

Proceedings
February 22, 2018

OFFICE OF THE ASSISTANT SECRETARY
INDIAN AFFAIRS
FEE-TO-TRUST
TRIBAL CONSULTATION

Miccosukee Resort and Gaming
500 Southwest 177th Avenue
Miami, Florida 33194

Thursday, February 22, 2018
9:00 a.m. to 12:20 p.m.

Reported by:

Robert Worst, Court Reporter

APPEARANCES:

JOHN TAHSUDA, III, Principal Deputy Assistant Secretary,
Indian Affairs

PAULA HART, Director, Office of Indian Gaming

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1 (Thereupon, the following proceedings were
2 had:)

3 MS. HART: Good morning. My name is
4 Paula Hart. I'm the Director for the Office of
5 Indian Gaming. The Acting Assistant Secretary has
6 asked me to be here today, and I wanted to let
7 everyone know that Mr. Tahsuda is being -- is
8 delayed. Something happened with his flight. So,
9 he isn't expected to be here until about 10:00,
10 10:30.

11 So, I guess I want to leave it up to you
12 guys. I can go over -- Mr. Cason spoke to the
13 crowd at the listening session in D.C., on
14 Thursday. I can go over some of his comments. I
15 have -- I listened to the tribes in Sacramento and
16 in Minneapolis. I can go over some of my thoughts
17 on the questions that they had with Mr. Cason
18 giving the answers that he gave on Thursday. I
19 think I can summarize some of that.

20 We can proceed like that. I see we only have
21 one person signed up to speak. So, you can, in
22 the back, the ladies are at the table as you come
23 in the door. You can go in and you can sign up to
24 speak, there.

25 So, I think I kind of want to leave it up to

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1 you guys. How do you want to proceed, knowing
2 that Mr. Tahsuda won't be here for another hour,
3 hour-and-a-half? And I don't know how many -- how
4 many of you were at the listening session in D.C.
5 on Thursday?

6 Okay. So, about a quarter of you heard what
7 Mr. Cason had to say up there.

8 Any thoughts? Anybody want to --

9 AUDIENCE MEMBER: I think the answer is we
10 would just prefer to wait for John.

11 MS. HART: Okay.

12 AUDIENCE MEMBER: We couldn't hear that in
13 the back.

14 MS. HART: Okay. Chehalis would like to
15 wait until John gets here before they speak. That
16 is completely understandable.

17 So, I guess what I'll -- Ernie?

18 MR. STEVENS: Sorry. Does that mean we are
19 just delayed until he gets here?

20 MS. HART: We can -- I was asking people
21 here what they would prefer to do.

22 MR. STEVENS: I agree with the Council, but I
23 would say we let any elected officials --

24 MS. HART: Right.

25 MR. STEVENS: So, I would be interested in

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1 their thoughts, but I wouldn't mind waiting.

2 MS. HART: Okay.

3 MR. STEVENS: Not that you're not a very
4 important lady.

5 MS. HART: Because I could -- and,
6 Ernie, actually, you heard what Jim Cason had to
7 say at the listening session.

8 MR. STEVENS: Yes.

9 MS. HART: So, I thought, you know,
10 maybe you could, or I could, kind of -- there is
11 about a quarter of the people here heard Mr.
12 Cason. So, I think it would be helpful for the
13 rest of the people to hear kind of what Jim had to
14 say.

15 So, I thought maybe we could do that before
16 John gets here. So, is that --

17 AUDIENCE MEMBER: That part sounds okay.

18 MS. HART: Okay.

19 AUDIENCE MEMBER: Is that just considered
20 informal dialogue before the formal consultation
21 starts when he arrives?

22 MS. HART: It will all be on the record.

23 It will still be all on the record, but, yeah, it
24 would be -- what I heard in Sacramento and what I
25 heard in Minneapolis was the tribe leaders wanted

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1 kind of a back-and-forth of dialogue.

2 And so, I guess I would have answered some of
3 the questions, and now that Mr. Cason has answered
4 those questions, and I think we were saying the
5 same thing, that I could kind of explain to you
6 how we got to this point, kind of explain the
7 draft that had come out early on, things like
8 that. So, kind of do more like a setup, so you
9 guys, hopefully, I can answer some of the
10 questions that I have heard before, and we can
11 proceed like that.

12 But I apologize for Mr. Tahsuda. He has been
13 -- I think he was in Phoenix at a consultation on
14 Tuesday, and I think he had another thing to go to
15 on Wednesday. And so, based on his travel across
16 country, he was delayed to come here this morning.
17 So, we do -- but he is planning on being here.

18 MR. STEVENS: Let me just say, Paula. I
19 certainly am not going to speak on behalf of Mr.
20 Cason. If there are any elected officials here,
21 I'm interested in their -- I work for 184 member
22 tribes and I'm very interested in their posture.

23 I think that, if there is nobody else that
24 wants to really analyze that, maybe you could give
25 us a brief overview. I can give you a couple

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1 points, and then, maybe, we'll try to just kind of
2 exercise that, and maybe take a short break before
3 John gets here.

4 MS. HART: Okay, that sounds good.
5 Okay.

6 MR. STEVENS: The only thing I'll say on
7 behalf of Jim is that he said that he wrote me a
8 blank check. No, I'm kidding.

9 (Laughter.)

10 MS. HART: I didn't hear that.

11 AUDIENCE MEMBER: Sounds scary, Ernie.

12 MR. STEVENS: Yeah, and Paula is going to
13 sign it.

14 (Laughter.)

15 MR. STEVENS: I think that we heard more of
16 the same things that the tribes continue to be
17 concerned about, and, again, I'll wait until John
18 gets here. If I say anything, I really yield it
19 to the leadership or their designee. I've been at
20 just about every one -- we, Mr. Jason Giles, who
21 is our executive director, we have been at every
22 one, between the two of us, and we continue to
23 have that posture.

24 Mr. Cason gave us, I got the assignment, but
25 he gave us the opportunity to write to him. So,

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1 if there is any input about any of the tribes,
2 we're going to write him a letter. I had written
3 him a letter at the beginning of this process.

4 MS. HART: Right.

5 MR. STEVENS: So, I think that, you know, a
6 lot of folks are really trying to emphasize that
7 the priority of understanding what it is to
8 recover our homelands, and too many people get in
9 and claim that we'll try to get a casino. I don't
10 know if my presence really helps that, because,
11 for those of you who don't know who I am, my name
12 is Ernie Stevens and I'm Chairman and chief
13 spokesperson for the National Indian Gaming
14 Association based in Washington, D.C.

15 I'm an Oneida from Wisconsin. I live on a
16 beautiful reservation right on the edge of Green
17 Bay. I don't know if anybody has heard of Green
18 Bay. We have a good football team. Put that in
19 the record, please.

20 But again, we don't want to control or push
21 this process around, and I'm a second-generation
22 person in this world of tribal sovereignty. I
23 learned this from my father, who traveled this
24 whole country long before there were any
25 lobbyists, very little staff, no cell phones, fax,

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1 none of that stuff, and my father taught me about
2 sovereignty, self-determination, self-
3 sufficiency, and all these things.

4 And really, that is what our land is about,
5 coming back to where we came from, and it is
6 unfortunate when people come and say that we are
7 trying to get a casino. There's like ten, you
8 know, rulings, and only, really, a few that are
9 really off reservation.

10 So, I really think that, while I am an
11 advocate, a chief spokesperson for the industry in
12 which myself and my team here will stand pat and
13 work heard, this really is about the recovery of
14 our homeland. And again, we went down the list
15 and we will put it in our illustration, in our
16 writing, I should say, about some of those
17 experiences, some of those experiences that I
18 heard from my father, some of them verbal, some of
19 them I don't even care to put on the record because
20 they are so sad about how we lost our land.

21 And those experiences are too many to even
22 list in this process. So, once we -- we have good
23 folks that help me write, because I tend to write
24 like I talk, I ramble on. And so, we will try to
25 streamline it.

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1 I know nobody believes that, right?

2 AUDIENCE MEMBER: Breathe, Ernie. Breathe.

3 MR. STEVENS: I've got a technique.

4 But I think, when it is all done here, this
5 is about recovery. This is about making it right.
6 And when it first started out, Paula, it was like
7 they just threw this process out there and then
8 they're going to do it -- that gave reflection to
9 us that they are going to do a formality and they
10 are going to continue to take us down the road.

11 And there is a new administration and different
12 things that play a role into that. Those are
13 concerns. But I will say, and this is all I will
14 state on behalf of Jim, Jim Cason, because I won't
15 speak for him, but I found that last week's meeting
16 was a more open-door posture, that he was willing
17 to listen, and that he had a better viewpoint in
18 soliciting our input.

19 And that is the most I can say, because, look,
20 it has happened before. You know, I always say it's
21 like Charlie Brown, when Lucy pulls the football
22 out there. You run up, try to kick it, and then
23 they pull it out. Tell Jim Cason to let us kick
24 that football and we will give him something that
25 is fair, something that any country can live with,

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1 and that will impact us for the next seven
2 generations. I know that sounds rhetorical. I
3 have 15 grandchildren and they should not have to
4 go through what we have to go through to try to
5 acquire that, to try to start a business, to try to
6 bring our people home to our community, because we
7 have jobs there now, to a large extent.

8 More land will create economic development,
9 create more jobs, and bring people home, and that's
10 our -- that's really a strong goal of ours. It is not
11 about a casino. This is about self-sufficiency and
12 people coming back to their homeland and feeling
13 comfortable about being there.

14 So, that is as much as I'll say. I can keep
15 going, but I'm running out of breath.

16 MS. HART: Okay. Thank you, Ernie.

17 MR. STEVENS: Thank you.

18 MS. HART: What we will do is I'll have
19 somebody do a prayer, but we will do -- start that
20 once John gets here.

21 What I would just like to do is kind of
22 summarize what has happened and how we got to this
23 point. I think, from day one, Jim Cason came on
24 real early and a memo came out saying that he was
25 pulling everything into D.C. All the non-gaming

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1 applications were coming in, and one of the things
2 that he was hearing right away was these
3 applications taking way too long, what, you know --
4 we need to do something about that.

5 So, what he did is he said, okay, non-gaming
6 -- all gaming applications come in here and go to the
7 Assistant Secretary. I want to see all the gaming
8 applications. And all the non-gaming ones have to
9 come into D.C. and will be signed off on by the
10 Assistant Secretary, and I will have to (inaudible)
11 off on them.

12 So, we pulled in all that applications, but
13 the non-gaming applications he pulled in because
14 of the -- of what the cry from Indian country, saying
15 there is -- these are taking way too long and why
16 are they taking so long.

17 So, he came in the door, he was hearing that
18 right away. He had heard that the Obama Administration
19 had made a bunch of decisions on the very last day,
20 in the very last hour, on gaming, for sure. And I
21 can tell you what had happened in that case is we
22 had been working on projects for a long time. The
23 applications had been in a while, it takes a while,
24 we were working with the tribes, and we did a big
25 push, at the end, to get applications completed and

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1 out the door.

2 And it had just so happened that, on the last
3 day, we tried to get as many as we could out, but
4 not by taking any shortcuts, but by following the
5 law and doing what we thought was the best that we
6 could do, put forward a good application. All of
7 our applications are litigated, most of the time.

8 So, we have to put together a process that
9 will
10 withstand that litigation, and we have actually had
11 -- you know, I don't think we have lost on any of
12 our cases. So, when we put together an application,
13 it does take a while to make sure that we will --
14 the tribes aren't harmed in the litigation process.

15 So, Jim -- so, Mr. Cason was looking at all
16 of that,
17 all of that. Along with that, what was happening
18 is tribes were coming in, he was taking meetings
19 with tribes nonstop, from day one, tribes were
20 coming in, and tribes were making their cases, and
21 they were saying this is what we need, this is what
22 is not there, this is what we have been asked for,
23 it is not in the regulations, this tribe wants to
24 do -- and it was a lot of competition, it was a lot
25 of people coming back, and we are hearing a lot of

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1 competition amongst tribes.

2 And so, Mr. Cason was calling together,
3 internally,
4 saying, asking us what it is that we were doing to
5 handle these issues, and we were saying that,
6 listen, we follow the law, we build our case, and,
7 yes, we ask for maps, we ask for this, we ask for
8 that, but it is all in an effort to help the tribes
9 produce stronger applications. And so, if it is
10 not part of the regulations and we know that a
11 congressman or a governor is going to ask for it,
12 when we put that application out and ask for a
13 concurrence or we put it out with a letter asking
14 for local community support or opposition letters,
15 support letters, when they come in, we look at
16 these, and a lot of people started to immediately
17 send their letters of opposition to Mr. Cason,
18 also.

19 So, tribes were sending in letters. We have,
20 I
21 think in the Shawnee application, we have about 300
22 letters of opposition that went right to Mr. Cason
23 that we, you know, nobody below him had seen until
24 he came up and asked me to read these letters of
25 opposition.

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1 So, I think what he was doing is he was
2 saying to
3 us, and he was saying, how do we -- we need to give
4 Indian country some answers, like how do we address
5 this? So, he -- we came up with that draft that
6 went out early on, September, October, and, now
7 that I look back at it, I think that there's some
8 -- I think we wrote it from the wrong point of
9 view.

