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

FEE-TO-TRUST TRIBAL CONSULTATION
April 12, 2018

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UNITED STATES DEPARTMENT OF THE INTERIOR

BUREAU OF INDIAN AFFAIRS

FEE-TO-TRUST TRIBAL CONSULTATION

Tribal Council Leaders Consultation held at the
Foxwoods Resort and Casino, 350 Trolley Line Boulevard,
Mashantucket, Connecticut, on April 12, 2018, beginning at
9:29 a.m.

Held Before:

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

and

PAULA HART, Director, Office of Indian
Gaming
THE HEARING OFFICER: Good morning, folks. I think let's go ahead and get started.

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

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

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

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

[Prayer in Wampanoag.]

Almighty God, Master of us all, we give you honor. We give you praise. We thank you for allowing us once again to see the morning light, once again to hear the songs of the Winged Ones. We give you good thanks for gentle rains that fall down upon the Earth.
A new beginning. It is our new year.

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

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

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

And Lord, pour down the blessings upon all.

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

And Father, we, as we stand here in freedom, we lift up the people of Syria, Father. Lord, that thou will protect, that Thou will guide the hearts of the United States, Russia, China. We know that the prophecies are being fulfilled, Father. So we ask for you to strengthen our shields from the top of our heads to the bottom of our feet.
Lord, we ask you to bless this conference, that there be good discussions, good outcome. So we ask this of you in the name of Jesus Christ.

Amen.

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

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

And so my apologies. They were, of course, not really within our control, but again we appreciate your patience with us as we wanted to hear from the tribal leaders in this region, and of course from folks from all around the country.

But it's good to be here and possibly maybe a little bit better time than a month ago to be here whether-wise.

And so I will want to also note we have -- I don't have a good list of -- in part because we had to reschedule -- we don't have a good list of the tribal leaders that RSVP-ed. So if you could just help us out when you come up. Make sure that
we get your tribe and your name and everything
down clearly for the record. It would be helpful.

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

    Do you have anything to add?

MS. HART: No.

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

    Generally speaking those changes that
corresponded to decisions by the federal courts
which have required us to make adjustments in how
the regulations provide the due process, and sort
of public notice, comment and other
constitutional and APA requirements under federal
law.
So we are now asking for input whether it's appropriate to make some changes now specifically focused on off-reservation fee to trust to respond to needs and concerns that we've heard from tribes over the years.

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

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

Your input is critical as you are the folks who are asking us to fulfill our trust responsibility in taking the land and putting it within your jurisdictions. So I look forward to hearing from you. This is a formal consultation, so we have a court reporter. And they will get
your comments -- both oral, and I would encourage you to submit written comments as well -- will be part of the formal record of this meeting.

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

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

Along with that you have a set of the current 151 regulations. And so if you need to reference
that, feel free. If you need a copy I think we have additional ones on the table out front where you signed in.

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

Thank you, Chairman.

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

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

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

So welcome to the Mashantucket tribal leaders and staff. We appreciate you all being here and we hope you enjoy your visit here at Mashantucket, and we're honored to be able to host you all.
With regard to your visit, I have talked to several of you. I've sent out an e-mail. This is probably one of the most important things today that you should take note from, aside from this meeting here this morning.

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

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

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

You know, we're here today obviously for critically important issue to talk about, the fee-to-trust process. We appreciate the fact that
the earlier update that Interior had proposed you
have since withdrawn and are now looking to speak
with tribes and hear our perspective on it. So we
certainly appreciate that and look forward to the
continued dialogue as such.

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

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

So I think there's a lot of openings in the
current regulations and even in the proposed that
allow for interference from outside jurisdictions
that lengthens the process and adds to the cost of the process as well. Also as opposed for adding opportunities for them to insert their opinions that aren't necessary and we should be limiting those opportunities.

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

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

We've seen that firsthand here in Mashantucket, and many of you have seen that in the federal with respect to the cases that we were dealing with. And certainly it's absolutely unacceptable, and it infringes on our sovereign rights. We oppose that provision in the October draft, or any provision that would require agreements or MOUs with local governments be submitted to the department as part of the
fee-to-trust application process.

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

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

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

In closing, we appreciate the opportunity to provide input into this process, and would like to note our support of changes that make the process more efficient, but not at the expense of tribal rights, and note our opposition to any changes to the regulations that make it more difficult or
costly for tribes to place land into trust.

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

THE CHAIRMAN: Thank you, Chairman.

CEDRIC CROMWELL: Zip line, one o'clock.

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

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

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

The United States failed to protect our land from encroachment in the 18th century, despite federal laws which should have protected our land. And so we became a landless tribe. The department finally took land into trust from Mashpee and proclaimed it a reservation in 2015.
We had strong local support for the creation of our reservation. This ended decades of landlessness for my tribe. Now the administration has refused to defend the original decision and take our land into trust, and it has withdrawn from the appeal in that litigation.

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

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

I want to make three points today. First, Indian country is not for these changes to the fee-to-trust regulations that you have suggested. What we have asked for is your help to relieve some of the serious damage that Cochere decision has on many of the most-needy and economically
disadvantaged tribes in America. It is incredible
to us that the department's ten questions do
not even acknowledge the Cochere problem. The
current proposals appear to perpetuate the
creation of second-class tribes, which has
worsened since the Cochere decision was rendered.

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

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

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

THE HEARING OFFICER: Thank you, Chairman.

RODNEY BUTLER: Thank you. Appreciate it.

JESSIE LITTLE DOE BAIRD: [Greeting in Wampanoag].

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

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

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

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

So for two and three I would just like to
make the point that all of these United States are Indian country. These are our aboriginal lands and the trust application process and the trust process itself were powers that were granted by Congress to the department in order to undo the damage during the Termination Era.

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

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

THE HEARING OFFICER: Thank you, Vice Chairwoman.
HARRY PICKERNELL: Good morning, John. Good morning, Paula. Thank you, Mashantucket, for hosting and allowing us on your lands.

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

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

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

However, some questions have gone unanswered or inadequately answered, like what is that need to alter the current regulations? What tribe or tribes have asked for new regulations? Why does the department want to further complicate and make more expensive the fee-to-trust process by
reinventing the wheel? What would be the department's response if informed by a tribe that the delay may prompt further lawsuits from opponents.

