? So after the Sheryl case.



1 You know, they asked for 16,000 acres in one chunk  
2 to be taken into trust. Right? And the counties  
3 and the local townships were all up and arms. And  
4 you know, he said, you know, after like a year of  
5 sort of shuttle diplomacy and trying to figure out  
6 how you could, you know, address both sides and  
7 stuff.

8 And you know, he said to the local community,  
9 so just be honest with me. Is there anything I  
10 can do that will address your concerns? And they  
11 said, no. He said, okay. That's good to know.  
12 Right? Went in and took the land into trust. And  
13 the good part of it is that once that was kind of  
14 behind them they felt these great relationships  
15 now with the counties. Right?

16 So yes, I mean, we have to address those, but  
17 we also have to finish our decision-making  
18 process. And you know -- so I don't know. I know  
19 sometimes it seems uncomfortable that we have to  
20 go through all these processes while the tribe is,  
21 you know, waiting patiently for us to get through  
22 to the end of the process.

23 But I think at the end of the day, you know,  
24 when the process fully plays itself out it results  
25 in, you know, a decision that -- and I don't want

1 to put so much on the legally defensible, but it  
2 also ends up in a decision that at the end of the  
3 day, you know, all the communities can live with.  
4 Right?

5 Because at the end of the day after we take  
6 action you're still going to be living there.  
7 They're still going to be living there and you've  
8 got to figure out some way to live together.  
9 Right? And so I think that's also part of the  
10 process. You know, just as much as they wish you  
11 would go away. Right?

12 I know you wish they would go away, but that  
13 doesn't happen. Right? Nobody goes away. And so  
14 working through those at least, you know, we can  
15 say we have addressed their concerns. We heard  
16 their concerns to the extent possible.

17 It's just like EIS's. Right? You can have  
18 impacts of the environment and most times the law  
19 doesn't say you have to take care of all of them.  
20 It just says, you have to mitigate them the best  
21 way you can. And once you've done that you move  
22 on.

23 CHERYL ANDREWS-MALTAIS: With that being said, you  
24 know, I'm just looking at the environmental  
25 studies and the impact statements that are

1       necessary. Tribes generally have adopted or  
2       created, or you know, adopted by reference  
3       environmental policy and environmental regulations  
4       and whatnot.

5               So again, it's undermining a tribe's rights  
6       and sovereignty. If you've got all that stuff in  
7       place why would tribes be forced to sit there and  
8       hire an outside person to sit there and say, okay?  
9       We're going to drop \$200,000 on an environmental  
10      impact statement, you know, for us to be able to  
11      take land into trust.

12             That shouldn't be necessary. That's the type  
13      of latitude and discretionary authority that we as  
14      tribes would expect that the Interior and Indian  
15      Affairs would be using to say, you know what?  
16      It's overburdensome. You know, it's over  
17      encumbering. It's over expensive.

18             That's the type of streamlining and that's  
19      the type of change that Indian country is looking  
20      for, but the type of changes that are being put  
21      out here it seems like it's somebody else's.

22             And even to reintroduce that notion of  
23      commutability? Oh, my goodness. That's insane,  
24      because even when I mentioned, well, why don't you  
25      use -- if you want to use some sort of

1 justification for connection to the land, then why  
2 not use the NAGPRA, you know?

3 And the response that I received was, all the  
4 land in the United States is Indian country. I'm  
5 like, well. Hell, yeah. That's not going to  
6 change, but the bottom line is that if, you know,  
7 Stockbridge-Munsee wanted to come and build  
8 something west of the Connecticut River and the  
9 Springfield area, that's their right to do.

10 That was their original homelands. You know,  
11 we can sit there and talk about how narrowly these  
12 regulations are trying to define that, but also we  
13 have people that commute for hours, you know,  
14 boats, trains, ferries and in planes literally to  
15 get to work. And to say that well, you better be  
16 able to do it. It's got to be close to this.  
17 It's got to be close to that.

18 People aren't even close to their homelands,  
19 particularly out this area. And in other areas  
20 they were dislocated by federal policy. They were  
21 dislocated because of employment and/or  
22 opportunities for education, but mainly  
23 employment. So they're not even close to where  
24 their homelands might be.

25 And usually the tribes get a fraction of a

1 fraction of a fraction of an acre based upon what  
2 the original homelands were. So you know, it's  
3 very troublesome to hear that there's these  
4 notions that somebody that doesn't have our  
5 experience of why people are aware of where we're  
6 at, and where the location is and the distance is  
7 between where our communities live and where our  
8 homelands might have been rebranded, and that  
9 somebody outside or external is going to make that  
10 kind of determination on us.

11 That's totally unfair and that is not in any  
12 spirit of consultation, and that is not in any  
13 spirit of support or trustee, or responsibility.

14 THE HEARING OFFICER: Thank you.

15 We're running out of time here, but I do want  
16 to get back. So you know, again -- and somebody,  
17 it might have been you, Cheryl, said at the  
18 beginning, you know, I don't want people to get  
19 totally caught up that this is the only thing to  
20 talk about.

21 And so, you know, in the notion of  
22 streamlining, can we do it better, you know, I  
23 frankly have a personal beef with the level of  
24 resources that I have to go into the environmental  
25 work that's done. I totally agree.

1           We have a departmentwide effort looking at,  
2           you know, is there a way that we can comply with  
3           the law, but do the environmental reviews across  
4           the department in a more, sort of, responsible  
5           way? And it's not just the money. It's the time  
6           that it takes to do these. And so that's part of  
7           what we're looking at with trying to -- we have a  
8           number already on the books and that apparently  
9           have not been used enough, I think, in the past.  
10          And if there's more, you know, we'd love to add to  
11          that.