10 I think we write it, like, okay, for example,
11 when

12 he said, listen, we should see what the local
13 communities want, we should see these MOUs, maybe
14 we should put in there that there should be an MOU.

15 Well, what I heard in Sacramento is that there are
16 counties that actually have ordinances that say we
17 will oppose every single land acquisition by any
18 tribe in the county.

19 So, I think what we should be saying, in our
20 regulations, is, are the -- do the tribes have
21 evidence of counties or local governments not
22 coming forward with or not working with the tribes.

23 So, something -- so, we kind of looked at it and
24 said, do you have an MOU? We can use that to say
25 this is going to be great.

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1 When he suggested that, I did come right
2 back, and I
3 said, no, no, no, we cannot -- that will cause a
4 problem, and I think George and I dealt with that
5 in Collins [sic].

6 Way back when, they asked, do we need an MOU?

7 And

8 we said, unofficially, yeah, you know, you have to
9 have an MOU with the locals, because this
10 administration, that's what they like to see.

11 So, but I think -- so, I came back to Mr.

12 Cason and

13 I said we absolutely can't do that, because what is
14 going to happen is the tribes are going to be --
15 they are basically going to be blackmailed into
16 doing something. So, he said to me, well, what do
17 you think? What do you think we should -- how do
18 we answer that? And I said, we need to, if you're
19 going to have that provision in there, then we need
20 a provision in there that said, if you can't get an
21 MOU, then you need to explain to us why.

22 And think if you are in California and you're
23 dealing with a county that has an ordinance that
24 says, automatically, they are going to oppose, we
25 need to know about that. We need to know the

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1 negative, as well as the positive.

2 So, I think, when the tribes seen that
3 provision, it
4 was -- it was outrageous, and, now that I look
5 back, it was outrageous, and -- but I -- and nobody
6 seemed to see the second part that said, well, if
7 you can't get an MOU, you need to tell us why, and
8 I think we should have flipped it, and, if I had to
9 rewrite it again, I would put the why up front,
10 say, if the county or you have evidence that the
11 county is not going to work with you, then we need
12 to know that, because we need to have an answer for
13 that, also.

14 So, a lot of the questions that I heard were
15 why did
16 this come about, how did this come about? Tribes
17 were coming in and tribes were complaining. They
18 were complaining about how long it took for land to
19 go into trust. They were complaining about how far
20 tribes were going away and they were coming into
21 other areas, competitive areas. They were
22 complaining about -- and then, local counties,
23 counties, mayors were coming in and they were
24 saying we need to have more say in this process
25 because this is putting a lot of strain on our

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1 infrastructure and we don't know how that's going
2 to affect, you know, and we want to have a say in
3 it.

4 So, he was looking at all of these, all of
5 these
6 questions, and he wanted to come up with a way to
7 address the questions, how to make the process
8 easier.

9 Now, the other thing, at the same time, that
10 was
11 going on, was we had an application in, and we had
12 processed it as an initial reservation. It had
13 gone all through the process, it went into trust,
14 and then there was a Carcierri issue. Everybody,
15 everybody knew that this tribe had gotten into a
16 lot of debt, and, if the litigation didn't go their
17 way, the tribe was out a lot of money and there was
18 nothing that we could do. So, that tribe came and
19 said, listen, how about if we do -- we can't game
20 under IGRA because of this Carcierri issue and the
21 litigation, but if we had the land and it wasn't in
22 trust, then maybe we could -- we probably could do
23 commercial gaming, under state law. So, how do we
24 do that?

25 So, Mr. Cason came to everybody and said,

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1 okay,
2 well, how do they do this? There is no way, under
3 the Indian Gaming Regulatory Act, to do that once
4 the land is in trust and it becomes Indian country.

5 So, we were asking everybody, we were asking the
6 tribal attorneys, we were asking, okay, so what do
7 we do? How do we do this?

8 So, the question, then, comes up, well, do we
9 take
10 the land out of trust? If we took the land out of
11 trust, this tribe would be able to go 100 percent
12 forward with commercial gaming and would be well on
13 their way to paying back their debt. So, that kind
14 of worked its way into the regulations: How do we
15 take land out of trust? Do we do this?

16 The other question that we were hearing a
17 lot, and
18 it was -- and I have to say, I wasn't hearing it at
19 all, but I know, every time I talked to Mr. Cason,
20 he would bring it up, he said, a lot of times,
21 people were complaining that the land was going
22 into trust for non-gaming, and then the use was
23 changed to gaming.

24 So, that has become a question and I think I
25 heard,

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1 in Sacramento, and I think this is a really good
2 point, so I'm kind of restating it, so you guys can
3 put it all in your comments to write in on this.

4 And what the chairman got up and said was
5 that
6 governors do it all the time to us, they make
7 deals, and then a new governor comes in and changes
8 position, and that's not illegal. And mayors do
9 it, city councils do it all the time, where they
10 come in, they change their positions, and then --
11 so, why is it like a big crime for Indian tribes to
12 do it, when a chairman comes in and says we're
13 absolutely not doing gaming, a new administration
14 comes in and they say, okay, we want to do gaming.
15 Why is that so bad?

16 And I don't think -- so I actually, when the
17 next
18 time I met with Mr. Cason and he brought up the
19 example of tribes changing their mind, I repeated
20 exactly what the tribal chairman said. And so, he
21 kind of paused, and he looked at me, and he said,
22 well -- it's almost like I could see that he had
23 never thought about that. And so, if he sees it in
24 writing and if you keep raising it to him, I think
25 he is going to understand, from that point of view,

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1 just like when I was talking about the MOUs and I
2 put this language in there and we worked on this
3 language, and then, now, when I listen to the
4 tribes and I think, okay, we should have said that
5 a little differently. It shouldn't have been, you
6 have MOUs; it should have been, is there something
7 we should know about and why the locals would not
8 be supporting the tribes. I think we should have
9 put it a different way, and I think it wouldn't
10 have been so harsh. But it certainly wasn't where
11 we were looking for you guys absolutely have MOUs,
12 because we knew that was impossible.

13 The other thing I think that he is looking at
14 is he
15 has always -- Mr. Cason has always dealt with just
16 the gaming applications, and a lot of the people
17 who come in to talk to him are talking about gaming
18 applications, and I think that's the process that
19 he is familiar with and I think we definitely have
20 to make sure that he separates gaming applications
21 from the non-gaming applications. I think that's a
22 good starting point.

23 I think he has to understand that, you know,
24 there's
25 a lot -- there's a reason why there is this process

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1 and why it was put in place and why the local
2 communities get way more involved in a gaming
3 application than a non-gaming application. I think
4 Prairie Band made a really good point where that
5 chairman got up and said that my reservation is an
6 island, so everything is off reservation. I think
7 stories like that, that Jim needs to hear because
8 he doesn't understand. He is not as familiar with
9 Indian country as we are, and he doesn't understand
10 that there's these unique situations with tribes
11 that he may not have heard of, and, unless we get
12 them in the record here and I can -- and in many
13 instances, when he says something about, oh, that
14 is off reservation, I can come right back and
15 explain to him Prairie Band's situation and ask
16 him, well, how do you want to handle this, because
17 everything is going to be off reservation because
18 there is no -- there is water all around this land.
19 And I need to -- and then, he needs to think about
20 that.

21 But I think it makes him very much aware --
22 George?

23 AUDIENCE MEMBER: I think you mean Prairie
24 Island, not Band.

25 MS. HART: Yes, Prairie Island. You're

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1 absolutely right. Prairie Island. You're
2 absolutely right.

3 So, I think that -- so, I think he is -- I
4 think we
5 have to educate him on who we are, and I think the
6 stories that I'm hearing, it's very helpful. I
7 think he -- I think he is coming from a point where
8 he wants to -- he does want to -- he wants to be
9 fair. He doesn't always come across like that, but
10 he does, I have to say, he has welcomed meetings by
11 anybody who has called in and asked. You have been
12 able, everybody has been able to get a meeting with
13 him. There's times that he has had to say no
14 because of scheduling, but he is pretty much -- and
15 even myself, I have to say, I think he's the first
16 Deputy -- Associate Deputy Secretary that I can
17 walk up and -- on Friday, before I left, I walked
18 up there to give him a briefing paper and he called
19 me right in and we talked about this consultation,
20 we talked about what he said at NCAI.

21 So, he was -- you know, he's -- and I asked,
22 I said,
23 because, inside the building, he is known,
24 perceived as a very mean person and he is out to
25 get Indians, but I don't think that's -- I don't

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1 think that's -- I even told him, I said, yeah, your
2 reputation, you might have ruined it because you're
3 coming out as, you know, you're actually going to
4 want to work with Indian tribes, and that's a good
5 thing.

6 And so, he -- but he will tell me, he comes
7 right
8 out, and he'll say, you know, I've got a lot of
9 local people in here and they're saying a lot of
10 bad things about what's going on, and I said, okay,
11 then, we need to have the tribes respond. We need
12 to have the tribes come back and tell you their
13 side, because you can't just hear one side. And
14 so, I think he's willing to do that, and I think,
15 part of this process, he asked me about the
16 process.

17 He said, what do you think, how do you think
18 the
19 consultation is going, and I said, listen, I think
20 the tribes are not going to be happy at the end of
21 this consultation process because, I said, the way
22 it's running is like we're sitting there, listening
23 to what the tribes have to say, and they're not
24 getting any feedback. And I said, so I think it
25 was good that you gave feedback at the listening

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1 session, you actually had a back-and-forth, and I
2 said that really needs to keep happening.

3 I said, but I think what has to happen is the
4 tribes
5 need to hear that we hear what they're saying, and
6 so we need to develop something, some way of
7 figuring out how you guys will know that we have
8 heard what you said.

9 So, he talked to me about that already. He
10 -- so,
11 we're -- he wants to put in place a policy that
12 works with Indian tribes on consultation, like how
13 do we better do consultation. Is there
14 consultation that you've been to that you thought,
15 you know, that's really good consultation? What
16 needs to happen for that, for you guys to feel like
17 you've been heard? Because I do think that, at the
18 end of the consultation, you guys are still going
19 to be unhappy with this process, and I informed him
20 of that. He is very much aware of that.

21 So, he is thinking, right now, he wants to
22 kind of
23 do a summary, and I have to talk to Mr. Tahsuda
24 about this, so I probably am speaking beyond what I
25 should, but I think I'm relaying to you what Mr.

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1 Cason and I had talked about, and just to kind of
2 let you guys know that this is all something that
3 he is thinking about, this is all something that he
4 is aware of, and he does want to figure out what it
5 is, what it is that -- and I think the other thing
6 that he realized is that what he is hearing in
7 meetings is not necessarily what Indian country is
8 saying.

9 I think he really has heard that loud and clear.

10 But how do you -- how do you -- and I have
11 this
12 problem, too. How, when a tribe comes in, sits in
13 front of you, and tells you what it is they want to
14 do, and why it is going to be really, a really good
15 thing for that tribe, then how do you make policy
16 that affects every other tribe and still make sure
17 you keep your word to that tribe that is sitting
18 right in front of you?

19 And I think he needs to understand that is a
20 difficult thing to do, and I think he tries to be
21 as honest as he can, and I think one of the things
22 that he has a hard time doing is there's -- he is
23 hearing a lot of information that I'm not aware of,
24 and it is -- and he may have to say no on some
25 cases, and how do you do that, and when do you do

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1 that, and how do you do it in a manner that -- how
2 do you tell a tribe, listen, you know, this -- this
3 -- like with the tribe that is now in big-time
4 debt, how do you -- and we kept saying to the tribe
5 -- to the administration, listen, you know, we have
6 to let tribes make bad decisions, too. We can't
7 just -- we can't just think that every decision
8 they make is a good decision, and, you know, if
9 they make a bad decision, we have to process it, we
10 have to follow the law, and we have to do what we
11 have to do, even if we think it's a bad decision
12 and ends up they're in a lot of debt, we did what
13 we could to help them do what they wanted to do.

14 So, and I use my own tribe all the time
15 because they
16 make a lot of bad decisions -- no, I shouldn't say
17 that, but I disagree with a lot of things that they
18 say, and I can see George laughing back there
19 because he said our tribal state compact is the
20 worst on the record, and I think it still holds
21 that. We have a -- it was a bad decision and
22 George argued with the tribe for about an hour to
23 get them to say we should disapprove this, and the
24 tribe absolutely wouldn't go along with him, so.

25 We have to, even though we're sitting here,

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1 we have
2 to leave it to tribal leaders to know what is best
3 for their tribe and their situations, and I think,
4 when he meets with you, he listens to what is going
5 on. And so, okay, this is a big backlog, at the
6 Bureau, there is a big backlog, let me call these
7 applications in and let me find out what is going
8 on.

9 And it is probably good that John isn't here
10 because
11 he said to John, John, I've been here a year now
12 and we haven't processed one non-gaming
13 application, what is the holdup? Either you guys
14 are not doing anything, or you're not telling me
15 what you're doing. And no non-gaming application
16 had been processed in a year. And so, he looked at
17 John and he said, what's the problem? And John
18 said, basically, the trust -- the Office of Trust
19 has been in a re-org and they are working on that,
20 and they haven't been able to get to him the
21 applications for non-gaming that need to be
22 processed. And John -- and so, Mr. Cason says to
23 Mr. Tahsuda, listen, this is what they're -- this
24 is what the problem is, this is what the complaint
25 is. You guys have got to be able to do your job, so

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1 that, when I go out there or you go out there, we
2 don't hear how this backlog is. So, it is
3 unacceptable that, for one year, there hasn't been
4 one single non-gaming application processed.