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

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

Third, the potential of a two-step process
doesn't save drives, time and money. If done properly under the current regulations -- and that means working in conjunction with the agency and the region before submitting, that tribes know that they have developed all the information and answered all the concerns before submitting the final request for fee-to-trust conversion.

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

Fourth, you stated that central office had a concern about different regions applying different standards to fee-to-trust applications. Tribes are all sovereigns and all different. How can you determine that one region is applying for some different standard when each tribe, each location, each need and each request is different from all
other tribes' locations, needs and requests?

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

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

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

Why require, let-alone mention MOUs? Tribes
will obtain them on their own if they can. And if
they can't, it means that the local governments
said, unless you pay for us from your own
stretched resources allocated to the needs of your
tribal members, we will prevent you from economic
diversification. How does that help tribes? How
does that meet your responsibility to the tribes?
Six, trying to avoid lawsuits through regulations is a futile effort. No matter what precautions the department takes up front there are whole firms all over the country that make a living suing tribes on these issues. Focus on the needs of the tribes, not on trying to preempt litigation.

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

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

The department should return lands to the land base of tribes for cultural, religious, essential government services and economic diversification, because no one will protect cultural and religious sites except the tribes. No one will provide housing and essential government services to our members except the tribes. No one will provide economic diversification and economic resources for tribal member betterment except the tribes.
Eight, I know that Mr. Tahsuda indicated that when the proposed regulation comes out there will be a new round of consultations. This presupposes that the department intends to ignore the comments of all the tribes urging that there be no new regulations.

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

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

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

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

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

And now the issue that tribes are now incapable of protecting the land and limiting of liability, thereby removing many prior burdens that the department shouldered. The reality is
that once the department takes land into trust, tribes zone, plan, develop, protect, police and provide services to that land without burdening the resources of the department.

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

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

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

Thank you for your time.

THE HEARING OFFICER: Thank you, Chairman.
SARAH E. HARRIS: This might not be the only time I'm up here. It's been a while since I've been through all this stuff again. But I'm Sarah Harris. I am a councilwoman at the Mohegan Tribe.

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

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

So if the aim is to make it -- the stated aim is that -- it's supposed to make the process go more quickly, the proposed regulations, you know, suggest that the department will first make a decision on certain criteria and then only after that decision is made will you consider NEPA or Cochere, or 292. And you know, those -- those processes can be time consuming, which is why if you run the processes simultaneously, you know,
the tribes understand that, you know, pretty
significant amounts are for Cochere and NEPA.

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

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

The Pachaug patch fix to reinstitute the
30-day waiting period, initially in the
regulations the 30-day waiting period was
instated -- I can't remember -- I think in the
1990s because there was a ruling that the Acquired
Title Act prohibited third parties from bringing
any sort of a claim against the land, and that the
Acquired Title Act would preserve the trust status
of the land which would effectively, in the
Court's mind, block judicial review of the parcel
that's taken into trust.

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

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

And another question -- I guess this is more
of a big question since I know this is a
consultation which can go both ways. The
requirement that tribes submit information with
respect to whether or not the trust acquisition
would consolidate fractionation, or otherwise
consolidate tribal land holdings.

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

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

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

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

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

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

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

THE HEARING OFFICER: Right, certainly not.

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

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

SARAH E. HARRIS: Great. And I'm sure I'll probably
have more comments as we go on -- but thank you.

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

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

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

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

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

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

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

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

The other lands now include the campus of Stony Brook University and many of the fabulous homes in the United States. Generations of my people have supported themselves by housekeeping, landscaping, and on these trespassing estates.

And as a daily matter we're aware of removal from our sacred Shinnecock Hills -- and I'm not talking about the golf course there, but it was as central
to our culture as the Black Hills are to the
Lakota people. Archaeologists are still finding
our forts and homesites that are more than 10,000
years old, and these sites are being destroyed in
the construction of new multimillion-dollar homes
while my people are having trouble getting access
to the beach and protecting our hunting and
fishing rights, and our traditional territories.

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

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

So on question one our response is, the
1. The department as a trustee should be doing its best
to facilitate the best interests of the tribe by
reducing the red tape involved in the tribal land
restoration process.

The department should be assisting tribes and
restoring these lands in their land bases, while
streamlining the process, while putting land in a
trust or restricted fee for those tribes with that
type of landholdings, which you are not doing by
creating extra steps and challenges and creating
additional opportunities for legal challenges.

The department should be making sure that tribes
have a sovereign land base to facilitate their
ability to create solid economic development,
adequate housing, healthy living and educational
opportunities for self-sustaining Indian
communities to prosper.

Question number two. Many of you are asking
the wrong question, as the gentleman here also
stated -- because we don't have trust lands
where my nation is located. What about addressing
those tribes with undisputed aboriginal territory
held in restricted fee which the department has
fully overlooked? The fact that there are 573
federal tribes from all parts of the country that
are in uniquely different situations and different
types of landholdings has to be considered as
well.

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

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

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

All available land should be considered,
especially if it's within the borders of a tribe's
aboriginal territory. Any policy that only says
you can have land in your reservation is a
diminishment and a continuation of 19th century
American policy which was to effectively diminish
tribal land basis all around the country. The
basic policy of the IRA was to help tribes recover
their land base, not make it harder to do so.

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

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

To have separation and different procedures
only serves to serve an additional handicap to the
tribe in an already arduous process.
B, it is legally wrong to insert restrictions for gaming lands into the trust process. IGRA has already created those limitations elsewhere and IGRA specifically says that these restrictions do not affect the secretary's trust authority.

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

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

Fee-to land owned by the tribe outside the boundaries of a reservation is not subject to legal restrictions against alienation or encumbrance absent any special circumstances. The law is not clear whether such restrictions apply to fee land within the boundaries of a
reservation. So if a tribe has those lands they are unprotected in important ways, and of course the tribe's jurisdiction may be limited, and its ability to exercise sovereignty is also at risk.

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

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

The way that the wording is for trust land that says that land is held in trust by the United States is unacceptable to us in New York, and to my tribe in particular because we don't really trust the trustee. Trust lands, the federal
government holds legal title, but the beneficial interest remains with the tribe. This is the majority solution to protecting lands and jurisdiction, but not all tribes want to participate in that same way.

