Tribal Consultation with Department of Interior

TRANSCRIPT OF PROCEEDINGS

The following is the TRANSCRIPT OF PROCEEDINGS, taken before Julie A. Brooks, Notary Public, Registered Professional Reporter, at Mystic Lake Casino, 2400 Mystic Lake Boulevard Northwest, Prior Lake, Minnesota, commencing at 9:10 a.m., Thursday, January 18, 2018.

Note: The Department of the Interior corrected the statement of Mr. Kyle Scherer on page 4 to accurately reflect his affiliation.
APPEARANCES:

Department of Interior:

Kyle Scherer, Esquire
Office of Assistant Secretary of Indian Affairs

Paula Hart
Director, Office of Assistant Secretary of Indian Affairs
Whereupon, the TRANSCRIPT OF PROCEEDINGS was commenced at 9:10 a.m. as follows:

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MS. HART: Good morning. I think we'll get started now. My name is Paula Hart. I'm the director for the Office of Indian Gaming. And the assistant secretary has asked me to come and listen to comments on the action that's being taken.

The first thing that I would like to do is introduce Kyle Scherer. Kyle is a new political appointee in the front office. So I'll let him introduce himself.

Kyle.

MR. SCHERER: Sure. I'll introduce myself in a minute. Before we begin, could I just ask Chairman Flute to come up and lead us in an opening prayer.

MR. FLUTE: (Native language spoken.) I greet each and every one of you with a handshake from my heart this morning.

(Native language spoken.) We're going to talk about our lands today.

(Native language spoken.) Speak with a
good mind.
(Native language spoken.) Speak with a
good heart.

With that, I'll say a prayer to the
creator in my Dakota language the best I can. I ask
the elders that I stand before to bear with me as I
speak our language the best I can.

(Prayer in Native language.)

MR. SCHERER: Thank you very much,
Chairman.

And many of you know Paula. I'm a newer
face for many of you. Although, I see a few people who
I've worked with before.

Just by way of background, I am
[CORRECTED: Munsee-Delaware and a descendant of the
Chippewa of the Thames First Nation.]

I previously worked on Navajo Nation
for DNA - Legal Services Corporation and was most
recently at the Department of Justice, where I was an
appointee in the last administration and was lucky
enough to be held over where I worked with the Indian
resources section.

It is a privilege to come over to the
Department of Interior where we have a lot more
interaction with the tribes and individuals who serve.
And this is the second consultation I've done with Interior. I recognize a few faces from some of the Tuesday consultations. We heard a lot of helpful things, honestly, in Sacramento. I hope that dialogue continues today.

There's some housekeeping items. The expectation -- based on the number of people who signed up to speak, it looks like we will get through everybody. The expectation is that we conduct a four-hour consultation. We will take a quick break for Paula, myself, and the court reporter, so we can use the latrine at about the halfway point. We will add that time onto the end of the consultation just to be sure that four hours is respected. For those who are here to share your thoughts, obviously, feel free to move in and out as needed.

What we're going to do -- I see a few people who are on the list to address and share their thoughts from the same tribe. So I think we're going to go through and make sure that we have one person speaking from each tribe first, and then we will come back around. And then it looks like we will have quite a bit of opportunity for some open-mike time.

With that, Paula --

MS. HART: Yes. I wanted to let you
know that this is being recorded. What we do in my
job -- and you have Annette here -- what we'll do is
take everybody's comments. We will have them
transcribed. And what is heard today, we will put in a
format so it goes all the way up to the Secretary so
all of your comments are heard.

I'll let Kyle explain what we are doing
today. But we are here on behalf of the Secretary and
the deputy secretary. The associate deputy secretary,
Mr. Cason himself, has asked for these consultations.

So everything is being recorded.

Everything is going to be transcribed. We will put
them in a format so that everybody all the way up the
chain gets to hear what Indian Country has to say to
them.

So I'll let Kyle explain the
situation.