5 So, this was a conversation that we had
6 within a
7 week. So, he is hearing what is -- he is
8 listening, he is hearing, and he is trying to
9 improve the process, and I think -- I think that is
10 something that the administrations have been doing
11 for a long time.

12 The other thing I think that the heard from
13 the last
14 time is regional directors were handling
15 applications different. And so, what was happening
16 in Indian country, one tribe's application would go
17 through no problem, and the exact same circumstance
18 would happen in another region and it would be
19 stuck for a long time. And so, this tribe would
20 come in and say, well, they got it done, and it
21 was, you know, no issues, and we do the same thing
22 and there's all kinds of problems. So, he tried to
23 get the regional directors to, you know, try to
24 standardize the process for everybody, and I think
25 that's -- this is a work in progress.

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1 I think this is -- has a lot to do with the
2 management, and I think that's why he asked Mr.
3 Tahsuda to look at what is going on and what is
4 slowing things down.

5 So, I think those are the major issues that I
6 heard
7 and that he addressed at the listening session.

8 Does anybody have any questions on any of
9 this?

10 Okay.

11 AUDIENCE MEMBER: Is there going to be
12 something at NCAI in Kansas City?

13 MS. HART: I -- Debbie?

14 AUDIENCE MEMBER: I think they agreed to that
15 case that --

16 MS. HART: Okay.

17 AUDIENCE MEMBER: -- and they moved the
18 deadline to June.

19 MS. HART: Okay. So, yes --

20 AUDIENCE MEMBER: But I haven't heard that
21 anything has come out. I know you guys are going
22 to Foxwood.

23 MS. HART: Yes.

24 AUDIENCE MEMBER: But I haven't heard whether
25 you're also going to Kansas City.

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1 MS. HART: I think -- I think, when Mr.
2 Cason spoke on Thursday, I think Liz Apple
3 (phonetic), who is the person in charge of these,
4 she has to make that -- put that on -- get that on
5 the schedule and she has to do all of that. And I
6 think -- so that's in the process, right now.

7 But yes, there is going to, on March 15th,
8 they scheduled -- they rescheduled the Connecticut
9 consultation, so that one will happen March 15th.

10 And I think what -- I think what will happen
11 is there will be a notice coming out that, if we
12 schedule one, when that one gets scheduled, there
13 will be another notice that goes out on that.

14 I think I think the only thing that I keep
15 saying, and one thing I want to make sure
16 everybody is aware of is that I am pushing to make
17 sure that he separates the gaming and the non-
18 gaming. I think there was a couple good ideas
19 about paddocks. One of the things he did say,
20 also, he told Mr. Tahsuda, on reservation, let's
21 get those
22 out. They should not -- there should be no delay
23 on those.

24 So, he heard what was being said. He said
25 that the only ones that, you know, should be

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1 taking more time is off reservation. And I have
2 to tell you that he does have, when I first talked
3 to him about off reservation, I will give an
4 example of -- is anybody here from Oneida of New
5 York?

6 Okay. Well, he had dealt a lot with the
7 Oneida application when he was here eight years
8 ago, and they had concluded that there was 13,000
9 acres that the tribe would take back into trust.
10 So, when he came back this time, there was three
11 parcels that they had applications in for, and he
12 said, wait a minute, what are these three parcels?
13 And so, we explained to him they are within the
14 exterior
15 boundaries of the reservation. And he said, we
16 agreed to take in 13,000, and here is the cluster,
17 and is it within that 13,000? I said, no, that
18 13,000 is done. And he said, well, that's the
19 reservation and anything outside of that would be
20 off reservation. I said, oh, no, no, no, that's
21 not -- that is absolutely not true. I said,
22 Supreme Court said their exterior boundaries had
23 never
24 been terminated. And he said, well, eight years
25 ago, we agreed to this 13,000. And I said, well,

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1 that doesn't change the definition of exterior
2 boundaries within the reservation boundaries.

3 So, I -- so, we talked through that, and he
4 now understands that, you know, what he thinks as
5 on reservation is totally different than I bet
6 anybody else in this room. So, that's why,
7 Prairie Island, it was really important for them
8 to understand -- him to see that situation,
9 because, even in an easy case where the Supreme
10 Court has said these are the exterior boundaries,
11 he
12 doesn't -- he didn't see that everything within
13 there is on reservation. He felt like what we had
14 taken into trust was now the reservation, and so
15 anything outside of that was off reservation.

16 So, there's some really things that I think,
17 in Indian country, we all understand and see very
18 clearly, that he -- I don't think he ever thought
19 about. So, I think getting everything in writing,
20 submitting it, testifying, everything is taped, he
21 now is going to, I think, try to make sure that
22 there is a document put out or something that you
23 guys understand that he has heard what you said,
24 and maybe it's a summary of the consultation, but
25 something to help you understand that he -- he has

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1 -- actually, he reads everything, so he is
2 probably going to be reading all the transcripts.

3 He does read everything that comes across.
4 Everything that I have given him, he has reads.
5 He reads
6 all the briefing papers, he looks at the maps, he
7 looks at everything. And of course, there is a
8 lot fewer gaming applications than non-gaming, and
9 I can't speak to the non-gaming applications, how
10 he is treating them.

11 AUDIENCE MEMBER: I don't know if you have
12 addressed this, but one of the things that came up
13 with Cason, too, is how a tribe's past treaty
14 lands and private treaty lands going to be
15 impacted by this, and that was a comment, too,
16 that he had asked tribes to write what you think
17 and how it should be that the Supreme Court ruled
18 (inaudible) encourage tribes to write on both that
19 issue.

20 MS. HART: About the treaty, the
21 treaties --

22 AUDIENCE MEMBER: Past treaties.

23 MS. HART: -- past treaties --

24 AUDIENCE MEMBER: Prior treaties --

25 MS. HART: -- prior treaties and

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1 settlement acts. All of that, he needs to
2 understand, and he needs to --

3 AUDIENCE MEMBER: With off reservation and
4 all of that.

5 MS. HART: Yeah, so. Okay. Yeah?

6 MR. CARROLL: Kitcki Carroll, United South
7 and Eastern Tribes. Just one initial thing I
8 wanted to offer.

9 First, a comment about your remarks this morning.

10 I think part of the challenges that the
11 Bureau is suffering from is a communications
12 deficiency. So, it's insightful to hear your
13 thoughts about inside the game, inside the wall
14 conversations that are taking place, but, using
15 your own example of a whole year went by before
16 any
17 fee to trust applications were approved, the
18 Bureau has to appreciate, from our perspective, as
19 an outsider who is not inside those walls, having
20 those conversations, that's a statement in and of
21 itself.

22 MS. HART: Yeah.

23 MR. CARROLL: All right. So, when the very
24 next thing that happens is rolled out an
25 announcement from the Bureau is memo 151, where is

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1 this coming from, when we just had a year of
2 (inaudible) trust answered.

3 MS. HART: Right.

4 MR. CARROLL: The thing I want to remark on
5 that came up during last week's session was you
6 would assume, from hearing conversations that were
7 had inside the building about deficiencies in the
8 process, those meetings are probably a small
9 fraction of a percentage of the 573 tribes
10 approved.

11 MS. HART: Right.

12 MR. CARROLL: So, before, one would assume
13 that, before the Department takes the steps that
14 it did, it would offer Indian country some
15 analysis to justify that action. Really, what is
16 the problem in this process? And you just
17 mentioned, you know, the administration's own
18 effort on reorganization is interfering with the
19 very
20 process that we're talking about.

21 On top of that, and I'm speaking only from a
22 BIA eastern regional perspective and our knowledge
23 of existing deficiencies within this region, we
24 also know that the Bureau suffers from capacity
25 and resource issues to do its jobs in a multitude

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1 of areas, including the fee to trust process.

2 So, we would like to see, we have asked for
3 what analysis has been done, beyond just anecdotal
4 comments from conversations about process, to
5 really zone in on where those problems are coming,
6 why there are these delays. Is it really a
7 procedural one, and that's the reason for
8 procedural changes? Or is it resource related and
9 there needs to be a resource piece of this
10 address, as
11 well?

12 The other thing that you mentioned and that I
13 have heard now, a couple times, we are aware that
14 is part of the meetings that are being discussed,
15 but there are tribal concerns being put forward in
16 this space. At the same time, everybody in this
17 room who does this work on a daily basis is fully
18 aware of the challenges that we, the consistent
19 challenges that we have with local counties and
20 state governments.

21 The roundtables at our organization that our
22 tribe leaders have been involved in over the
23 years, on this fee to trust issue, have
24 concentrated on that very reality that the
25 counties and the states don't like this in many

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1 ways, to your own point where they have standing
2 policy
3 that, for any fee to trust application, there is
4 going to be opposition to that.

5 And so, that also begs the question for us,
6 where is this coming from? And I keep hearing, in
7 response, the tribal pressure, and then kind of
8 dismissal of the local county/state pressure,
9 where, from our perspective, it seems to be the
10 reverse.

11 But it seems, for whatever reason, the
12 Department is leading with the predominant message
13 of this is a tribal issue that is causing this
14 problem, as opposed to counties and states are the
15 ones behind this, causing this issue. And you're
16 giving some glimpses that those conversations are
17 happening, so we know they are happening, so it
18 would
19 be interesting to know, as part of that same
20 analysis, who is -- not necessarily who,
21 specifically, but with all these interests that
22 are kind of in play here, where are the
23 predominant pressures coming from? What is the
24 Department responding to? So, just some initial
25 thoughts.

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1 MS. HART: And how would -- should we
2 put out a tribal leaders' letter? How do we --
3 how do we communicate that? Because there's --
4 you're absolutely right, there are -- and when I
5 talk, I'm leaving out tribal names because we're
6 having meetings and I'm listening to what the
7 tribes are saying and we're trying to make
8 adjustments to that.

9 But I don't know, unless that tribe, or every
10 tribe that meets with me, wants to make their
11 interests well known, that's the other problem.
12 How do I do -- how do I put it out there, without
13 saying or getting very detailed on a certain
14 tribe's situation?

15 So, I guess -- so, how do I -- how do we do
16 that?

17 MR. CARROLL: So, I don't have all the
18 answers in response, but here is what I would say,
19 just as a -- within the current administration, in
20 comparison --

21 MS. HART: Okay.

22 MR. CARROLL: When the Indian Trade
23 Regulations were being rolled out, the message
24 that was coming, in relationship to those new
25 trade rights, was we are going to have the most

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1 robust consultation that any country has every
2 seen about these Indian Trade Regulations.

3 MS. HART: Yes.

4 MR. CARROLL: That's what we were being told,
5 and this is going to be a multi-consultation
6 across Indian country.

7 MS. HART: Right.

8 MR. CARROLL: When the administration and the
9 Department took this step, it was night and day,
10 because, in fact, our first communication was whoa,
11 what is the rush. One, where is this coming from?
12 One, why is -- the comment deadline was, initially
13 --

14 AUDIENCE MEMBER: December 15th.

15 MR. CARROLL: -- December 15th.

16 MS. HART: Yeah.

17 MR. CARROLL: All right. So, it was a very
18 small window. So, to your point, we had just sat
19 back, watching nothing happen; now, all of a
20 sudden, this is being forced with a quick
21 turnaround.

22 MS. HART: Yeah.

23 MR. CARROLL: Again, that speaks volumes to
24 what the intentions are when there isn't a more
25 direct inclusion.

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1 So, part of my response would be, I'm sure
2 the Department is getting hit with a variety of
3 issues, a multitude of issues, from a variety of
4 tribes.

5 MS. HART: Right.

6 MR. CARROLL: My position on that, I feel
7 like the administration has a responsibility to
8 assess whether this is indicative of an all Indian
9 country issue, or whether this is an issue in
10 isolation, and then that determines whether or not
11 how it goes forward.

12 But that goes back to my analysis. Has the
13 Department done any analysis to substantiate what
14 it is hearing in these discussions about a problem
15 with the process? And sharpen that with clarity
16 and focus, so it can identify is this something on
17 us, is this getting bogged down in our own
18 internal discretion? Do we not have the right
19 people in the seats to do their job to process
20 these applications? What is going on here that is
21 behind this?

22 MS. HART: Okay. The only thing I can
23 say to that is, I think, when we put out a
24 schedule, like the December 15th deadline, I do --
25 I don't think that -- I don't think that anybody

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1 inside the building felt like this was going to be
2 a done deal by December 15. I think we anticipate
3 that we are going to have to do more consultation,
4 but I think what we try to do is put a start date
5 and an end date, so that -- and I think the
6 administration puts that on the staff to say,
7 okay, this is -- this is your timeframe and we
8 want something done.

9 And so, even on December 15th, if we come
10 back and we say, listen, we need -- we need six
11 more consultations, that it -- and I think that's
12 probably on us, that they are saying you guys need
13 to do something and here is what we have, and now
14 you need to reschedule -- you need to schedule six
15 more consultations.