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

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

Given our unique status and pre-trust era landholdings in New York, we would be looking for a special New York carveout to help us secure additional protected lands under restricted fee. We have managed our land face for thousands of years with diminishment through outright theft
under the Nonintercourse Act. And it is
imperative that we reacquire additional lands
within our aboriginal territory for economic
sustainability, health and housing needs as our
population continues to grow.

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

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

Question number eight, the department should
listen politely and take comments from state and
local jurisdiction. Balancing their concerns
would be outrageous given the department's primary
obligation to fill its trust responsibility. The
department must really listen to the tribe's
interests first and foremost. In listening to the
State and local jurisdiction the department needs
to consider the motivation behind the comments that are being given. The department should never forget its primary objective and obligation as a fiduciary to the tribe, to the tribes and its trust responsibility.

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

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

Question ten, our recommendations leave the process in the regions that knows them best. Centralizing it to D.C. would just cause additional delays.
If a tribe can show the land was in their aboriginal territory and they were the last owner of record prior to its theft, then it should be an automatic process to take it into restricted fee or trust. Instead of fee to trust it should be tribal lands restoration.

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

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

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

In conclusion, we are a federally recognized tribe with uninterrupted governmental ownership of
our tribal lands at Shinnecock. The land has
already been held by the tribe as part of our
Shinnecock sovereignty over the land without
dispute since first contact. Our first contact
was in 1638.

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

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

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

The United States only enters into treaties
to take land, not give it back. There should be a
New York State carveout allowing tribes to
continue to put their reacquired lands into
restricted fee just as there are other state
carveouts across Indian country for Indian tribal
situations.

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

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

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

Thank you.

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

CHERYL ANDREWS-MALTAIS: I'm Cheryl Andrews-Maltais.
I'm the Chairwoman of the Wampanoag Tribe of Gay Head, Aquinnah. And I'd like to thank our hosts, the Mashantucket Pequot tribal Nation for hosting this forum for us. And I'd like to thank you, John and Paula for being here and listening to our concerns.

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

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

And I also believe that we are expending really valuable resources on this subject matter that was not requested, as opposed to investing our resources in the reorganization that was being planned for the Department of the Interior and Indian Affairs. That in itself could probably assist in how to streamline these regulations as
opposed to make them overburdensome and would
encumber tribes with more responsibility and more
outlay for these considerations.

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

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

That was the whole intent, is giving the
lands back to the tribes because we know that the
taking away of tribal lands, the dismantling of
tribes, tribal heritage and culture is not what's
in the best interests of Indian people. And the
way that this is set up is contrary to what was
the intent of the Reorganization Act.

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

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

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

We've had to pay for our own lands. We've
had to pay for the lands that contain the remains
of our ancestors. These are the lands that our
blood was spilled to defend, and yet we're being
asked to make decisions and try to help exterior
or outside forces continue to keep us oppressed
through that.
There shouldn't be any different criteria used in any circumstances. Restoration of the land is restoration of our tribal lands. The tribes have the right, the sovereign right to have the jurisdiction to determine what it is that we would choose to do with our land, and therefore there's no circumstance under which that a tribe -- if a tribe needs the land and the tribe requests the land to be in trust, whether it's for health facilities, whether it's for housing, whether it's for economic development, no matter what that economic development is, it's the tribe's right to make that determination.

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

However it should not be a reason or a condition under which any tribe's application would be considered, more favorably considered. Because frankly, as our brothers and sisters have already said, the local communities sometimes are helpful, but for the most part the only reason why
they're looking to deny tribes' rights to be able
to have the land and have jurisdiction over it is
simply because control, or simple greed and
economics.

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

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

There are so many other departments and
agencies that have categorical exclusions to processes. Why is that option not afforded to tribes? We're governments, not government arms, branches or entities. We have full governments. So why should we be subject to other things?

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

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

We all know how often and how zealous the Indian haters are up there. Like my brother from Shinnecock said, he's got very expensive real estate holdings around him, as do we on Martha's Vineyard. The problem is, is nobody asked us whether we wanted these people to move in, whether
we wanted them to put their multimillion dollar homes around our homes, our modest living.

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

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

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

Well if your real estate is not inexpensive, where does that leave us? Where does that leave tribes like us that are not out in the desolate
or, you know, the open areas of the country?
Those of us that are in areas that are well
populated, that are more industrialized, that
we've had more contact for centuries, that we've
been displaced in our own homelands, where does
that leave us?

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

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

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

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

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

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

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

That's not that process. That's not the land
into trust process that we're talking about here. That's an internal problem. That's where the focus need to be. Provide the regions with the human resources, with the financial resources, with the legal expertise, mind you, to be able to read a congressional act, to follow it. To be able to read through the regulations and put them through, to be able to provide support to the tribes and not hurdles for the tribes to be able to overcome in order to get their land into trust.

It's all about the restoration of the tribal lands. It's all about the sovereignty of the tribes. It's all about respecting the tribes and who we are. And these regulations as proposed are not wanted. These regulations and changes are not helpful. It does not expedite or streamline the process. It makes it over cumbersome, it makes it over burdensome and it makes it more expensive. And clearly, the way to look at it is to look at the reorganization, and then look at how we streamline it for tribes and waive those cumbersome regulations as opposed to adding extras.

And with that, I'd like to ask other people
to speak. And then maybe we can sit and have a
dialogue and talk about ways to get there.

    Thank you.

THE HEARING OFFICER: Thank you, Chairwoman.

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

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

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

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

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

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

I mean, unless the Supreme Court of the United States rules that the department has to remove the land, you know, take the land out of trust, I'm not sure that there's any other court -- or the Department of Justice would say that any court except for the Supreme Court itself
has jurisdiction to rule the department has to do something.

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

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

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

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

And an order, again in vigorously defending our decisions, I mean, an order would be a final order at the highest court, you know, that makes
that decision, whether it's appeals, court of
appeals or whether it's the Supreme Court.