MR. SCHERER: Yeah, so John wanted to be
here. Obviously, he was able to be with us in
Sacramento two days ago. The Secretary is actually in
Oklahoma and asked John to accompany him to introduce
him to a variety of Tribal leaders who were in Oklahoma
today, so that is where John is today, obviously.

With that, are we ready to go?

MS. HART: Yeah.
MR. SCHERER: I should mention,

obviously, this is a consultation on the 151 regs.

Whenever there is a proposed rule, we'll be going
through this process again to consult with the tribes.

So I think the first individual is

Chairman Pickernell from Chehalis.

MR. PICKERNELL: Good morning. Thank

you for the time. Thank you for the opportunity.

Thank you for allowing us on your homelands. So thank

you.

My name is Harry Pickernell, Chairman of

the confederated tribes of the Chehalis Reservation in

southwest Washington.

Today I'm just going to go over the ten

questions that were given by John. So Number 1 is:

The land in the trust should facilitate the purchase

and fee-to-trust conversion of lands which can be used

to diversify tribal economies so that tribes can obtain

more diverse economic growth and provide employment for

more of their members.

On-reservation fee-to-trust is

relatively easy to accomplish. Off-reservation

fee-to-trust is the time-consuming and costly process

that needs to be simplified and sped up, in our

opinion.
The Department owes a fiduciary duty to the tribes. If, for non-gaming purposes, a sovereign determines that taking an off-reservation parcel into trust is beneficial for economic diversification, cultural, or other benefits, then the Department should not impede that process and should facilitate that process in a timely manner.

Since tribes are now capable of protecting and preserving trust parcels and take all jurisdictional and all steps in which in earlier times were the responsibility of the United States and since tribes no longer rely on the United States to be responsible, the criteria should be minimal.

There could be a reliance on the seated territory homeland concept to ensure tribes don't go too far afield geographically. The Department should not substitute its values and concerns for that of a sovereign nation.

There should be no different criteria for any purpose, other than for off-reservation gaming purposes. All other purposes are really non-controversial. Therefore, the tribes have determined what is in their best interest. The Department should not be the determination.

Land in trust reduces the friction with
local governments and facilitates the ability of tribes
to obtain the best possible benefit from the land as
the tribal government determines the best and highest
uses.

There are no disadvantages to trust
land, as opposed to the potential of being forced to
meet non-Indian views of what is best for tribes and/or
non-Indian prejudices about the rights and
responsibilities of tribes.

Prior submissions for fee-to-trust
should be grandfathered in, rather than requiring
tribes to spend valuable resources and taking more time
to meet new standards.

It is the tribe's responsibility to deal
with state and local jurisdictions on a
government-to-government basis. Tribes understand the
benefit of good state and local relations. Often
tribes have already obtained the support of state and
even local governments. Trust land and economic
development have proven to be beneficial to state and
local interests. And studies show tribal development
has a widespread benefit for jobs to non-Indians and a
lessening of the financial demands upon state and local
resources.

MOUs generally mean that state or local
entities will try to replace the taxing authority which they lose when they substitute what provides them with other revenues. Such attempts by state or local governments impede economic progress for tribes and ignore the ongoing benefits to those entities from employment, including increased sales tax revenues when tribal members have jobs and other benefits.

Trust lands are the equivalent of a tax base for tribes that the state and local governments already have. It should not be a requirement to have an MOU, since that issue is a government-to-government issue and not a U.S. to state and local government issue.

Return to the prior department program of keeping all non-gaming fee-to-trust decisions at the agency and regional levels. Those levels of the Department are much more attuned to the needs of the tribes. It is an unnecessary cost and time-consuming process to have to go to D.C. and justify a tribe's need a second time. And it also costs the U.S. valuable resources that could be better used to help tribes.

Thank you for your time. Thank you so much.

M.R. SCHERER: Thank you, Chairman.
Next, we have Councilman Metoxen from Oneida.

MR. METOXEN: Good morning. My name is Kirby Metoxen, councilman from the Oneida tribe.

The Oneida Nation of Wisconsin is pleased to be here with you today and share our views concerning the Department of Interior's draft amendments to 25(c) of our Part 151 and the ten questions outlined in the tribal leaders letter dated December 6, 2017.