16 So, I understand, now, in having you said
17 that, that, if -- if you're comparing to, and you
18 should because they're happening at the same time,
19 the Federal Indian Traders License Consultation
20 versus what happened here, I -- and I think it was
21 just different offices' way of moving things
22 forward.

23 And Dr. Clarkson came in, he told us this was
24 his goal, this is what he wanted to do if he
25 accomplished nothing else while he was here,

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1 during this administration, that he wanted to work
2 on the Federal Indian Traders License, and he
3 focused on that, and that was his -- that was his
4 project. And so, he did what he needed to do to
5 take that step.

6 The 151 regs kind of crosses over into a lot
7 of programs. Like I said, it isn't -- the
8 regulations are not gaming regulations, but they
9 call me in because all of the gaming applications
10 go through the 151 process and they wanted to make
11 sure that I was aware of everything, the trust
12 people were on board, the regional people were on
13 -- had to be called in. So, there was a lot more
14 people involved in the 151 internal process.

15 And I think, and I think, also, a lot of
16 people, new administration -- we're hearing all
17 kinds of rumors. There's all kinds of stuff, you
18 know, being said. You know, there's a -- and on
19 top of this, now, there's a whole big re-org with
20 the whole Department of Interior, and all of these
21 things affect everything that is going on.

22 And I don't think a lot of people talk to Mr.
23 Cason on a daily basis like Mr. Tahsuda does. So
24 --

25 MR. CARROLL: Just one last thing from last

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1 week's session, I didn't see -- I didn't want to
2 (inaudible) that Chairman Stevens said in his
3 early remarks.

4 One of the things that we talked about last
5 week, as well, is this is all restoration of
6 homelands. We don't need to get into the history
7 of the whys behind that. The starting point is in
8 recognition that this is a restoration of tribal
9 homelands.

10 Part of the -- part of my communication on
11 and our frustration with the way that we're
12 hearing this presented, and it is not that we are
13 naïve to reality, we all get how D.C. works and
14 how the real world works. However, there seems to
15 be a reoccurring theme about the Department
16 striking a balance between tribal interests,
17 state, county, and local government interests, and
18 you can at least appreciate, from our perspective,
19 this is about the restoration of tribal homelands.

20 Nowhere in that restoration, nowhere in the
21 Bureau's mission does it say anything about
22 striking balance between, in its job and
23 responsibilities to Indian Country, with local and
24 state county governments, because this is not a
25 new phenomenon that states, and counties are

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1 opposed to tribal sovereignty. We have numerous
2 examples where we can shed light on that. So,
3 that has always been there.

4 So, it is a little disconcerting to us when
5 we hear this notion trying to strike balance,
6 because, if that's the case, it is going to be a
7 very slow process because there is going to be
8 constant county/state opposition, in many cases,
9 to fee to trust applications, especially in this
10 off-res environment.

11 So, we would just hope that, as part of this
12 continuing conversation, that the Department
13 expresses a greater weighing, balancing towards
14 our interests, if there is balancing at all, that
15 the goal is restoration of tribal homelands. That
16 noise of state governments, local and county
17 governments is always going to be there, and that
18 really, then, becomes the concern of the
19 Department to figure that out, as opposed to
20 tribes trying to get all this handled to present
21 to the Department so it doesn't have to deal with
22 that. Its job is to restore our lands.

23 MS. HART: And let me -- and I
24 absolutely, as a tribal member, I absolutely, 100
25 percent agree, and I absolutely try to push back

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1 on that, all the time.

2 But I will use an example of what happens,
3 and I keep using George because George is the
4 former Director of the Office of Indian Gaming,
5 and there was an application that came in. We had
6 finished our analysis, it had gone through the
7 surname process, it was going up to the Assistant
8 Secretary for signature.

9 One of the local communities submitted like a
10 1,000-page report, and the Director of Gaming
11 said, no, we can't look at that because it's past
12 the deadline, you know, we're outside, and my
13 decision has been made, it has gone up. The
14 courts came back, and they basically said,
15 absolutely no way; if that came in before the
16 document is signed and final, then you have to
17 consider that.

18 So, it's not that the local counties came and
19 said we want you to look at this and we said we've
20 got to be fair about this. In that case, we had
21 to stop the whole process and we had to consider
22 this document by order of a court. So, we're
23 being -- things are being done in reaction to
24 litigation, also.

25 And we push back all the time, and we say to

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1 the administration, you know, we -- this is the
2 Bureau of Indian Affairs and we want to make sure
3 that that is first and foremost. And so, inside
4 the building, we do push back, but we also realize
5 that, if any of these applications go in front of
6 the court, and, like I said, all of the ones I
7 deal with go to litigation, and that's what the
8 judges are looking at, did you listen to what so-
9 and-so -- and look at Patchak, for example. The
10 whole Patchak case, how is that man able to do
11 what he has done? But we have to look at that
12 because that is what the courts are saying has to
13 happen.

14 And so, that is kind of why, I think, the
15 locals have gotten so much into this process, and
16 it is not that we sit back and think that, you
17 know, let's be fair to these people. You know, we
18 realize that we're looking out for the tribes and
19 we're trying to make the applications the best
20 possible, so that, when it goes in front of a
21 judge, the judge can't change it so that they have
22 more power.

23 And we constantly say, especially on off
24 reservation gaming applications, wait a minute,
25 the state has veto power over this anyway, so we

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1 need to make sure that the tribal interests are
2 well up front. So, you know, there -- so, I do
3 have to say litigation has a lot to do with the
4 process, also.

5 MR. CHARLES: And if I could tag on to Mr.
6 Carrol's comments, and, Kitcki, thank you for
7 those comments. I'm James Charles.

8 THE COURT REPORTER: I'm sorry, could you
9 come up to the microphone? I can't hear a word
10 you're saying.

11 MS. HART: For the record, Rob would
12 like you to spell your name.

13 THE COURT REPORTER: Everybody, when they
14 speak, if they could please come up to the
15 microphone. Otherwise, I'm just putting you're in
16 the gallery because I can barely see where
17 somebody might be.

18 MR. CHARLES: James Charles, C-H-A-R-L-E-S.

19 Just to tag onto Kitcki's comments, I think
20 something that is extremely important is that,
21 when you're going through and you're looking at
22 these regulations and you're looking for
23 consultation on them, you're looking -- you're
24 processing this based on -- you have a
25 bureaucratic process that you go through.

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1 For a lot of tribes, as Kitcki said, this is
2 restoration of ancestral homelands. This is a
3 cultural decision which requires traditional
4 decision-making, and traditional decision-making
5 doesn't necessarily follow in that 30, 60, 90-day
6 timeframe. And being, respecting that will help
7 for meaningful comments.

8 So, I would just respectfully request that
9 you guys
10 acknowledge that, and, you know, your comments
11 brought that to my mind. It's difficult when you
12 get -- you guys have worked on something for eight
13 to 12 months, and then we get it back and we have
14 30, 60, 90 days to respond. Well, how do I -- how
15 do we get the elders, how do we get the community
16 meetings together, how do we explain this, how do
17 we process all this, how do we get a decision? And
18 then, how do we go, quote, unquote, "formally"
19 give something to the tribal council. That
20 doesn't normally happen in 30 days. I appreciate
21 it.

22 MS. HART: Thank you for that comment.

23 What I would recommend, and I don't -- and I
24 think
25 we look at that all the time, and one of the

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1 things that I process in my office is, if a tribe
2 writes to me and tells me that is what they have
3 to do, then I totally, totally will allow the
4 tribe's process to go forward. I think we put the
5 30-day time limit, we put those time limits in, so
6 that the process keeps moving.

7 But if, absolutely, if the tribe has a
8 process that
9 is not going to fit, I think if you let the
10 program know that that's the problem, then we will
11 certainly make adjustments to that. Thank you for
12 that comment, though.

13 Okay. I think, then, if there -- hopefully,
14 this
15 was helpful. I tried to let you know what the
16 thinking was inside the building, and kind of how
17 it is we work with Mr. Cason's office.

18 But Mr. Tahsuda should be here, he said about
19 10:00,
20 10:30, so I'm expecting any time now. So, we want
21 -- everybody take a break, and we can start over
22 and we'll do a prayer when he gets here, and we
23 can, then -- and then, like Rob said, as you come
24 up to the mic, if you want to say your name and
25 spell your name, your comments will be recorded on

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1 the record. Thank you.

2 (Off the record.)

3 MS. HART: If everybody would be -- will
4 stand for a prayer before we start our
5 consultation with Mr. Tahsuda. Robert?

6 MR. SAUNOOKE: Please bow your head, as your
7 custom dictates.

8 Our most kind, gracious father in heaven, we
9 bow our heads and give thee thanks for the many
10 people who have come and traveled far distances
11 today to fight and offer advice and consultation
12 over our lands, our people.

13 We are mindful of those who have struggled
14 and fought with us before, gone before us, and
15 laid the groundwork for our ability to be here
16 today. We ask for their spirits to be with us as
17 we work together to accomplish the goals of our
18 people and to protect our sovereignty, our
19 traditions, and our customs.

20 We ask for wisdom, for strength, patience,
21 and to allow us to have open ears and hearts, so
22 that we might be able to share with one another
23 our struggles and find strength in those
24 struggles. Please help us be mindful that,
25 together, we are stronger than we are apart; that,

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1 as a people, we are the foundation of this country
2 and set the example and tone for those who
3 continue to oppose our struggles and to fight for
4 the efforts that we are trying so hard to protect.

5 Please give wisdom to those who come from
6 Washington, D.C. to listen, that they might also
7 have the wisdom and spirit to be openminded and
8 help us to find a way to continue this path and
9 this journey that we have been fighting and
10 struggling for so long.

11 We ask you to watch over those who travel,
12 that they will do so safely as they return back to
13 their homelands, that they will be able to return
14 with a positive message and a better understanding
15 of what is necessary, so that we might be able to
16 accomplish the goals of our people, as we continue
17 to struggle and fight for our rights and our
18 sovereignty.

19 We ask these things humbly in the name of
20 Jesus Christ. Amen.

21 MR. TAHSUDA: Good morning.

22 Believe it or not, I'm thankful I could actually
23 make it here to be with you. It was quite the --
24 quite the travel experience to get here, so.

25 So, I know Paula had talked with you a little

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1 bit beforehand, and if I repeat anything she said
2 take it as emphasis, but I thought, we're trying
3 to offer, as we do these consultations, a little
4 bit of the overarching themes that we're aiming
5 for, and also to dispel any concerns or
6 misperceptions about what we're talking about.

7 And so, as a foundational matter, our boss,
8 the Secretary of the Interior, is strongly
9 supportive of tribal sovereignty. He said that
10 publicly. He supports tribes getting land into
11 trust. He supports tribes having strong, healthy
12 communities, both on the economic side and on the
13 cultural and spiritual side, the health side. And
14 so, this is part of our direction from him is to
15 find how we -- ways that we can better serve
16 Indian country. That is our charge on his behalf,
17 is to serve tribes and Indian-people.

18 So, in that regard, I've heard the question
19 asked a couple times, and I think it bears
20 repeating, strongly, that there is no hesitation
21 on behalf of the Secretary and our doing our work
22 for him to take land into trust for tribes. It is
23 a fundamental responsibility that we have on your
24 behalf, and a fundamental aspect of your
25 sovereignty, and something that we continue to do

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1 and will continue to do. That includes both on
2 reservation and off reservation.

3 So, the discussion that we've having today is
4 really on the off reservation, 151, Part 11, and
5 that discussion is really focused around us trying
6 to find a better way to come to more timely
7 decisions on the tribes' behalf, and come to
8 decisions, at the same time, that are strongly
9 defensible if we are faced with litigation over
10 these.

11 And I would say, without hesitation that we,
12 the Department and you, the tribes, get sued a lot
13 more often for off reservation acquisitions than
14 you do for on reservation. So, part of our effort
15 is also to try to build the strongest record we
16 can on your behalf, when we make a decision to
17 take the land into trust.

18 So, that is part of what -- I guess that is
19 sort of an underlying theme of what we're here to
20 do, and part of that then leads into how can we do
21 -- how can we address off reservation acquisitions
22 in a way that addresses the tribes' needs, that
23 addresses the legal responsibilities that we have,
24 also.

25 So, I know there has also been asked the

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1 question about why do we make -- I think, to boil
2 it down, why do we make it so difficult, with all
3 these regulations, to take land into trust off
4 reservation? And the sort of simple explanation
5 is that the discretionary authority for the
6 Secretary to take land into trust, both on
7 reservation and off reservation, comes out of the
8 1934 Indian Reorganization Act.

9 1934 was quite a while ago and Congress wrote
10 laws differently then than they do now, and that
11 statute is more simply written, I guess you could
12 say, than if it were a piece of legislation being
13 enacted today. And so, for those reasons, the
14 statute has been under challenge for years, and,
15 in an effort to bolster the constitutionality of
16 that statute, we have, the Department has engaged
17 in, for years, decades, at this point, really, in
18 trying to build a legal structure that sort of
19 fleshes out the Act in a way that the Supreme
20 Court, ultimately, the Federal Courts, but the
21 Supreme Court, ultimately, will be satisfied that
22 the law meets certain constitutional touchstones
23 that they want to see in this type of legislation.

24 So, that is the reason we have more extensive
25 regulations under this law than you may think is

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1 needed. It is also something, why we have to be
2 very careful on how we tread in making the
3 decisions under the statute and following our
4 regulations carefully.