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

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

And so I just wonder why the department would
cabin their discretion in this way, in a way that
leans against, you know, uphold the decision that
they've made in favor of, you know, the tribe
because the department has a trust relationship to
the tribe and the IRA dictates that these are the
types of things that we should be doing, acquiring
land, or the department should be acquiring land
for tribes.
And so this regulation really cabins -- as written really cabins the department's discretion and mandates that the department will follow any court order, or at least -- and then specifies the taking land out of trust as something that you'll do.

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

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

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

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

SARAH E. HARRIS: Yeah. No, I'm sorry. I mean, I know
that there's a current list of questions, but this is -- so this is no longer the proposed?

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

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

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

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

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

SARAH E. HARRIS: Yeah, I do.

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

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

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

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

THE HEARING OFFICER: Right.

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

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

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

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

Thank you.

THE HEARING OFFICER: Understood. Thank you.

CEDRIC CROMWELL: Thank you.

Cedric Cromwell, Chairman Mashpee Wampanoag
Tribe.

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

I would like to see regulation that says that
the department will vigorously uphold and support
its decisions. John, you said that the department
does that. No, the department does not.

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

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

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

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

JESSIE LITTLE DOE BAIRD: Thank you, Chairman Cromwell.
And thank you so much for those comments, Sarah.
And I'd just like to offer, Brother Tahsuda, just
to echo the Chairman's comments. It is our
experience in Mashpee right now that the
Department of Justice is defending the decision
made by the Department of Interior.

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

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

So I cannot help but feel that it is
specifically targeted at my people's back, and I
don't appreciate it when we have to defend us
under the 1790 -- beginning with the
Nonintercourse Act, is this department.
We're relying on you, and to that point I would like to note that there is a reason why there's not a process in place to take land out of trust. Because the spirit of that act was never to take land out of trust. It was to return homelands to tribes.

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

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

Thank you.

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

We'll take a five-minute break.
(Whereupon, a recess was taken from 10:53 a.m. to 11:19 a.m.)

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

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

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

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

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

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

So that's where everybody's thought processes start. So we have no idea where the administration really is, because absent that and absent these questions we really don't know where
The third point is, through any effort to achieve efficiencies you could propose the best new process out there, but if you don't have adequate resources to implement that it's still going to be problematic. And within the eastern region here we know that there are resource deficiencies already that are part of the reason behind the delays. Okay?

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

The fourth point is the reorganization plan as it relates to this fee-to-trust process. And I don't want to turn this into a reorganization discussion, but the failure of that proposal -- even though we don't have a DTL issue on that --
is that it suggests this rotation of leadership across the region, across bureaus. Well, as you've already heard the fee-to-trust process is a specialized process. It takes years of expertise to do that efficiently and effectively. And if you're constantly rotating leadership out every couple of years you are never going to achieve that.

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

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

So again to my initial point, we really need to see a report from the administration that speaks to the inadequacy of the process in terms
of some quantitative data. That's something that's always demanded of us when we're making our case. Give us the data. Give us the data. Well, give us the same thing. Just tell us what you are exactly trying to fix.

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

Thank you.

THE HEARING OFFICER: Thank you.

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

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

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

For those of us here in Wisconsin, where back in the days we were called Winnebagos and from
that time on we started being relocated to other areas outside of the state of Wisconsin. And for those of you that don't know, there are numerous times that we were relocated and continued to come back to Wisconsin and settled back in our aboriginal lands.

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

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

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

So when we look at those, the changes that we're talking about, our comments were already given at previous consultations. We would choose to resubmit those for this consultation here today, the comments that were presented by the
Ho-Chunk Nation, by the president, and previous
legislators in other consultations.

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

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

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

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

So the department will be receiving a
3,000-dollar bill from the Ho-Chunk Nation. We can get that in either hundreds, or black chips and we would appreciate that.

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

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

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

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

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

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

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

So that when we come to the, quote, unquote, consultation process that we know that it is also in our favor, that we would be here. That we would be heard and that you would also take those
into consideration as well.

Thank you.

THE HEARING OFFICER: Thank you, Chairman.

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

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

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

So I wanted to just, again echo the comments of the leadership here today. The comments that are made today are very powerful and with much substance. So hopefully that will require that I
don't take a whole bunch of your time this morning.

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

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

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

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

And I'm Ernie Stevens, Jr. I'm a member of the Oneida Nation, and I have the honor of serving
in my 17th year as Chairman and Chief Spokesperson
for the National Indian Gaming Association. I
apologize. That's probably how I should have
started.

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

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

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

There are many bearing circumstances that
tribes face with regard to their historical
homelands, their treaties, their relations with
the United States and a one-size-fits-all approach
will not work. The department should update to you so that its categorical exclusions under the National Environmental Policy Act apply to all on-reservation land acquisitions that have an acceptable containment survey.

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

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

My father taught me about land in the trust, about TLSA. He taught me about the rights of tribes as governments and also taught me, a fiery young councilman more than 20 years ago, how we extend ourselves to local communities to make sure
that we're fair in that process. To that point, while he rested in our nursing home I'm a pioneer as it relates to negotiating service agreements and municipal agreements with local fire, police and governments.

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

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

I used to fuss with the local municipal guy and my dad said that this guy is a good guy. You just have to sit down and give and take with him, and we'll get it done. And that agreement is standing to this day over 20 years, because we sat down, me and this old guy. I won't state his name for the record because he might call me up. He's very much retired now, but we went to Las Vegas to
the biggest gaming show in the world and told the
world about what it takes to sit down and make
agreements. This is 20 years ago, and here we
sit.

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

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

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

It is our hope that the department will take
the comments that you have received over the past
few months and continue to work with Indian
country to improve the land into trust process.

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

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

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

The stories he told me about how we lost this
land I don't have time to tell you, and I don't
want to, because then I'll get angry whether it
was manipulation, land companies, maybe religious affiliations. You know, I'm not going to state any of that for the record, but that land was taken from our people in terms of hundreds of thousands of acres.

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

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

And while we don't blame you personally it was the government's job to protect us then -- and they didn't -- it's the government job to protect
us now, and we're asking you to do that. That's
the bottom line in this process.