12           I agree. I find it unconscionable that, you  
13          know, we have to hire a contractor to do EIS work.  
14          You have to hire a contractor to do it, and we've  
15          created this cottage industry basically around  
16          Indian country in doing EIS's.

17           And so I would love to hear, right? What  
18          your thoughts are. I mean, the unfortunate thing  
19          is that's been kind of built into the process now  
20          and we need to have some justification to unwind  
21          that, but I mean that would be a great place to  
22          start. If it doesn't take a rule change, if we  
23          can do it sort of internally that would be great.

24          CHERYL ANDREWS-MALTAIS: Contract EPA, you know. And I  
25          mean, they should be performing these functions.

1 That's their job, you know, watching the  
2 environment.

3 The government could be contracting the  
4 government for a lot of these things. And there,  
5 that's their job. They're the subject matter  
6 experts. They're the professionals.

7 So if there is one, it shouldn't cost the  
8 tribe. It shouldn't cost -- the taxpayers pay for  
9 it anyway. So why should it cost the tribe. So  
10 it's a shared -- if there has to be any, it's a  
11 shared burden between the Environmental Protection  
12 Agency, the Department of the Interior and the  
13 tribe and it's going on in the schedule. And what  
14 is the real purpose of these things?

15 And if we're not drilling down to what the  
16 purpose is and it's just, you know, making  
17 busywork and making money for somebody else  
18 because they came up with this brilliant idea,  
19 then why are we doing it?

20 You know, and the other thing is, as we make  
21 these changes to these regulations, although  
22 another administration that might have a different  
23 view might come in and want to change it, the  
24 problem is the damage that's left behind during  
25 that interim when we had a bad law, or bad

1 regulations on the books. And we're still facing  
2 that from people that have had bad decisions with  
3 regard to their federal recognition, people that  
4 have had bad decisions with regard to their  
5 ability to take land into trust.

6 All these bad decisions that are there and on  
7 the books and bad opinions, we still live with  
8 that and it gets harder and harder to change them.  
9 So we want to make sure that we're doing it right,  
10 or leave it alone because if it's going to make it  
11 worse, leave it until we have the ability to take  
12 the time we need to really drill down and make  
13 sure we present something that is worthwhile that  
14 Indian country can embrace and support and not  
15 just patch things along.

16 And speaking of patch one more time,  
17 reinstate the Pachaug patch and waiver that 30  
18 days.

19 THE HEARING OFFICER: Thank you. So we're almost 25  
20 minutes past our hour. We got started late, so I  
21 appreciate you guys hanging around. I'll give  
22 you -- Kitcki, I know you can always ask one more  
23 question. You know, I'll stay for another ten  
24 minutes, but I do have to kind of get rolling, but  
25 we'll wrap up by about 1:30.



1 TYRELL TERRY: How you doing? Tyrell Terry, Shinnecock  
2 Nation, Councilman. I'm fairly new to this so  
3 excuse me, but I just have a question.

4 Pretty much listening to Kitcki and the  
5 councilwoman from Mohegan, I mean, how are these  
6 questions put together? Was there ever a  
7 consultation with Indian country about what is the  
8 problem with the process?

9 Or were these questions just -- how were  
10 these questions put together? I mean, how much  
11 input was -- the preliminary discussions, how much  
12 input did the Indian country have into these  
13 questions?

14 THE HEARING OFFICER: So again, these and even the  
15 ideas that were put on paper about some regulation  
16 changes were sort of the product of conversations  
17 with tribes, tribal leaders and for some of us  
18 that have been around -- Jim has been around a  
19 long time. I've been around for a while.

20 You know, some of these are conversations  
21 that were had over the years. And you know,  
22 that's -- frankly one thing to say is maybe that  
23 was an issue ten years ago, and maybe it's not  
24 now. You know, so -- but I mean, I have to be  
25 honest with you. You still hear some tribal

1 leaders that are concerned about, you know, other  
2 tribes getting land, off-reservation land into  
3 trust within their, you know, traditional  
4 territory. And you know, that's an issue that  
5 hasn't gone away.

6 And so that's, you know, those thoughts are  
7 what led to this. Now you have to start somewhere  
8 when you want to have a consultation and that's  
9 kind of the idea, you know, having a starting  
10 point. So that's what these questions are  
11 intended to be, is a starting point for the  
12 discussion.

13 TYRELL TERRY: So is there a list compiled of  
14 priorities of concerns from the actual people  
15 themselves? Or is this -- or are the priorities  
16 compiled by the department?

17 THE HEARING OFFICER: I'm not entirely sure what you're  
18 asking, but if this is what you're asking I would  
19 say, you know, so once we're done and we have all  
20 the comments submitted, you know, we go through  
21 those and figure it out, you know.

22 So are there priorities that are, you know,  
23 look like they need to be addressed? You know,  
24 and we'll figure out where we go from there with  
25 those. Maybe those require further consultation.

1 I don't know. We could focus in on those. Maybe  
2 we'll determine after we, you know, get through  
3 this first round of process. We'll see.

4 TYRELL TERRY: All right thank you.

5 THE HEARING OFFICER: Thank you, sir.

6 Thank you, everybody.

7

8 (Whereupon, the above proceedings were  
9 concluded at 1:28 p.m.)

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2 STATE OF CONNECTICUT

3 I, ROBERT G. DIXON, a Certified Verbatim Reporter, and  
4 Notary Public for the State of Connecticut, do hereby  
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16 WITNESS my hand and seal the 4th day of May, 2018.  
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Robert G. Dixon, CVR-M No. 857

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