5 So, anything else I should add?

6 MS. HART: I think that's it.

7 MR. TAHSUDA: Okay. So, this is
8 the -- was going to be the last consultation but
9 is now the fifth.

10 And did you tell them about the rescheduling?

11 MS. HART: Yes.

12 MR. TAHSUDA: Okay. I just want
13 to make sure everybody knows about the
14 rescheduling of the Connecticut consultation and
15 that the timeline for written submissions has been
16 extended to June 30th.

17 So, hopefully, we would love to hear from all
18 the tribes, get your views. You hopefully, also,
19 have the Dear Tribal Leader letter that originally
20 went out with a series of about ten questions, and
21 hoping that that -- that is not the universe of
22 questions. If you have questions or points that
23 you want to make, of course that is part of this
24 dialogue, as well, but, at least for our initial
25 thoughts going into this, that sort of seemed to

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1 be some questions that would be good for us to
2 hear from Indian country on.

3 So, I will now open the floor up. So, our
4 general practice has been to allow tribal leaders
5 the first opportunity to speak, and then, if there
6 are representatives of tribes who have been
7 nominated to speak on their behalf, we will hear
8 from them.

9 In most cases -- so, this is a consultation,
10 and so it's a government-to-government meeting,
11 and so it needs -- we need to, generally speaking,
12 follow the protocol of having government officials
13 interacting with us, as well.

14 So, first up, I have on my list is Chairman
15 Harry Pickernell from the Chehalis Tribe.

16 MR. PICKERNELL: Good morning.

17 THE COURT REPORTER: Can you please state
18 your name and spell it for the record, please?

19 MR. PICKERNELL: Harry Pickernell, H-A-R-R-Y,
20 P-I-C-K-E-R-N-E-L-L.

21 Good morning, John and Paula. Thank you,
22 again, for
23 the time and the opportunity. My name is Harry
24 Pickernell, Chairman of the
25 Confederated Tribes of the Chehalis Reservation.

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1 As you may have noticed, I have attended the
2 Sacramento, Mystic Lake, Portland, Phoenix, and
3 now the Miami consultations.

4 Based on the discussions from tribes at all
5 the
6 consultations, I would like to focus on an
7 important issue concerning sovereignty and
8 majority. I appreciate the fact that all tribes
9 which have presented and tribes which may have
10 spoken to you privately are sovereigns with
11 differing needs and opinions.

12 However, my takeaway from the previous five
13 consultation sessions and what I have heard about
14 the listening session from the Fall NCAI meeting
15 is that the vast majority of tribes with which you
16 have a trust responsibility are opposed to an
17 amendment to the current regulations. This is a
18 majority voice you should not ignore.

19 Tribes are adaptable and have adapted to the
20 current
21 regulations and have worked within the boundaries
22 of those regulations. Starting over and amending
23 the current regulations will cause countless hours
24 of time to revamp tribal government and tribal
25 staff processes to adjust to new regulations.

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1 These are resources that are better spent for the
2 betterment of the lives of our members, rather
3 than figuring out how to reinvent the wheel,
4 again.

5 You will not be saving tribes time and money.

6 On
7 the contrary, these new amendments will have the
8 opposite effect. Tribes have always had their
9 detractors, those who feel we should be just like
10 everyone else with no special relationship with
11 the United States. No matter what the Department
12 truly believes, those people will feel encouraged
13 by your potential actions. They will view
14 anything that the government now does with respect
15 to Part 151, whether true or merely perceived, as
16 a further signal from this administration that
17 their time has come to challenge tribes at every
18 turn.

19 Couple that encouragement with the
20 divisiveness
21 which we see daily on the television and the
22 appointment of conservative judges to the
23 Appellate Courts, and the unintended consequences
24 of any new regulations will be more resource-
25 sucking conflict to the detriment of the tribes

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1 you serve.

2 Finally, there is one thing the Department
3 can do to
4 help tribes with the fee to trust process, as it
5 now stands. So many tribes which have spoken have
6 urged you to speed up the process of applications.

7 The way to accomplish this result, at least for
8 all non-gaming, off reservation applications, is
9 to return the delegation of decision-making to
10 regional offices; bolster the regional staffs with
11 more resources in order to reduce the length of
12 time between the submission and final
13 consideration; rescind the requirement that all
14 off reservation, non-gaming applications and
15 submissions go back to Central Office in D.C.

16 That would be the single most important
17 improvement
18 to 151 process, and it wouldn't take new or
19 amended regulations and further challenges. Thank
20 you for your time.

21 MR. TAHSUDA: Thank you, Chairman.

22 Next up, I have Kathy DeCamp from the Ho-
23 Chunk
24 Nation.

25 MS. DECAMP: Do you have something I can

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1 stand on? Is it still morning?

2 Good morning, everyone. Excuse me for having
3 my back towards you when I speak. My name is
4 Kathy DeCamp, K-A-T-H-Y, Capital D, small E,
5 Capital C-A-M-P. I'm from the Ho-Chunk Nation.

6 (Speaking in Winnebago) but you can call me
7 Kathy DeCamp.

8 So, this morning, I was asked to be here by
9 the Vice President and the President of the Ho-
10 Chunk Nation. I was to meet the Vice President
11 here, this morning, but he weaseled out at the
12 last minute, unbeknownst to me, but I love to
13 public speak, so that wasn't an issue for me.

14 So, we spoke about many things, this morning,
15 and I had the privilege of reading the entire
16 transcript from the Mystic Lake consultation, and,
17 just like the Chairman Tibadal (phonetic) said
18 here, earlier, a lot of the tribes mirrored each
19 other what they said about what they wanted and
20 what they didn't want.

21 And before I get started on my rant, I would
22 like to say, first, exactly how we stand and what
23 our -- what our recommendations are, and then I'll
24 get into all the meat of what I was here to --
25 sent here to say.

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1 The recommendations that we make to
2 streamline/improve the land into trust program is
3 do not impose the 30-day appeal period before
4 accepting a property into trust status. Salazar
5 versus Patchak rendered this period unnecessary,
6 as opponents now have up to six years, after the
7 land has been placed in trust, to file appeals.

8 By reintroducing this period, it not only
9 creates uncertainty for tribes looking to develop
10 the property, it also imposes a time period not in
11 conformance with the Patchak decision. And excuse
12 me if I'm pronouncing that last name wrong.

13 In order to streamline the program, expanded
14 consultation with tribes for any future proposed
15 changes is necessary. The tribe knows what best
16 issues and problem areas exist within the current
17 fee to trust process. The program must reach out
18 to Indian country and understand the problems that
19 tribes have. They would be the top -- that should
20 be the top priority of the Department.

21 The program needs to revise the fee to trust
22 handbook for any changes and would assist and
23 clarify what is expected in future applications.

24 Finally, the program must work with Congress
25 on a fix that reaffirms the Department to take

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1 lands into trust for all tribes, and affirm lands
2 that already exist in trust, a Carcieri fix.

3 When tribes reacquire homelands, it is a core
4 cultural identity issue. When stripping the
5 ability of tribes to reacquire homelands, it is a
6 termination policy, intended or not.

7 This morning, I saw Paula at breakfast, with
8 my friend from the Menominee Tribe, and it was
9 nice to see them. It's always nice to see them.
10 And when I was reading the transcripts, I noticed
11 that a lot of the tribes were upset, and they
12 would come, and they would yell, or they would
13 give their history, or whatever. So, but before I
14 get into that, which I'm not going to yell because
15 I think that, when you communicate in a positive
16 manner, that has more impact than that type of
17 behavior, but thank you so much for the job that
18 you do. Maybe you don't get thanked enough but
19 thank you for that.

20 So, all of us tribes are not cookie-cutter.
21 We are not the same. I think that resonates with
22 Mr. Cason, that he understands that.

23 My tribe has 7,767 members, and our tribe was
24 forcibly removed from our ancestral lands 11
25 times. We are the only tribe in the State of

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1 Wisconsin that do not have a reservation because
2 of that forced removal.

3 We face a lot of challenges and we step up to
4 the plate for those challenges. We have MOUs with
5 the various counties that we reside in. We have
6 to reeducate every time that there is a new
7 administration. Not all the counties love native
8 people, that's for sure.

9 However, because you have people like me that
10 step up to the plate and are not ashamed or
11 embarrassed to talk about who we are, what we
12 want, and how to get it, we are making those
13 bridges with those counties in the State of
14 Wisconsin.

15 I think we are very nervous with this
16 administration that came in, because, when the
17 former administration was in office, we had a lot
18 of advantages, a lot of benefits that we were
19 given, and, now, we are unsure exactly of where we
20 stand. I think that is true with every
21 administration that comes in, though; we never
22 know what's going to happen from one moment to the
23 next.

24 We talked about -- I have, like, a lot of
25 notes that I -- we talked about the ten questions

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1 that you had, so I'm just going to go ahead and
2 read what my answers are. Can you all hear me back
3 there? Am I talking loud enough? Okay, thank
4 you.

5 So, what should the objective of land into
6 trust program be? What should the Department be
7 working to accomplish? That was the first
8 question.

9 The objective of the land into trust program
10 should be to rebuild and restore tribal nations'
11 land bases in the most efficient and accommodating
12 manner possible. Tribes must exercise jurisdiction
13 over our lands and rebuild our economics for the
14 benefit of our people.

15 The Department should carry out the rights
16 granted to the Secretary of the Interior from the
17 Indian Reorganization Act.

18 The second question. How effectively does
19 the Department address on reservation land into
20 trust application?

21 The Department implementation of the trust
22 authority pursuant to the IRA is fully consistent
23 with the 73rd Congress. However, the goals of the
24 IRA remain mostly unfulfilled. Today, only a
25 small percentage of lost lands have been restored

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1 to tribal nations. Introducing additional
2 regulations is contrary to the current
3 administration's deregulation policy.

4 The third question. Under what circumstances
5 should the Department approve or disapprove an
6 off-reservation trust application?

7 The Code of Federal Regulations, Subsection
8 151.10 and 151.11 describe when the Department
9 should approve or disapprove an off-reservation
10 trust application. The process works, but the
11 process is slow, and the tribes would like to see
12 the process be seemingly condensed and, thus,
13 quicker.

14 Question four. What should the Department
15 consider when approving or disapproving an off-
16 reservation trust application?

17 Aboriginal territory, specifically, it should
18 consider whether the acquisition would benefit the
19 tribe.

20 Question number five. Should different
21 criteria and/or procedures be used in processing
22 off reservation applications based on, A, whether
23 the application is for economic development, as
24 distinguished from non-economic development
25 purposes, for example tribal government buildings

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1 or health care or tribal housing?

2 The answer is no, applications should not be
3 discriminated against based on use, unless it is
4 for gaming.

5 And B, whether the application for gaming
6 purposes, as distinguished from other non-gaming
7 economic development?

8 The answer is no, additional regulations are
9 already in place for applications that are for
10 gaming purposes.

11 And C, whether the application involves no
12 change in use?

13 Yes; as there would be no change in land use,
14 the application should be streamlined, as long as
15 the required NEPA and title reviews are
16 sufficient.

17 What are the advantages and disadvantages of
18 operating on land that is in trust versus land
19 that is owned in fee?

20 Advantages on trust: Tribes, as sovereign
21 entities, are guaranteed the right to form our own
22 government that can create and enforce laws.
23 Tribes may collect taxes and regulate land use and
24 domestic affairs of our own people. Tribes may
25 lease our own lands with our federal oversight,

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1 through the nation's HEARTH leasing ordinances,
2 agricultural, business, and residential. The
3 right for a government to govern its own people
4 and land is invaluable.

5 Disadvantages of trust: Development can
6 stall because of the cumbersome process of getting
7 right-of-way or lease approved and recorded.

8 Federal oversight: The U.S. government has a
9 responsibility to protect tribal interests, such
10 as land, water, income derived from interests in
11 lands. However, they have not always fulfilled
12 its obligation as a trustee to the tribes, as
13 affirmed by the Cobell lawsuit.

14 Advantages on fee simple: Process for
15 recording is quicker through county offices,
16 records are more accessible through county offices
17 than LTRO.

18 And I'm going to read one last disadvantage,
19 and I think I'm going to take a break.

20 Disadvantages on fee simple: Tribes do not
21 have jurisdiction over fee lands. Tribes are
22 treated as any other owner, which includes
23 taxation, restrictions on land use, law
24 enforcement, and zoning. State and local laws may
25 limit or eliminate potential development or land

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1 use. Anything that can be deemed as a lien, such
2 as a managed forest law, cannot be on title once a
3 nation applies to have property placed in trust.

4 So, those are the types of thoughts, and
5 those are the things that I was sent to come here
6 and say. And I believe that most of us tribal
7 members from the federally recognized tribes are
8 saying the same thing. We are mirroring the same
9 thing.

10 If any of this is changed, it is going to
11 affect us. And so, I know that, because you take
12 your jobs very
13 sincerely and seriously, I know that you're going
14 to be able to reiterate all of these feelings and
15 thoughts for us.

16 So, thank you, God bless you for everything
17 that you do, and it was nice to see you again, no
18 matter how late you were. Thank you.