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

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

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

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

KRISTEN WHITE EAGLE: [Ho-Chunk greeting.]
I just wanted to greet you all. Good morning -- and introduce myself. My name is Kristen White Eagle. I'm also known in my Ho-Chunk language, my name is Rainbow. So I come from the Ho-Chunk Nation. It's a federally recognized tribe in the state of Wisconsin, and my esteemed colleague Brett Walker also presented here and provided some very great comments.

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

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

Some of the background of the Ho-Chunk nation, Brett Walker was able to provide a lot of that, but I also wanted to speak on behalf of what
our president, the esteemed Wilfred Cleveland had stated. Mr. Cleveland, our president was at the Mystic Lake consultation and I had the opportunity to join him there, and I heard a lot of the comments that were stated.

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

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

Until the coming of the white man and the removals that began to happen -- because they saw how beautiful and how valuable the land was -- but our people, we have a stewardship responsibility over these lands. So every time that there was a removal there was a time of returning back to our homelands.
So the federal government finally gave up, gave us trust lands. We don't even have a reservation. Everything that we do acquiring lands is off reservation, because we don't have a reservation.

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

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

The language in the act was intended to allow tribes with no reservation, much like our Ho-Chunk
Nation, apply to have lands taken into trust. The new administration had signaled it is looking into adding new hurdles for tribes seeking off-reservation fee-to-trust acquisitions.

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

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

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

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

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

The president of the Ho-Chunk Nation, Wilfred Cleveland and elder officials attended the department's consultation on January 18, 2018, at Mystic Lake Casino, in Prior Lake, Minnesota. The format was structured so that interior officials sat at a table who listened while tribal leaders verbalized their concerns and objections, while also attempting to answer the department's ten questions.
No disrespect. Out of all due respect, I do want to say I do not believe that's how consultations should work. The department should have held meetings with tribes first to discuss the fee-to-trust process, hear any concerns, obtain tribal input, then consider drafting changes to the regulations.

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

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

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

The nation has yet to encounter a tribal leader that has asked the department for these
changes or supports them now.

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

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

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

The effort was to restore those lands. And
significantly less than 5 percent of the lands lost have been restored since the enactment of the IRA in 1934. 5 percent.

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

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

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

The considerations of jurisdiction for state and local government where they had no jurisdiction of tribal lands, and the consideration of the impacts and the benefits for
state and local government are extremely concerning for us. The purpose and goal of the department under the IRA is to evaluate the benefit for tribes, period.

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

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

Question number ten, what recommendations would you make to streamline and improve the land-into-trust program. The Ho-Chunk nation objects to the department's transfer of off-reservation fee-to-trust applications from the BIA regional offices to the central office in Washington D.C. This change further delays decisions on off-reservation applications and removes the decision making from the regional
directors familiar with the needs of the tribal applicant, to Washington officials who will not have the same level of local knowledge.

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

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

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

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

Reintroducing the 30-day waiting period would not streamline the process. The Nation's position
is consistent with that of NCAI and other tribes.
Thank you for that. The Nation asks the
Department of the Interior immediately withdraw
and cease these efforts to amend the
land-into-trust regulations, while continuing to
maintain its fiduciary trust responsibility to
Indian tribes and the purposes of the IRA.

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

THE HEARING OFFICER: Thank you, Councilwoman.

CHERYL SMITH: [Choctaw greeting.]

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

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

CHERYL SMITH: I didn't know whether to give her
well-wishes or condolences, but I think that today
we represent Louisiana here today. And of course,
Paula and John, we have known y'all for a long,
long time. The Jena Band, if any tribe has ever
had any problems doing anything let me tell you it
was my tribe, and that was from getting
recognition. It took almost 20 years. I was a young girl when all this started, but we kept on. We didn't give up. We were knocked down. We got up.

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

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

But I think at Indian country I know now that anything we have we're going to have to fight for to keep it. It's always been that way. I think
people want to fight for sovereignty. It's just been that way for Indian people, and I think that that's just what we're going to have to do.

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

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

And in saying that I have met a lot of leaders, different tribes that I've never heard of here in the East. But then again, some people don't know there's Indians in the East out here. So there are lots of Indian tribes out here in the East. And then like I say, some have gotten recognition since we have. The Mashpee is a very good brand. We enjoyed the visit, the tour to
their properties, to their Indian lands. And you know, it's not fair for some tribes to be treated the way they are when they have fought so long for what they have, just as we have.

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

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

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

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

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

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

Melissa, would you like to say a few words.

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

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

And this is just one of the issues and we
were opposed to -- a lot of these changes. And I will be submitting my, I guess, formal answers to all these questions. And it's, like I said, it's something that we need to get on top of.

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

MELISSA DARDEN: Melissa Darden, Chitimacha Tribe.

CHERYL SMITH: Okay. Louisiana has spoken.


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

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

However, I think that we're still owed one in Washington D.C. And the other thing I was wondering is, there are 38 tribes in Oklahoma, but I didn't see any scheduled for Oklahoma. I don't
know why. Maybe somebody could explain why with so many tribes concentrated there that there wasn't one.

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

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

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

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

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

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

Whether the economic development that a tribe chooses is, you know, a big-box store, a gas station or a gaming facility, it shouldn't matter because it's the tribe's right and it's the fundamental component of being able to redevelop and reestablish ourselves as governments, provide for our peoples jobs and opportunity, and provide
for the welfare and the well being of our committees. So it should be irrelevant what the end purpose is as long as we have strong government and governance over our own lands over which we have jurisdiction. It shouldn't have a tract, this tract for these purposes and this tract for that purpose.

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

Thank you.

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

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

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

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

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

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

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

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

So if there's no other comments?

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

In the spirit of consultation, John, I just want to ask you question. I mean, Sarah brought up the potential, you know, what is the proposed policy? I don't think that was your question. It was like, why is there language in here about removing land out of trust?
And I countered that by saying that there should be proposed language in there talking about how the department supports the tribe throughout the litigation process.

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

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

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

And so our intent always is to have a decision for the tribe that we can defend, and then when it gets challenged -- and these days they're challenged a lot, you know, we then have a
responsibility. We've made the decision, we have a responsibility to defend it.

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

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

And they also do that on the litigation front because, you know, they're the nation's lawyers. So in a certain sense, you know, they have to be...
aware of, you know, what the United States' positions have been in years past, where are things going that they can be in a good position to defend the United States in the future? And that impacts current day litigation, I think.