As you may know, our nation is originally from this area which now comprises Upstate New York. After the revolutionary war, we lost nearly 5,000,000 acres of ancestral homelands to illegal land transactions, despite treaty promises from the United States that we would forever be secure in our homelands.

In the 1820's our people began to relocate to the territory which became the state of Wisconsin. The state of Wisconsin came to be in 1838. We entered into a treaty with the United States which established a 65,400-acre Oneida Indian reservation. And the 65,400 acres was to the 654 Oneidas that were relocated from New York to the Wisconsin area.

For nearly 200 years, we have lived here...
and called this our home. While the land mass of the reservation consists of 65,400 acres, we lost ownership of most of our land as a result of allotment and fee patenting, presumed through the Dawes Act. Now about 22 percent of our reservation lands are held in trust by the United States, and efforts are underway to reacquire title to the remaining parcels.

The fee-to-trust process, therefore, is very important to our nation and its members. In our view, the primary purpose of trust acquisition is to restore the alienable status of the land and revive the federal protection of title to the land.

When land is placed in trust, the land cannot be sold, leased, or encumbered without tribal approval. Thus, the fee-to-trust process creates a protected land base and provides a safe environment to nurture and promote Oneida culture, economy, health, and political infrastructure.

Returning the land to its original status as alienable to forever be held by the United States for the benefit of the tribe ensures that tribal investments within the reservation will never be lost.

The mission of the Oneida Nation is to strengthen, protect our people, reclaim ownership of
our reservation land, and enhance the environment by exercising our sovereignty. Each aspect of this mission is promoted by placing land into trust.

The current fee-to-trust process is working. And the factors considered under the current regulation are appropriate. Interested parties in the fee-to-trust application have an opportunity to comment. The Bureau of Indian Affairs considers these comments in determining whether to acquire land into trust. If the Bureau decides to acquire land in trust, the resulting notice of decisions addresses the comments. Interested parties then have the right to appeal. The process, thus, ensures that concerns of local municipalities and other interested parties are taken into account.

Any changes to these processes should be centered on deficiency and allocating resources to defend trust decisions and litigation.

As proposed, the changes to 151.12, the Department would reinstate the 30-stay before taking land into trust after a positive determination has been reached. This change in policy simply promotes an environment of litigation rather than cooperation.

Such a policy also creates an additional financial burden on tribes, exploiting tribes to the
continued obligations to pay property taxes on lands deemed eligible to be placed into trust. Truly, this proposed change creates a situation where tribes would be required to underwrite the litigation efforts being waged against them.

The proposed amendment 151.12 would have a negative impact on the Oneida Nation for trust acquisition of lands located on or contiguous of the Oneida reservation.

We feel that the proposed amendments to 151.11 may serve as a prelude to future changes to the regulations concerning the trust acquisitions of lands located within our continuous reservation.

We are not convinced that fragmenting the process will lead to greater consideration in the deed-to-trust application. At the same time, we are concerned that the additional hurdles created by the proposed changes will lead to greater cost and delays in the already lengthy process.

While we are grateful to the Department for its desire to find ways to limit the financial obligations tribes must accrue simply to reclaim title to their homelands, the additional financial obligations that will be incurred by tribes, should this rule go into affect, far outweigh any benefit.
In closing, Oneida believes the fee-to-trust process is appropriate and does not need to be altered.

M.S. Hart: Thank you.

M.R. Scherer: Thank you, Councilman Metoxen.

Next is Chairman Taylor from Saint Croix.

M.R. Taylor: My name is Lewis Taylor. I'm the Chairman of Saint Croix. And, you know, I really have been, you know, an advocate for land in trust, you know, with the regulations made by the tribes. I don't think the Bureau has any right to impose upon us, you know, regulations that restrict land-into-trust. We have a treaty right. Our treaty spells it out.

And all of a sudden, you know, over the course of the past few years, there's been, you know, a lot of savages on the trust land. And, you know, the old saying is that you know, the calvary is still among us.