19 MR. TAHSUDA: Thank you, Ms.
20 DeCamp. So, are there any other tribal leaders
21 that would
22 like to make a comment now? I only had those two
23 on the sign-up list outside. No? Okay.

24 Do you want to make a statement, Ernie?

25 MR. STEVENS: Yes, I would.

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1 MR. TAHSUDA: I guess I'll call
2 you a tribal leader surrogate. You're made up of
3 an organization of tribal leaders, so.

4 MR. STEVENS: Thank you, John. I represent
5 184 member tribes, and, for the record, my name is
6 Ernest L. Stevens, Junior. I'm Chairman and Chief
7 Spokesperson for the National Indian Gaming
8 Association, based in Washington, D.C.

9 Much of what we talked about has been
10 reiterated by the tribal leadership over and over
11 again, but my personal experience, in working with
12 local communities, has been a tribal decision, and
13 that is some of the discussion that has resonated
14 throughout.

15 And my father, I was a little bit energetic
16 in my early 30s as a city councilman for Oneida,
17 and my dad sat me down, as he was proposing to
18 negotiate an agreement with a local municipal --
19 local municipality, and he told me, he broke it
20 down for me that what is fair and why it is so,
21 and you can't just say because you're sovereign
22 and your government, you work on a government-to-
23 government level, that you disregard these folks.

24 And he explained that to me, and we went on
25 to write several service agreements with local

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1 municipalities that have worked for many years.
2 We don't -- haven't done that without its kinks.
3 There have been struggles with others, but, again,
4 the ones where we have struggled, have really cost
5 those communities, local municipalities hundreds
6 of thousands, if not millions, of dollars, because
7 they just don't want to come to agreement, but our
8 agreements are fair, and I believe they are in the
9 majority and they resonate throughout all of
10 Indian country.

11 There's a couple of real tough ones that
12 haven't -- haven't been acted upon, but, if they
13 did act on them and they were fair, they would
14 provide for a safer community, but, for the most
15 part, that process is working and they are a
16 volunteer agreement based on what is fair and a
17 fair tradeoff with mutual respect, and that is the
18 majority what's happening in Indian country and it
19 works.

20 Again, so respectful and mutual tradeoff.

21 And I really stand in opposition to any
22 discussion that would mandate that type of
23 agreement, and I don't -- we have already been
24 through this process in the 109th Congress, and it
25 would be unfortunate to have to go backwards. I

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1 think that we have to go forward, and the people
2 who want to be proactive and respectful, they
3 should follow our lead because there's examples
4 all over the country that are working very well.

5 And you know, with Mr. Cason, we had a very
6 productive meeting, and we appreciate it because
7 we know that Mr. Suto (phonetic) was very much a
8 part of that and Ms. Hart are very strong
9 components of this process.

10 And, but I want to just encourage you to
11 remember, wherever we go, you have your standard
12 Indian fighters who want nothing, no part of
13 Indian country moving forward and doing good
14 things, in spite of the fact of our gaming related
15 and non-gaming related employment marks up over
16 700,000, half of those being non-Indians.

17 We remember the days of the sign that says
18 Casi-No and all these different vigilante groups.
19 Well, maybe that's a strong term. Anti-Indian
20 groups, call them what you want, but once they
21 fall in and figure out what we do for the
22 economies and how we take of people around us, not
23 limited to just our tribal members, many of those
24 folks that stood in opposition to us now work with
25 and for us or benefit from our economic impact in

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1 some way.

2 So, unfortunately, there are still the Indian
3 fighters. Again, they cost their communities
4 probably millions of dollars, and they are going
5 to fight us no matter what and they are always
6 going to be there to fight us, and we have to
7 stand above them, but we can't appease them, we
8 can't lower ourselves to individually dealing with
9 folks who are anti-Indian and blatantly racist
10 against governments who are doing great things. I
11 didn't bring my statistics; I'm sure they will be
12 in my written testimony.

13 We had a good meeting last week, and I want
14 to be careful because I don't want to say that Jim
15 Cason is our next hero. I can't afford to rely on
16 a person with such a strong conservative
17 background, but I can be very pleased about his
18 posture, and I stated it last week.

19 But what we have to rely on is our sovereign
20 rights as governments; that's our strength, and
21 we're going to continue to take advantage of Mr.
22 Cason's openness to hear from us. And obviously,
23 you guys are the key listeners and spokespersons
24 for that, two people I have the utmost respect
25 for. And as was stated previously, I would never

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1 condone any disrespect or aggressive posture with
2 you, and certainly not with Mr. Cason.

3 And so, in closing, I just want to emphasize
4 that folks want to fight Indian country, and what
5 they are trying to do, because Indian country is
6 trying to reacquire land that was once theirs,
7 that have the audacity to call that some kind of
8 encroachment. That's wrong.

9 And I think if you really -- if we could vote
10 on every one of these, I think the people around
11 us would really see that the bottom line is that
12 people like what we're doing. People like the
13 economic impact we have. They like the fact that
14 our families can afford to buy a house, can afford
15 to send their kids to private school, and maybe
16 have a decent car. People like that. And guess
17 what? There's a whole bunch of people that are
18 not Indians that once drove those beat up cars and
19 had those beat up yards and had no money, that are
20 now working in our industry, that can make those
21 kind of payments. So, it's just not Indians.

22 So, I'll close, Ms. Hart and Mr. Tahsuda,
23 with, again, with utmost respect, and for Mr.
24 Cason, as well. But as I said in my previous
25 statement, you know, the gaming is one thing, and

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1 I'll stand -- I'll lay in the tracks for our
2 rights under gaming, but the main thing is what my
3 father told me and what so many tribal leaders are
4 telling me, is that we need to reacquire land to
5 build our future.

6 I have 15 grandchildren and they are going to
7 need a house, they are going to need some
8 property, you know. They are going to need land
9 that they have a right to live on as Native
10 American people in a Native American community.
11 We need opportunities to create businesses, to
12 strengthen and advance our culture, our tradition,
13 our language. All these things center around our
14 land. So, let's focus more on helping Native
15 America reacquire their land in a more timely
16 process.

17 And when it comes to gaming, we're willing to
18 fight that fight, when we have to, as well, but I
19 think this is really about, overall, land into
20 trust and bringing community members home. So, I
21 thank you for your time today.

22 MR. TAHSUDA: Thank you. So, we
23 have -- yes? Yes, Robert?

24 MR. SAUNOOKE: If I may? My name is Robert
25 Saunooke. I'm an enrolled member of the Eastern

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1 Band of Cherokee Indians. And Paxton might be a
2 little worried what I might say. It's not on
3 behalf of the tribe.

4 Saunooke is S-A-U-N like Nancy, O-O-K-E.

5 I have the privilege, also, of practicing
6 Indian law

7 and I teach federal law and policy, as applied to
8 Indian tribes, as I am often reminded that there
9 is no such thing as federal Indian law, it's just
10 federal law that is forced upon us. And I also
11 have the privilege of representing the Miccosukee
12 Tribe in much of its issues.

13 I don't think there's a question, and there
14 are some

15 things that have been said today that I want to
16 make sure are really in the record. One, that we
17 are all different tribes and individuals, as
18 communities and as culture, and that is something
19 that should always be remembered in utilizing
20 these regulations.

21 The second thing is there is no question that
22 the

23 history of tribal lands was designed by the
24 federal government to eventually eliminate the
25 existence of tribal lands. I mean, we see it in

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1 the allotments, we see it in the requirement of
2 blood quantum, which, when it expires, the tribe
3 ceases to exist. It was a systematic trick to
4 allow tribes to be peaceful, and in their place,
5 and then, eventually, pushed away.

6 So, the reacquisition of property that was
7 taken
8 should be not only a mandate, but a very simple
9 and easy process. It should not be complex. It
10 should not have questions. It shouldn't suggest
11 that we have to justify getting back what was once
12 ours. It's like if I stole your car and you catch
13 me, and then have to prove that your theft and
14 getting my car back is justified by some action on
15 my part.

16 I spoke with Paula briefly and I want to
17 highlight
18 something that I think -- that I don't see no in
19 the Bureau today, and it's something that I don't
20 know if many are aware of or have remembered, but
21 the federal law clearly states, and, as lawyers,
22 we look for that language to kind of help us get
23 to where we need to be, but Title XXV of the U.S.
24 Code says that the, "Commissioner of Indian
25 Affairs shall," it's not discretionary, shall,

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1 can't decide, consider, they shall, "have the
2 management of all Indian affairs and of all
3 matters arising out of Indian relations."

4 So, clearly, the Secretary of Interior and
5 Commissioner of Indian Affairs have that
6 authority. And what does that authority grant to
7 them? Well, I look at the CFR for guidance and,
8 as it is amended repeatedly, I'm reminded that,
9 "Notwithstanding any limitations, the Secretary
10 retains the power to waive or make exceptions to
11 the regulations in the best interest of the
12 Indians."

13 So, if that's the charge and that's the law,
14 why is
15 there a question as to whether or not
16 reacquisition of lands should not be had? It is
17 obviously in the tribes' best interest. They are
18 getting back what was once theirs. They are
19 reacquiring cultural and sensitive homelands that
20 are a part of their culture, their history, their
21 people. It builds for a future of their children,
22 as Ernie so eloquently stated. They need that
23 connection and it is more than simply title.

24 In a historical context, the early treaties,
25 you

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1 know, when tribal elders and leaders entered into
2 agreements that contained language like as long as
3 the mountains exist, and the wind blows, and the
4 rivers run, we didn't take that as just a cute
5 little colloquial of art. We firmly believed it
6 and we brought our children back when these
7 treaties were reread and reagreed, so that our
8 children would know that that was what it was.

9 For the non-Indian that we were dealing with,
10 they
11 were simply words that they could amend and change
12 later, and I'm confused, I guess, as to why we
13 have to answer these questions of how we should
14 recognize the balance of concerns of local
15 jurisdictions. Well, I try to be patient with the
16 fight that we fight, but the reality is we don't
17 have many friends, the Indian fighters, that want
18 to help or assist us.

19 And I see a lack of institutional historical
20 context
21 where we are losing and have lost very powerful
22 and longsuffering employees of the Bureau, people
23 like John Harrington who, for 40 years, served as
24 a solicitor, and his office now, today, is vacant,
25 and no one is stepping in to understand what

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1 happened before, so that they can help us fight as
2 we go forward.

3 I would ask that the Bureau do what the law
4 says it
5 should do, and that is take steps, waive, modify,
6 make exceptions to the law as is in the best
7 interest of the tribe. It's what the Supreme
8 Court has charged. If there are ambiguities, they
9 are decided in favor of Indians.

10 But in meeting with Secretary Zinke, as I
11 walked
12 into his office, he said, very clearly, my job is
13 to enforce these laws to make sure your rights are
14 protected. I still continue to wait for that to
15 happen, and I would urge the Department, as they
16 examine this process, to be mindful and continue
17 the idea and the mandate that the decisions that
18 are made and the regulations that are in place
19 should always be done in the best interest of the
20 tribes that they serve. Thanks.

21 MR. TAHSUDA: Thanks, Robert.

22 MR. CARROLL: Good afternoon. Kitcki
23 Carroll, that's K-I-T-C-K-I, C-A-R-R-O-L-L,
24 Executive Director United South and Eastern
25 Tribes.

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1 First, I want to second the comments that Mr.
2 Saunooke just made.

3 Two points I want to make, one I made a
4 little bit earlier, and one just additional
5 thought, too, about what Mr. Saunooke just
6 offered.

7 Mr. Tahsuda, in your opening remarks, you
8 said that the current regs, the complexity of the
9 current regs are tied to the vagueness of
10 ambiguity of the 1934 Indian Reorganization Act.
11 I don't know if those were your exact words, but
12 that was basically the point that you made. Then,
13 you also said that the law in '34 and how laws
14 were crafted in '34 was done differently than if
15 that same law was to be crafted today.

16 But to the point that Mr. Saunooke just made,
17 that is supposed to be in our favor. That
18 ambiguity, that vagueness in the IRA is supposed
19 to be interpreted in our favor if there is any
20 ambiguity or vagueness that exists.

21 So, efforts that try to type that up to make it a
22 2018-type of sharper, clearer focus type of thing,
23 works to our detriment in a way that I don't
24 believe was the intent of '34.

25 The '34 Indian Reorganization Act was a

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1 significant moment in time where there was a
2 recognition of the wrongs that had been done and
3 the stealing of lands and opened the door for land
4 restoration.

5 One of the things that I want to say, though,
6 in terms of process, and it is a suggestion that
7 I'm making for the record, and you've heard this
8 question posed numerous times, I think you're
9 hearing from tribes across the country in these
10 sessions that there is a desire for a more timely
11 process to be in place. I don't think there is a
12 dispute over that.

13 I think there still is, though, this
14 remaining question about what are we responding to
15 and whom are we responding to? So, with any
16 procedural process where you're trying to gain
17 greater efficiencies, it starts with an assessment
18 of what the problem is, where are the
19 shortcomings, what is causing the delays, so, when
20 you propose changes to that process, it is
21 responding to those very things that are
22 identified as the incumbrances or the challenges.

23 So, what we would like to see, in order to
24 get to that place of more timely processing of
25 applications, more efficient, we need to hear from

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1 the Bureau what exactly are you responding to.
2 Where do those deficiencies lie?