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

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

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

I just want to be very clear with everybody,
and as I've said before, that we Mashpee are in a situation where the department is not standing by the tribe in litigation whatsoever. You left us up there hanging.

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

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

So it's very sad that Congress' intent, which is important here on the IRA -- since the Termination Era to ensure that tribes have trust lands. Category one, two and three in the IRA are
very explicit. And our record of decision is about category two -- in the decision-making process that should be really supported by the department.

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

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

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

Vice Chair?

JESSIE LITTLE DOE BAIRD: And just finally I would like to say that I don't think anybody will disagree that the department has to have a process that can
be vigorously defended, and that is thorough and thoughtful, and I think it does.

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

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

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

Thank you.

THE HEARING OFFICER: Thank you.

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

Go ahead.

SCOTT SPRAGUE: [Pottawatomi Greeting.]
It's an honor to stand before you. I am Scott Sprague from the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians.

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

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

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

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

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

And that's a question.

THE HEARING OFFICER: We have no firm plans, dates. This is part of the process of just determining whether there's a reason to go forward.

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

I can tell you what's causing opposition when we put in applications for land in trust. That's all economics on behalf of the townships and the cities. And it all boils down to the same battle we fight with the local governments, the state
governments and even the feds, for the most part. It's a lack of education, a knowledge of what Indians are, why we're here.

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

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

Anyway, so this lack of knowledge of who the Indians are and why we've been here is something we've got to fight every election. We've got to fight every time we turn around, and try to say it in a nice way that doesn't offend people. You know, not using that word that everyone's avoiding, too. I'm not going to say it either, but that's exactly what it is. These Indians, what are they up to? Why are they trying to take more land back?
I know up there in our little community when we started buying land we heard the comment, that makes us uncomfortable because they're trying to buy their land back. What are they up to? Isn't that amazing? It's just pure ignorance up there, but we'll fight that battle.

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

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

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

And I know the reasoning -- the questioning that was in there originally about the need and the purpose of the land, what you guys are going to do with this land. I realize that was in there
from the start, but it still kind of grates you when you realize, do I have to explain why I need my own land back? It is what it is. The education continues, I guess.

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

Thank you.

THE HEARING OFFICER: Thank you.

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

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

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

The City of Bellingham is proposing
1.5 percent more in fees than they charge other
businesses. The City of Ferndale, where some of
the property is, is they won't give us an easement
permit to allow us to close out our loan. They
won't vacate a road that leads to nowhere. And
these are some of the issues that we're facing
when we put land into trust and those are some of
the issues that we want to get addressed, and
these proposed rules where we should have the
upper hand in what is done with our lands that we
asked to put in the trust.

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

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

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

We have a good relationship with our County.
Former Chairman Kim Ballou was elected as a county councilmember recently. So we're building relationships there.

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

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

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

Thank you for your time and it's an honor to
be here and to be here with all these other tribal leaders. Thank you.

Travis Brockie, Vice Chair, Lummi Nation.

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

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

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

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

We have a piece of land that we were going to
do gaming on. This land has been on no tax map since the inception of New York State. It has been labeled from the date that New York State took over as Indian land. It's not a trust land. Indian land, restricted land as the terminology is considered today.

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

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

It went beyond gaming. It went to our very existence, to the core of who we are as people. And that's disturbing when you put in these regulations, should a town or a village, or a municipality or anyone have any kind of say in what your tribe wants to do, and especially with land that we already have, that we have already
owned that has predated everything there. It
predated their existence.

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

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

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

THE HEARING OFFICER: I'll take a stab at it. I
think -- and actually I'll let Paula see if she
knows anything, too. So I think that -- so
historically there's what we now recall restricted
fee, or original Indian lands in New York State or
some other places around the country. The other
big area is the Eastern Oklahoma.

LANCE GUMBS: And the Pueblos.

THE HEARING OFFICER: And the Pueblos, yes.

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

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

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

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

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

And so I think -- and you heard from Jim. I
think, you know, there's a real interest in seeing
are there other, you know, ways that tribes can
own land, use it for their own purposes
beneficially? And certainly at least from our
boss, from the secretary, he's very interested in
the tribes being able to exercise their sovereign
authorities. Right?
So are there other avenues besides purely land into trust that they can acquire the land and be able to do that? And obviously this was something that was -- this was a scheme or a dynamic that was there before. And so there's some interest in looking at it and seeing, you know, is that something we can make work again?

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

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

And they questioned whether or not the existence of our whole reservation, like how was it held? And is Indian country where the secretary has the authority to service those people that live on that property? And at that point they then acknowledged that it was in restricted fee and that it was Indian country.
This came up again with the Indian gaming regulatory act because it talks about Indian country and what is Indian country. So we've been looking at it like that, and I think what we haven't done is said, okay. Can we create this?

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

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

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

So the solicitor's office looked at that litigation and then acted accordingly, but when I go back to them and ask them, well, wait a minute. Why shouldn't we be doing restricted fee? They
keep coming back to me saying, there was no
mechanism that creates the restricted fee like an
act of Congress in the Seneca case where they gave
us the authority to take the land in restricted
fee.

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

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

And I can actually share that information
with you. So you can see kind of how the federal
government didn't know how to handle restricted
fee land from the beginning. And that's an
historical -- and I think we're still trying to --
and then we get a case like Sheryl that's says,
wait a minute. You can't -- the tribes can't just purchase it and all the sudden it's Indian country. They have to take some kind of -- so that kind of blurs. The solicitor's office is thinking when they say, how do we get back into Indian country in restricted fee?

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

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

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

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

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

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

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

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

I know that several folks, including Mr. Cason, you know, had been working in the department in the two thousands. And some of these questions were asked then. There's questions about why does it take so long. There's questions about why tribes -- some tribes get land in trust off reservation when others don't. Some tribes are opposed to other tribes getting land
off reservation in the particular area that
they're asking for, and questions about how to
deal with that.

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

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

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

But they do raise issues and questions. And
so then that brings us around to whether there
could be a change in the regs that would address
those issues. Can we do it in a way that would
make the process better, because that's another
complaint?
And you know, so is the way to do that -- administratively, of course, is ultimately you have to change your regulations if you're going to do that. And how do you to that? You know, well, we start with consultation. We start and you just to try to build sort of a bank of information that you roll forward for, or roll forward with.