I think, for me, to look at regulations that are very -- that impose a legal hardship on my tribe, you know, I'm going to object. That's why I'm suggested.
I think, you know, as Indian people, you know, we have lost too much. We need to defend what little we've got left. And I think the land-into-trust is an issue for our tribe because we were forced -- we were forced to live on a reservation scattered through three counties in Wisconsin. You know, prior to that, we owned Wisconsin, you know.

All of a sudden, we've got this restricted type of land, that land base, where, you know, it really decimated my people. We couldn't fish. We couldn't hunt. You know, we couldn't, you know, do a lot of things that we were dependent upon, what the creator gave us for our subsistence. That's why a lot of our people died off.

Obviously, you know, there's a humanitarian effect to all of this land-into-trust issue. In respect to that, I think the Bureau should listen to us and make the right determination. So I think, to me, you know, that's why I'm here. I'm here because these damages that have been done over the past few years by the BIA, certainly, is not for us.

You know, we need a lot of environment. We need land. We need economic development. And we need to prosper as people in America. I think, to me,
we need a lot of freedom, and this is one of the freedoms that we need to preserve. So bewitch (sic).

M. R. SCHERER: Thank you, Chairman Taylor. Next we'd like to hear from President Buck from Prairie Island.

M. S. BUCK: Good morning. I'm Shelley Buck.

Have any of you been down to Prairie Island to see where we're at?

M. S. HART: No, I haven't.

M. S. BUCK: We're an actual island. We're an island that half of our land was flooded in the '30s by a lock and dam the federal government allowed to go through.

The federal government also allowed a nuclear power plant with 30-40 plus storage units filled with nuclear fuel sitting on our island 600 yards away. For golfers, it is a long par 5.

We also have a railroad track that the government allowed that goes through our reservation that blocks our one reliable way on and off multiple times throughout the day.

So, for us, the only acquisition we can have is off-reservation. We have no other choices.

Trust me, if we could have land that was attached to
our current res, we would. For us, the off-reservation really hits hard on us.

All these changes do is develop a new path for gaming acquisition that just adds more bureaucracy and hoops for tribes to jump through. It gives the Interior an easy way to deny off-reservation fee-to-trust acquisition. IRA already prohibits off-reservation gaming to lands acquired after 1988 with a few exceptions. There is nothing, I repeat nothing, in IRA that gives the Secretary authority to treat gaming acquisition differently. These changes actually act to diminish tribal sovereignty.

With the connection to the land, first where was that concern when the land was stolen from us? Where was that concern for our connection to the land then? This requirement is problematic, especially for tribes that faced removal or where tribes shared lands.

Tribes would have to prove they could effectively exercise governmental and regulatory jurisdiction over land, and this puts Interior in a position to determine whether a tribe's exercise of its inherent jurisdiction is sufficient.

The 30-day delay is just to make tribes wait longer to have land put into trust.
And last, these proposed changes are supposed to give us more certainty in land-into-trust before we extend more resources, but the Trump administration has already given his desire to limit tribe's ability to take more land into trust, especially for its gaming purposes.

(Native language spoken.) Thank you.

M R. SCHERER: Thank you, President Buck.

Next President Holsey from Stockbridge-M unsee.

M S. HOLSEY: Good morning. Good morning everybody. Thank you for allowing me to be here on behalf of the Stockbridge-M unsee community. As he said, my name is Shannon Holsey. I'm the president of the Stockbridge-M unsee tribe.

I don't want to reiterate some of the things that have already been discussed, but I do think it is important to expound on them, because I think this is a great time of uncertainty for all of us. There is great concern with regards to a lot of the things, from the logistics to the way that consultation was established, to the geographical locations of where they were, to how they were focused on urban areas where it didn't give a lot of access to a lot of other Natives.

There are 567 federally-recognized
tribes, and we all need to have input because these are
issues that are important to all of us.