3 We talked, one of the things this morning,
4 about was the reorganization charge and some of
5 the challenges that may be tied to that, in real
6 time. We talked about deficiencies in the overall
7 BIA budget and having the right people in the
8 seats, just from a financial standpoint, to be
9 able to do their job as part of this process. We
10 have had conversations in the past about whether
11 the right people are on the right seat on the bus
12 and doing their jobs effectively to be able to
13 process these applications.

14 So, I think there are different things that
15 you can look at to sharpen that, to achieve that
16 timely process, but we haven't even had -- we
17 haven't seen anything to identify that in a very
18 clear way.

19 So, the ask that I would have, on behalf of
20 our membership, is we would like to see what
21 exactly has the Bureau found and identified as the
22 challenge to achieving that timeliness? And that
23 way, when we see what the administration is
24 proposing, or put us in a position to propose to
25 tighten that up to achieve that same timeliness,

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1 because we all want that. We want that
2 timeliness. We want to achieve those goals, as
3 expressed in the Indian Reorganization Act, to
4 rebuild tribal homelands.

5 MR. TAHSUDA: Thank you, Kitcki.

6 All right. Any other tribal leaders? If
7 not, I'll

8 offer a few thoughts, see if I can try to give you
9 some responses, now. Obviously, we look forward
10 to getting written responses from you, as well,
11 and compiling those, and then being able to kind
12 of give a comprehensive response to questions the
13 tribes raise.

14 So, I understand -- so, that's a good point,
15 Kitcki,
16 and I think it kind of relates back to what
17 Chairman Pickernell was saying.

18 So, we don't want any changes in the process
19 to
20 further incumber it. That is not the point. And
21 it is actually a process we're going through. It
22 is incumbent upon us to assess internally, human
23 capital, do we have the right people doing the
24 job, do they have the right training to do the
25 jobs that they are doing, and I would guess most

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1 of you here in the room, if you have dealt with
2 the Bureau over the years, you would say we
3 probably have some challenges in that front, folks
4 who need a little bit more training on how to
5 process the work that they have, and I don't think
6 the Bureau, historically, has done a good job of
7 doing that for its workforce.

8 We also have -- we have -- we have an issue,
9 which
10 all of the government is dealing with, and that is
11 that we have, sort of, a donut hole in the middle
12 of our workforce, in the sense of we have a lot of
13 great people, with great experience, who worked
14 for us for decades, but they are ready, now, to
15 take a well-deserved retirement.

16 And we have a fair number of young people
17 that come
18 in the door and stuff, but we don't have -- we are
19 very deficiency on those folks in the middle who
20 should be the next ones stepping up to senior
21 leadership roles, those who should be developing,
22 now, years of experience and turning that to the
23 benefit, you know, to the benefit of our programs,
24 our services. Other bureaus, and stuff, again,
25 they have the same kind of issue.

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1 So, that's also something that we are in the
2 process
3 of trying to figure out what is the best way to
4 address that, and we have -- we have, in the
5 Indian Bureaus, we have the issue -- we have the
6 issue of trying to fill those slots with as many
7 Indian people as we can, first, too. We have an
8 Indian preference. And so, that -- so, that
9 further winnows down the field of folks that we
10 might be able to tap to bring in, you know,
11 instead of starting at the ground level, but folks
12 who might be able to come in at mid-level. So,
13 those are all considerations that we have to make.

14 And also, partly to your point, Chairman, I
15 don't --
16 so, the moving of the decision-making from the
17 regions to the central office I think has less to
18 do with any bottlenecks in the process. So, there
19 is a multistep process -- is it 16 steps in the
20 fee to trust?

21 MS. HART: Yeah.

22 MR. TAHSUDA: So, and the big
23 chunk of those, even for the off-reservation ones
24 or the gaming ones that come to the central
25 office, the bulk of that work is actually done out

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1 in the regions.

2 And so, really, what Paula does for gaming
3 things or for the other off reservation
4 acquisitions, we're really doing a lot of more
5 reviewing what has been compiled by the region,
6 and then, for our purposes, again, I go back to
7 the point that I think is really important for us
8 to confirm is that we have to make the best
9 decision we can, the most defensible position we
10 can.

11 So, the Department does spend a fair amount
12 of resources on attorneys. You would probably be
13 surprised.

14 I was surprised and I'm a lawyer, so. But there
15 is a
16 lot of work that goes into, also, the legal
17 review. And, you know, along with this sort of
18 expansion on the complexity of statutes and laws,
19 over time, it also means that there has been,
20 grown in sort of complexity in how they are
21 interpreted. So, all the government uses more
22 lawyers now than they probably should.

23 But we also have the situation in which we
24 have a significant amount of influence on our
25 policies that happen outside of even Congress.

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1 They happen in courts and stuff. And so, we have
2 a lot of time and energy that is spent making sure
3 that the decisions that we make are going to be
4 following current court themes. You can't --
5 they're not like statutes, all right, you have to
6 kind of just pick up a theme in it.

7 And so, making sure that we're doing that, so
8 that, if this case gets litigated, and we get sued
9 a lot, all right, for any number of reasons, but
10 that we will have kind of divined the good themes
11 and be able to defend this. So, that's a lot of
12 the time and effort that goes into that.

13 And for -- I guess, unfortunately, but I
14 would say, you know, a lot of the off reservation
15 -- a lot of the litigation over fee to trust
16 happens with off reservation acquisitions, whether
17 it's gaming, sometimes there's some non-gaming
18 ones that people are, around the community, are
19 opposed to.

20 So, it's also, I think, on those, incumbent
21 upon us to put the extra effort into, as well,
22 just because you have to anticipate that there may
23 be a challenge there. So, that's part of the
24 process that -- I'm getting really longwinded.
25 Sorry, Chairman, I'm tired.

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1 So, but that is part of the process that --
2 when it comes to the central office. And, but the
3 really -- the big bulk of the work has to do with
4 NEPA and those kind of things, and those all
5 primarily happen at the regional level. And so, I
6 don't know that, you know, any changes that we
7 would propose or the question of is there a point
8 of decision-making in the region or in the central
9 office, has that big of an impact on the overall
10 time component.

11 But, in addition to this discussion, I mean,
12 we are working, also, charged by the Secretary to
13 look at how we apply things like NEPA. And I was
14 actually kind of surprised because you don't hear
15 it talked about much when we talk about fee to
16 trust, but the BIA actually has on the books, I
17 think it's 25 categorical exclusions that it
18 rarely uses.

19 And so, we're actually putting out a Federal
20 Registered Notice to identify those and to get
21 comment from the tribes, if there is any other
22 kind of categorical exclusions. There is a great
23 way to speed up the process, right there, I have
24 to say. If you buy a golf course and you're going
25 to keep it a golf course, there really should be

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1 no NEPA analysis done, right? That's a categorical
2 exclusion that is on our books and should be used
3 now, but for reasons I don't know, I haven't been
4 on the job that long, maybe Paula knows, she has
5 been around forever, but we haven't really been
6 utilizing them that well.

7 So, we have an ongoing process of trying to
8 identify some other things that I think are
9 bottlenecks in the system that we can -- that we
10 will hopefully deal with positively outside of
11 this dialogue and anything that comes out of it.

12 I think it's really -- so, I think, those of
13 you that were there last week, when Jim and I came
14 over and talked, I thought it was -- I hope it was
15 illustrative to you guys that part of the thought
16 process -- so, we had the Chairwoman from the
17 Prairie Island community, I'm trying to think,
18 there was a couple others, but spoke really well
19 about the unique history and circumstances of
20 their tribes, and that's really something that we
21 would like to hear about, too. You know, is that
22 a process -- or is that something that we can
23 build in, that we don't have cookie-cutter, that
24 we can actually have a positive way to insert that
25 into the process, as we look at it, and that be a

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1 positive factor in consideration, as well. So, I
2 think that's a really important thing.

3 I think other things that, like cultural and
4 religious, you know, reasons for particular sites,
5 I know Eastern Band has an ancient historical
6 site, right, and so I think those are great
7 opportunities for us to find additional -- similar
8 to categorical exclusions, similar ways that we
9 could identify, maybe, that those are really
10 important and carry additional considerations,
11 positive considerations that we could apply to the
12 consideration -- apply to the review.

13 Anything else? Do you guys -- I think I --
14 did I answer all of it?

15 I appreciate -- I should say, also, I've been
16 trying to keep hitting on the MOU. I want to make
17 sure that everybody understands that there is no
18 -- there is no proposal or concept that there
19 would be mandatory MOUs, and, if you didn't get
20 one, that, somehow, that gives a veto to a local
21 community.

22 The real purpose of that, again, and I have
23 kind of come to look at it sort of like NEPA,
24 again, like these categorical exclusions. So, in
25 this context, when you have addressed with the

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1 local community your simple needs, water, sewer,
2 law enforcement, jurisdiction, you know, you've
3 worked all that out, a lot of tribes have -- I
4 know it has been painful, but have, over decades,
5 now, been able to get a mutually respectful
6 relationship with local jurisdictions and they can
7 work these things out. And so, for us, I think, it
8 also would be helpful.

9 So, the idea of the MOU is to say this whole
10 thing about considering impacts to the local
11 community, benefits to the tribe in that -- is we
12 really don't have to think about it if you have an
13 MOU. You have already addressed that, in large
14 part. So, if you have that in place, then that is
15 maybe another spot that we can speed up the
16 process.

17 And so, if you can't, if the relationship is
18 not there, or for whatever reason you can't do it,
19 or you don't want to do it, that's your choice.
20 Nobody is taking that from you or nobody would --
21 we're not proposing to take that from you. It
22 would just be simply, for us, another possible
23 mechanism to get through the process faster, on
24 your behalf.

25 And I think, ultimately, again, when I -- I

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1 don't want to harp too much, but I keep coming
2 back to the notion of legal defensibility. So,
3 when a local community has entered into and hit
4 these touchstones on local impacts, then there is
5 little argument to say that we, the federal
6 government, on your behalf, or jamming something
7 down their throat, right? They have signed an
8 agreement and said that you have addressed these
9 issues.

10 So, that is -- I really would like to hear,
11 you know, again, more on the MOU, if we're not
12 looking at it the right way, but that's kind of
13 the way I have been looking at it and hope that
14 that --

15 MR. JOHNSON: Sir, are you voicing this, what
16 you just explained about the MOUs, differently
17 today than you have in past consultations or maybe
18 even going back to October?

19 Because what I'm hearing in Indian country,
20 and from constituents, is something totally
21 different than what you just now explained.

22 MR. TAHSUDA: I have been trying
23 to --

24 THE COURT REPORTER: I'm sorry. Who are you?

25 MR. JOHNSON: I'm Lewis Johnson, Assistant

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1 Chief with the Seminole Nation of Oklahoma.

2 And my question to Mr. Tahsuda was, is how he
3 explained, just now, about options of MOUs that
4 would actually use that terminology streamline,
5 but not mandated, could be looked at by the
6 Interior as a possible way to speed up these
7 applications for trust.

8 My question to him was this: Is this what he
9 has stated over the course, since the beginning,
10 even back to October? Because what we're hearing
11 among our constituency and other Native tribes is
12 something different than what you just articulated
13 to us this afternoon.

14 So, that sounds actually like trying to get
15 the process going faster, as long as it is not
16 mandated, but the Interior Secretary of Indian
17 Affairs would consider that as a process that
18 doesn't necessarily have to have, you know, a
19 microscope over it, if you have those types of
20 agreements with your local municipalities, your
21 communities, and so forth. But as long as it's
22 mandated, those types of things, as Mr. Stevens
23 said, and others, we have worked on those things
24 for years.

25 But I will give you an example of a piece of

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1 property that the Seminole Nation was going after
2 and the community knew that we were going to a
3 council meeting to either approve or disapprove
4 that acquisition, on a Saturday, and this was a
5 Friday evening, and an attorney from a local
6 community wanted some property that we just had
7 purchased and we were able to acquire that
8 property in their interest.

9 So, what happened in that particular
10 instance, the Friday before we go to the Council
11 to vote on that property, I get a message in about
12 4:59, right around 5:00, I usually leave the
13 office about 5:30, 6:00 o'clock, but I picked that
14 message up and you know what it was? Another deal
15 has been made.

16 Now, Mr. Tahsuda, you have been out to
17 Miccosukee Mission, just a little ways outside of
18 Seminole. Do you know how I interpreted that? I
19 didn't see it as a courtesy call to the Assistant
20 Chief of the Seminole Nation. I did not. I saw
21 it as good try, Indian, but you stay out at
22 Miccosukee Mission, but don't you try to come to
23 town.

24 And those are the type of things that we know
25 exist, you know, in certain areas of Indian

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1 country, and, being from Oklahoma, you also know
2 some of those things exist because people in this
3 room know that, whenever there is a case that
4 involves Indian country or sovereignty, they
5 realize -- Bay Mills is an example. The Choctaw
6 Tribe there in Mississippi and the Dollar Store
7 situation, they are always there whenever
8 something is to do with sovereignty, and, if
9 possibly to kind of edge away from that
10 sovereignty, they are there to do that very thing.

11 So, to say, to make that a mandated type of
12 MOU definitely would not always be in the best
13 interest. Obviously, you have got to work with
14 other communities; that is within the statute,
15 already, as far as them having a comment period.
16 So, mandatory would be probably not in the best
17 favor of Indian country, because of those types of
18 situations.