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

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

Or should there be focus on particular needs? And again, I know some people are of the opinion that gaming should be kept in with everything, and some tribes are of the opinion that it should be separated out. Because you have to be honest.
Gaming brings a lot -- it's got a whole separate statute that it brings in with it.

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

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

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

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

The Indian Reorganization Act is getting pretty old. And I know I've heard the comment from some tribal leaders that, you know. Well, we don't really need anything but the act. The act
says the secretary can take land in trust, and
that's a great thought, but that's kind of not how
we work the government nowadays. Right?

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

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

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

And that of course brings with it, you know,
interactions positive and negative with other
local communities. And so I assume by the 1980s
the decision was made that we've got to have some,
some basis in regulation to say that we are making
well-thought-out decisions.

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

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

And so you know, those aspects that have also
sort of been made part of the regulations over
time, and we've had several cases, you know, where
the courts have said, you haven't built up your
process well enough to address, you know, those
issues. And so the regs were changed to try to
address those.

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

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

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

So that's, you know, part of what brings in
these other aspects of the laws, and make sure
we're addressing them. And I mean, the way I'd
look at it ultimately in the day is we have to go through all of that so that when we make a decision for the tribe we can defend it.

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

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

So that's been a long way around to say that I feel like we have to have a commitment to making sure that we have a process for the decision-making process. Again, off reservation raises a number of other issues. They raise a lot of -- there's political concerns. You have to be realistic and understand, too, that you know, not just politics with local communities, but we have national politics.
And when off-reservation decisions are made, you know, we often get inquiries from congressmen and from senators about what's going on here. And it's helpful for us to be able to explain to them, well, no. This has been a pretty good process that, you know. Or to say, well, you know. It's been a difficult process. The tribe does not have a good relationship with the local community and that's why you're hearing from them. And this is what the tribe is doing to address that.

And you know, when we have that kind of information it helps us to address those, those concerns as well because at the end of the day we are subject to congressional oversight and you know, we do have to respond to those inquiries. And so I don't know if, you know, changing the regs and, you know, if these questions would help in or not. That's part of what we want to talk about. You know, it seems like as we talk internally and we talk with some tribes that maybe, you know, if you answer some of these questions, however you want to answer them, that that can guide us down the road of answering the question.

So are the regs good enough as they are now?
Should there be some improvements made? And that's kind of where this whole process started.

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

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

So that's a really long-winded answer.

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

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

But I think that the communities then, I guess, produced these, or groups like Stand Up For California and Say No To Casinos, and they said, wait a minute. If they do this for these
applications let's do it for all the applications.
And when we didn't do it for the non-gaming
applications then they went to their congressmen
and senators.

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

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

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

KITCKI CARROLL: If I may? So on your last point about
the congressional members, the honest part of that
conversation is well more than half of those
congressional members making those inquiries don't
have any regard, understanding, respect for their responsibilities to these charged relationships. Let's just have an honest conversation about this whole thing.

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

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

THE HEARING OFFICER: Can I, just real quick?

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

And sometimes we can go out and say we want to talk about kind of this big idea and the tribes
are like, well, you don't really need to come talk
to us until you've got a more concrete idea of
what you want to do.

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

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

KITCKI CARROLL: Okay. Fair enough, but listen. This
issue is land. There isn't a single more
important one than land because it permeates
through every other issue that we talk about. So
if that's true, there should have been more
thought behind we're going to roll something out
that's fundamental to tribes, the foundation to
their existence of land. We better be very
careful about how we proceed forward as not to
create a misperception about what our intentions
Because part of the blowback that you were feeling months into this process is blowback over perception, because we're in a seat right now where we don't have a clear picture where this administration stands on things. So we're in a position left to kind of fill in the blanks about what the intentions are behind this coupled with on the congressional side things that have been going on in the congressional side as it relates to land and pushback that we had to do in that space. So we're in our shoes piecing all these things together trying to come to an understanding of why these things are happening. Okay?

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

So whether a state or a community is taking actions, or whether those same sorts of considerations are given to tribal leaders to be
engaged in those processes, to chime in about something that's going to impact them, I'm curious as to whether those same sorts of considerations are part of statute, or part of the process in the same way that you're framing them about why we have to accept them from this perspective.

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

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

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

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

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

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

So if the department is seeking -- and, I mean, the department does have discretion in some areas which is the point that I was getting at earlier with, you know, you're going to follow
court orders. Well, of course the Department of
the Interior, if it chose to follow a court order
could follow a court order. But why would the
department in this context memorialize that in a
regulation in a way that seems like it's always
going to cut against Indian country.

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

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

SARAH E. HARRIS: But addressing them is different than
giving them -- than the department cabining their
way, like, cabinet-ing off their discretion in a
way that favors them that I think inappropriately considers their -- gives inappropriate weight to their concerns.

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

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

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

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

It's also -- you know, I think it's incumbent
upon us when we talk about, you know, so when you
get down more granular to regulations that direct
action by officials, that it be very specific
about what they have to do to meet our statutory
requirements and other legal requirements, and
that there not be any ambiguity in that, because
those ambiguities ultimately can lead to bad
decisions and bad, bad court cases.

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

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

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

KITCKI CARROLL: So I'm not criticizing the guidance,
because actually I find it to be a good insight, that we have accounted for that suggestion in the work that we're doing. What I would, though, do is follow Chairman Cromwell's comment that he made about litigation support expectations.

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

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

And it's not even -- the only thing I'm going to push back on is it's not a weaker position and that may be the way the Supreme Court spoke of it. It's a recognition this was European law being imposed on tribes and we didn't have that same
level of knowledge about European law. It's not
about weakness as sovereigns, or weakness as
individuals, it's two worlds crashing together
that we didn't understand how that was being
implemented against us upon us, but that's not
even my point.

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

THE HEARING OFFICER: And I think we in good faith do.
So you know, it's just going over six months now
I've been in the department, but my observation,
you know, in our process now, I look at
regulations, you know, that are in place that
we're taking actions under.