One of the areas I'd like to talk about
is the benefit of the expedited denial process for
land-to-trust. The Department proposed to justify some
of these proposed changes by claiming that establishing
a new two-step process to quickly turn down trust
applications is a benefit. The claim that this is a
process that would spare tribes the time and expense of
preparing all necessary elements of land-into-trust
application that is likely to ultimately be denied is a
dubious benefit that appears to reflect a patronizing
attitude toward tribal governments that assumes they
are not sophisticated enough to properly weigh the
merits of the land acquisition requests.

In our experience, decisions by a
federally-recognized tribe to seek land are not
undertaken likely or impulsively. They are a product
of extensive planning, thought, and consideration
before ever being submitted for review. To our
knowledge, no tribal governments are asking the
Department to implement an expedited denial process to
protect us from our own decision-making. In fact, the
only entities we are aware of that have sought such a
policy are some non-tribal interests who have fought
tribal land acquisitions and economic development no matter what form it takes. The other part of it is the lack of the proposal on the appeal of the expedited negative denial. The draft contains no detail on how tribes may appeal any negative decision for land trust acquisition. While the proposed regulations specify what criteria will be used for making such a decision, they provide no information or process on how a tribe can appeal a negative decision if they do not agree with it.

The Stockbridge-Munsee Indian community believes that this would give significantly and largely unaccountable power to decision-makers in Washington to reject applications wholesale with no opportunity short of litigation to challenge their position.

The Department of Interior has a trust responsibility to tribes, not local governments. Based on the language of the proposed regulations, is it fair to question whether the Department has forgotten it is a trust responsibility that is to the federally-recognized tribes, not local units of government.

Significant portions of these proposed changes appear to be written as though they were
intended to meet the desires of local governments, not
the needs of federally-recognized tribes. Tribes are
sovereigns and government-to-government relationships
with the United States. Local and municipal
governments are subs of the state governments.
Throughout the proposed changes, the concerns of the
local municipal governments appear to be given
increased weight without the needs of the tribes.

In the draft requirement of Part 151.11,
Subsection 8, Part 111, provides that the Department
will now require tribal applicants to provide evidence
of mitigation of local community impacts, including
inclusion of any intergovernmental agreements or an
explanation of why agreements do not exist. The
practical effect of this and the requirement is to give
local governments a near veto power over tribal land
acquisition.

The experience of tribes nationwide has
shown that obtaining such agreements from all parties
involved is often difficult, if not impossible.
Additionally, many situations exist where some local
governments support trust land acquisition, while
others in the area do not. For example, a township in
a county might support tribal acquisition, while a town
within the borders may not. How would the Department
deal with these conflicting viewpoints?

Furthermore, it is undeniable that, in certain parts of the country, long-standing differences exist between tribes and some local units of government. These animosities often have more to do with decade-old friction, as opposed to current issues. That can present insurmountable obstacles in reaching cooperative agreements.

The changes in your draft proposal would hold tribal progress hostage to these local disputes and fly in the face of the trust responsibility the federal government has towards tribes. Ironically, the only entity that is left out of the expanded role or requirement for intergovernmental agreements in this draft regulation is other tribal governments, precisely the entity in which the federal government does owe a trust obligation and one which receives no mention in the proposed change.

Finally, as many have already spoken to, the imposition of the 30-day minimum waiting period before the land is placed into trust is extremely detrimental to tribes. Perhaps, for Stockbridge-M unsee, the worst single aspect of the proposed regulation is the requirement that land being placed into trust for any purpose has at least a 30-day
1 delay for Department approval, as specified in proposed
Part 151.12, Subsection C(2) and in 151.12, D(2).

2 In the view of the Stockbridge-Munsee Indian community, the sole discernible purpose of the
provision is to make tribal trust land acquisitions
3 more vulnerable to litigation and to further the unit
4 governmental responsibility to other private parties.

5 In no way can this requirement be reviewed as
advantageous to any tribe and, in fact, will serve to
dramatically increase litigation by hostile parties on
all tribal land acquisitions.

6 The ill effects of litigation encouraged
by proposed Parts 151.12 and 151.12, Part D, would
include creating disincentives for financial institutes
in providing funding for tribal land acquisitions due
to litigation risk and virtually guarantee that every
tribal land-into-trust acquisition will be challenged
in court at great expense to tribes and substantially
increase the cost incurred by the American taxpayer to
fund the Department's defense of its actions.