19 But is that something that you have shared in
20 that context of what you just shared continually,
21 since October, or is it something you just shared
22 today?

23 MR. TAHSUDA: No, I've -- I have
24 tried to make that clear at every consultation we
25 have had. It has been a question that has been

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1 raised from the very first discussion we had at
2 NCI back in -- in October?

3 MS. HART: October.

4 MR. TAHSUDA: In Milwaukee. So, I
5 have been trying to make that clear. I'm not sure
6 --

7 MR. JOHNSON: I hear what you're saying.

8 MR. TAHSUDA: But again, I want to
9 clear any misperceptions.

10 I understand that lawyers can have different
11 views on things, and I think some tribes express
12 views their lawyers have put to them.

13 And again, so this is, though, the -- great
14 things to work out through the comment period,
15 right, and you -- we are looking at it in what I
16 think of as a positive way.

17 If it is -- if there is an angle to it that
18 I'm not seeing, I'd love to hear about it and see
19 that. So, thank you.

20 MR. PICKERNELL: John, Paula stated earlier
21 that --

22 THE COURT REPORTER: Sir, your name?

23 MR. PICKERNELL: Harry Pickernell. Paula
24 stated earlier that Cason had voiced his
25 displeasure at the -- that not one off reservation

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1 had been processed in a whole year.

2 Can I move back to your comment about the
3 central
4 office not being a bottleneck? Can you clarify
5 your stance on that, that it is simply a review
6 board and not a bottleneck area, in the process?

7 MR. TAHSUDA: In the process.

8 Well, so, there has been, initially, you know, as
9 we have moved complete, I guess you would say,
10 decision-making authority from the regions and
11 bringing the end review back to the central
12 office, there was, fair to say, some confusion, I
13 think.

14 The original message that went out to the
15 regions was not entirely clear, and, so, I think
16 there was some confusion on their part, and we
17 take the blame for that.

18 So, and then, there, you know -- there was --
19 there has been -- there was sort of a slow ramp-
20 up to leadership in the Department on Indian
21 Affairs, as well. And so, I think that probably
22 contributed to it, some, as well.

23 But we are processing them now. The
24 Secretary, just a few weeks ago, signed an off-
25 reservation gaming parcel in Oklahoma for the

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1 Shawnee Tribe. And so, I hope that's -- people
2 see that as a good sign.

3 Again, we are continuing to process and work
4 through. We do have a number on the desk that I
5 think we will, hopefully, we will have decisions
6 announced soon. But I, you know, I think it's fair
7 to say that we created our own bottleneck, briefly
8 there, for a while as we were making the
9 adjustment back and not being crystal clear with
10 the regional directors, the regional folks on
11 that.

12 MS. BENNETT: Good afternoon. Jeanine
13 Bennett, J-E-A-N-I-N-E, B-E-N-N-E-T-T. I'm the
14 In-House General Counsel for the Miccosukee Tribe
15 of Indians of Florida, and, on behalf of the
16 Tribe, we welcome you all here.

17 It is interesting that you gave the analysis
18 of a golf course. The Tribe has, since 2003,
19 tried to have its golf course placed into trust.
20 We have been met with immense local opposition,
21 not for any valid reason, but because the Tribe
22 has affirmed its sovereignty in relationship to a
23 matter not even involving the golf course but some
24 direct opposition from the -- not even from the
25 mayor, not from the council, not from any elected

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1 body, but from the person who is the State
2 Attorney in Miami-Dade, because she could not
3 serve subpoenas on our reservation, which is in a
4 direct conflict to the Tribe's sovereignty of what
5 she wanted to do.

6 And because we fought her against it, the
7 Tribe has had to wait all this time to have its
8 land placed into trust. We have done a summary
9 NEPA, which is what was originally required,
10 because we're not changing the use. We were
11 directed back to go do a full NEPA, even though we
12 are not changing it, because the drum up of the
13 fact that everybody in the area who enjoys their
14 golf course view thought that they would -- that
15 the Tribe would be putting a gaming facility on
16 that land, regardless of the fact that the Tribe
17 spent millions in placing -- doing improvements to
18 make that golf course PGA certified.

19 When we went back to go do our NEPA, we also
20 had to do a Carcieri analysis, not because it was
21 something that Interior required of us, but it is,
22 indeed, something that we knew we would have to do
23 because that decision, in the meantime, had come
24 down. So, in order to be able to make sure that
25 the Tribe did not have to go back a third time, we

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1 went through that analysis.

2 We had, audacities of all audacities, had to
3 have somebody who is non-Native go through and
4 write an opinion about the fact that this Tribe
5 existed way before that magical day in time and in
6 history.

7 Now, we have submitted that application, and
8 it is with the Eastern Region and it has been with
9 the Eastern Region for a while, and the letters
10 that we have gotten from Eastern Region saying
11 that they are looking -- they are looking at the
12 application, they are this portion of the
13 application, that portion of the application,
14 regardless of the fact that the first letter we
15 got didn't even pertain to the golf course itself,
16 but some other tribe's property.

17 But it just describes to you the bottleneck
18 that this Tribe has had to endure. And, in the
19 meantime, now, we, because of another issue that
20 the Tribe has, involving its sovereignty and its
21 right to be able to enter into the manner of
22 leases with individuals, and then have dividends
23 based on those leases, but because we happen to be
24 a gaming tribe, the view is we must be
25 distributing that gaming revenue.

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1 So, now, that application is bottlenecked
2 into that aspect, because we cannot get title
3 insurance on a land that we have had for all this
4 time. So, the Tribe's concern, when these new
5 rules came out, is that, one, we would have
6 additional hurdles that we would have to do, on
7 top of all the other hurdles that we have had to
8 endure, but, also, the fact that the way the rules
9 were viewed from our point was that we would have
10 to go back to these people who fought us so
11 ferociously to now do an MOU on this land.

12 So, this Tribe is looking for definite
13 assurances that they are not going to have to
14 endure another 15 years, and then, therefore, make
15 this process 30 years in trying to have a land
16 placed into trust for the economic benefit and
17 well being of the Tribe that is not gaming
18 related.

19 So, whatever assurances you can have on that
20 would be great, at this point. I am thinking
21 maybe I just might take a copy of the application
22 and give it to our lobbyist and have it on Jim
23 Cason's desk. I don't know what else to do.

24 MR. TAHSUDA: Thanks, Jeanine.

25 So, if your question is, does -- so, let me back

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1 up.

2 So, what we're discussing are some concepts
3 that, if we move forward, could go into proposed
4 rules, proposed amendments to the current rules.
5 So, if your question is, is, if, at the end of the
6 day, we amended the regulation, would you have to
7 go back through the process? That's what I'm
8 hearing, right?

9 MS. BENNETT: Correct.

10 MR. TAHSUDA: So, that is not the
11 intent. Another thing I have tried to make,
12 hopefully, make
13 clear to everybody, this is a forward-looking
14 process, completely.

15 We have not stopped processing fee to trust
16 applications, and anything that is in the pipeline
17 now would continue on under the current
18 regulations. It is not to say that we probably
19 wouldn't give you the opportunity, if you like the
20 new regulations better, to jump into that
21 pipeline, if you wanted to, but that would be your
22 choice.

23 But the whole discussion on this is a
24 forward-looking discussion.

25 And we can talk some more about that. I know

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1 there are some other -- so, there are other
2 issues, extraneous, that have bottlenecked that
3 up, and, but so, you know, the Secretary met with
4 the Chairman in D.C., and we're trying to be
5 helpful where we can. It's just --

6 AUDIENCE MEMBER: We get it.

7 MR. TAHSUDA: It's a complicated
8 issue.

9 AUDIENCE MEMBER: Very.

10 MR. TAHSUDA: Thank you. Thank
11 you very much.

12 Okay. So, we're about at the end of the
13 time, and, again, I apologize for being here late.

14 It was not in my hands. I'm not a pilot, so I
15 couldn't force the plane off the ground myself,
16 last night, but I'm glad I could make it and be
17 here with you guys, at least for a short time.

18 We have the other consultation coming up on
19 March 15th. The 15th, right?

20 MS. HART: Yes.

21 MR. TAHSUDA: The 15th, in
22 Connecticut. And the open comment period open
23 until June 30th, so.

24 MR. CARROLL: Just one comment I want to
25 make, if you're going to be closing this out, and

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1 I know we spoke about this just briefly last week.

2 And please understand -- Kitcki Carroll, USET
3 -- in no way am I suggesting that this
4 administration needs to act or do or behave like
5 any other administration, but I have heard you
6 say, now, a couple times, including today, as well
7 as last week, that Secretary Zinke has made it a
8 priority to restore tribal homelands and that he
9 believes in the fee to trust process. That's
10 great. But we also know that, 15 months into this
11 administration, there is a very small number of
12 approvals that have actually occurred.

13 So, with anything, I think it is a good idea
14 for this administration to set itself a target.
15 So, if you want to have that same conversation
16 about whether the right people are in the right
17 seats on the bus to be able to do this work and
18 whether the resources are right, if you don't --
19 if you leave it open-ended, it's kind of, people
20 prioritize on a day-to-day basis. But if there is
21 a goal that gets spoken to, meeting after meeting,
22 public speech after public speech becomes
23 something real, and I think that is what is
24 missing right now.

25 So, it is great to hear that the Secretary

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1 has a priority for fee to trust acquisitions, but
2 we highly recommend that this administration set
3 itself a goal, so that we can monitor how well
4 that verbal commitment is actually translating
5 into actual fee to trust approvals.

6 It would also be interesting to know, right
7 now, how many applications are pending, and maybe
8 some related analysis identifies what is the
9 challenge. Is it getting hung up at the region?
10 Has a request been sent back to the tribe and it's
11 pending? I know some of this is information that
12 can't be disclosed, but, in a general way, what
13 are the applications that are sitting out there,
14 right now, and what is preventing them from coming
15 to closure, so we don't have a 15-year issue going
16 on. And that is not an isolated situation; we have
17 heard of other situations like that where there
18 are these multi-year pending applications that
19 aren't being resolved.

20 The other question I would have, I know that
21 it changed into the ten questions that the
22 administration proposed, the question I would
23 have, though, is, just a hypothetical, if you have
24 a situation where -- well, before I say that.

25 We share the same sentiment that you have

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1 heard over and over about the thought of an MOU
2 recognizing the many challenges that exist with
3 many states, local, county governments,
4 municipalities, whatever, unable to even achieve
5 that. So, just park that on the side for a
6 second.

7 But in a situation where a tribal nation does
8 have a favorable relationship with that local
9 government, or whatever that government structure
10 is that it needs to enter into an MOU with, and
11 they achieve that, and they get a free and clear
12 NEPA analysis, would there be any reason, under
13 the Department's discretionary authority, why it
14 would not approve that?

15 If the NEPA is clear, if the MOU between the
16 local governments is clear that they support this,
17 would there be any remaining situation why the
18 Department would use its discretion to deny that
19 application?

20 MR. TAHSUDA: You're talking for
21 off reservation acquisitions?

22 MR. CARROLL: Yes.

23 MR. TAHSUDA: Well, so, we still
24 have the other considerations. You know, there's
25 a Carcier analysis, possibly, that has to be

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1 done. So, we -- there's --

2 MR. CARROLL: So, there is the potential --

3 MR. TAHSUDA: You can go through
4 the list. So, there is the list of the -- in the
5 regulations, now, they list the things that we go
6 through.

7 MR. CARROLL: So, it is not that simple,
8 then. So, it is not -- so, the MOU is just a
9 factor in getting to that ultimate --

10 MR. TAHSUDA: It's a factor. It's
11 also a time -- so, I know that it takes time. So,
12 anecdotally, in my experience, in my observations,
13 say in a state like Oklahoma where a lot of the
14 tribes have been able to do -- get a reasonable
15 history of these, you know, type of agreements,
16 those are typically in place before the
17 application is submitted. And these are on
18 reservation, not off reservation.

19 But, and so, that should mean that part of
20 the process is done, right? So, that is the
21 thought. So, in the off-reservation context, when
22 the same situation arises, then you have just
23 taken care of that. And so, that timeframe that
24 we go, if we're doing the analysis, we have to get
25 comments from the local community and we have to

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1 go and weigh those, so maybe we can shorten that,
2 and that's the idea.

3 All right. Thank you, guys. Thanks for
4 traveling so far. Hopefully none of you had the
5 travails that I did, and I guess, as it seems, we
6 will probably see some of you in Connecticut, but
7 I appreciate your efforts and look forward to
8 talking with you more. Thank you.

9 (Thereupon, the proceedings were concluded at
10 12:20 p.m.)

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1 CERTIFICATE OF REPORTER

2 STATE OF FLORIDA

3 COUNTY OF MIAMI-DADE

4 I, Robert Worst, Court Reporter, certify that I
5 was authorized to and did stenographically report the
6 foregoing proceedings, and that the transcript is
7 a true and correct record of my stenographic
8 notes.

9 I further certify that I am not a relative,
10 employee, attorney, or counsel of any of the
11 parties, nor am I a relative or employee of any of
12 the parties' attorneys or counsel connected with
13 the action, nor am I financially interested in the
14 action.

15 Dated this 8th day of March 2018.

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Robert Worst, Court Reporter

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