My observation is that if there is a question
there we interpret the statute consistent with
Supreme Court precedent, which you know, would say
that we will interpret it in light of the best
interests of the tribes. That is our role as a
trustee and we do that when we're putting that
into a regulation to take action.
And so I don't know how else -- so again, I don't know how else we would address that. I know when the regulations have been developed, if there is -- I've have seen a couple of times. We have an express statement, you know, the statute could be interpreted a different way.

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

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

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

SARAH E. HARRIS: Agreed.

THE HEARING OFFICER: And it doesn't -- ultimately, you know, I'll just express this as my personal view. It doesn't do you a lot of good to take a sharp
left or right turn on policy when it comes into regulations, because regulations are changed by the next administration. Right?

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

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

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

THE HEARING OFFICER: Well, I think there's no crisis. I mean, this is a question of, you know, can we do this better? And again, looking at off reservation in specific, is there a better way to do it?

SARAH E. HARRIS: Yeah. I mean, there are different criteria for on reservation and off reservation currently. There's a separate process for gaming
regulation that doesn't sort of let the gaming
piece bleed into the fee-to-trust land acquisition
piece.

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

THE HEARING OFFICER: But there is bleed over. Right?
I mean, we have separate EIS's that are done for
the land into trust and for the gaming piece. I
mean, why wouldn't we do the same -- I don't know.

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

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

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

And part of the other point that I was making
was that instead of using those resources to more
fully supplement the offices that need to do those things and do those reviews, as opposed to expanding the resources in other areas.

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

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

The other thing is, is because as Kitcki said, we don't know what that impetus is and because it appears that it is negative or it's being weighted against tribes' rights, as opposed to be reinforcing and setting up policy that is going to be more supportive of the tribes' rights,
and given the agency their deference with those litigations.

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

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

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

The money and anything else that's going in, and when you talk about the responsibility of the agency to take into account, you know, the impact,
the environmental impacts on the other human element, that's fine. But that's taken into account -- they should get the box checking this off, and like we get. Yeah, we heard you. Thank you very much. Sit down. Shut up. Go away, because the project is going through anyway. That's what we get, but we don't get the same respect when it comes to our projects to have that deference addressed.

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

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

And so Jim Cason has a great story that talks about Oneida. Right? So after the Sheryl case.
You know, they asked for 16,000 acres in one chunk to be taken into trust. Right? And the counties and the local townships were all up and arms. And you know, he said, you know, after like a year of sort of shuttle diplomacy and trying to figure out how you could, you know, address both sides and stuff.

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

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

But I think at the end of the day, you know, when the process fully plays itself out it results in, you know, a decision that -- and I don't want
to put so much on the legally defensible, but it also ends up in a decision that at the end of the day, you know, all the communities can live with. Right?

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

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

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

CHERYL ANDREWS-MALTAIS: With that being said, you know, I'm just looking at the environmental studies and the impact statements that are
necessary. Tribes generally have adopted or created, or you know, adopted by reference environmental policy and environmental regulations and whatnot.

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

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

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

And even to reintroduce that notion of commutability? Oh, my goodness. That's insane, because even when I mentioned, well, why don't you use -- if you want to use some sort of
justification for connection to the land, then why
not use the NAGPRA, you know?

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

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

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

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

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

THE HEARING OFFICER: Thank you.

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

And so, you know, in the notion of streamlining, can we do it better, you know, I frankly have a personal beef with the level of resources that I have to go into the environmental work that's done. I totally agree.
We have a departmentwide effort looking at, you know, is there a way that we can comply with the law, but do the environmental reviews across the department in a more, sort of, responsible way? And it's not just the money. It's the time that it takes to do these. And so that's part of what we're looking at with trying to -- we have a number already on the books and that apparently have not been used enough, I think, in the past. And if there's more, you know, we'd love to add to that.

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

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

CHERYL ANDREWS-MALTAIS: Contract EPA, you know. And I mean, they should be performing these functions.
That's their job, you know, watching the environment.

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

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

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

You know, and the other thing is, as we make these changes to these regulations, although another administration that might have a different view might come in and want to change it, the problem is the damage that's left behind during that interim when we had a bad law, or bad
regulations on the books. And we're still facing that from people that have had bad decisions with regard to their federal recognition, people that have had bad decisions with regard to their ability to take land into trust.

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

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

THE HEARING OFFICER: Thank you. So we're almost 25 minutes past our hour. We got started late, so I appreciate you guys hanging around. I'll give you -- Kitcki, I know you can always ask one more question. You know, I'll stay for another ten minutes, but I do have to kind of get rolling, but we'll wrap up by about 1:30.
TYRELL TERRY: How you doing? Tyrell Terry, Shinnecock Nation, Councilman. I'm fairly new to this so excuse me, but I just have a question.

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

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

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

You know, some of these are conversations that were had over the years. And you know, that's -- frankly one thing to say is maybe that was an issue ten years ago, and maybe it's not now. You know, so -- but I mean, I have to be honest with you. You still hear some tribal
leaders that are concerned about, you know, other tribes getting land, off-reservation land into trust within their, you know, traditional territory. And you know, that's an issue that hasn't gone away.

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

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

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

So are there priorities that are, you know, look like they need to be addressed? You know, and we'll figure out where we go from there with those. Maybe those require further consultation.
I don't know. We could focus in on those. Maybe we'll determine after we, you know, get through this first round of process. We'll see.

TYRELL TERRY: All right thank you.

THE HEARING OFFICER: Thank you, sir.

Thank you, everybody.

(Whereupon, the above proceedings were concluded at 1:28 p.m.)
STATE OF CONNECTICUT

I, ROBERT G. DIXON, a Certified Verbatim Reporter, and Notary Public for the State of Connecticut, do hereby certify that I took the above deposition, on April 12, 2018, at the Foxwoods Resort and Casino, 350 Trolley Line Boulevard, Mashantucket, Connecticut, 06338.

I further certify that the within testimony was taken by me stenographically and reduced to typewritten form under my direction by means of computer assisted transcription; and I further certify that it is a true and accurate record of the testimony given in these proceedings.

WITNESS my hand and seal the 4th day of May, 2018.

__________________________
Robert G. Dixon, CVR-M No. 857

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