7 The inclusion of this provision benefits
only the opponents of the tribe. It is a gross
abrogation of the trust obligation of the federal
government to protect interests and the trust
obligation of federal government and to spend the
taxpayer’s money wisely.

It is nearly incomprehensible that the Department that professes to be committed to tribal sovereignty in its trust obligation would even contemplate such a measure. It must be immediately removed from the proposal.

The Stockbridge-Munsee community urges the Department to quickly withdraw this ill-conceived and apparently ill-intended set of regulations and, instead, focus on implementing policy initiatives with input from all tribes and that the real benefit be that to the American Indian.

Thank you.

M R. SCHERER: Thank you, President Holsey.

Next is President Cleveland from Ho-Chunck.

M R. C L E V E L A N D: Hello. (Native Language spoken.) So I recognize being in front of you here.

Thank you for coming over this way.

I’d like to say thanks for the prayer.

It is well appreciated. We rely on talking with the Great Spirit in all the endeavors that we do in our everyday living and being grateful for what we have.

So it is really appreciated.
I'll say a word of thanks to the Department of Interior or the Bureau of Indian Affairs for expanding their sessions to bring it out more into Indian Country to listen to the concerns that we have. But I was thinking that you have a house full of people here. And, even though that this is something that we requested at NCAI, this young man is telling us we only have four hours to speak to you, when there may be a lot of people that are going to be left out because of that.

To us, this is a very important topic to be talking about, and we don't take it lightly and come over here and speak as fast as you would like us to get our point across to why we think this is a bad idea. I'd just like to make note of that, as I proceed here.

And my name is Wilfred Cleveland. I'm the president of Ho-Chunk Nation. We are across the big river here in what is now the state of Wisconsin. I have been a tribal member all my life and lived there all my life. It was a struggle for my ancestors to live there, and we've been removed time and time again from our homelands there. We originated up in the Green Bay area in what was referred to as Red Banks. We've been living in those lands since the beginning of time, until the coming of the white man
and the removals that began to happen because they seen
how beautiful and how valuable the land is.

But our people, we have a stewardship
responsibility over these lands. So every time that
there was a removal, there was a time of returning back
to our homelands. So the federal government finally
gave up and gave us trust lands. We don't even have a
reservation. Everything that we do acquiring lands is
off-reservation because we don't have a reservation.

So I was liking it when this IRA -- when
reading about it and the purpose of that. And it
seemed like, over the years, that this has been
changing from the original intent of why we are able to.acquire lands, our lands, back.

And so I was -- I come here, it seems
like, with more questions than answers. We will be
sending our comments in by the due date, but I thought
it was important for me to come over here and make a
statement and ask some questions, not that you would
know the answers, because there are higher-ups.

According to what Ms. Hart referred to earlier, there's
about four levels above you that answer the questions
that we have. You have come here to take notes for
them, I'm assuming.

So one of the questions I have is: Why
is BIA trying to make it more difficult for us to put land into trust, when the original intent of the IRA was to stop the loss of land by Indians and returning land to Indians? Now, since that time, they put a lot of restrictions or requirements into that. An example of that was mentioned here already several times, this 30-day period of waiting. And why? I guess, I have a lot of why questions to what is trying to be taking place.

That brings back one of the questions.

The 30-day appeal process is unnecessary. Anyone who opposes has up to six years to appeal, and within that six years, they might even realize it is a good thing. It is a good thing for them that we put this land into trust. They might be benefiting from it.

Just like everything that was said already, there may be reasons from way back just because some white people don't like Indians and they don't want us to have these lands. That's a concern. And it makes it difficult for a tribe to develop that land if someone, a government of some sort, appeals it and we're in litigation and no one is going to want to do anything with that land. It could go on for years and years, a lot further than that six years that's there or a lot longer than that 30 days. So those are
the kind of concerns that we come here with.

How were these questions -- these ten questions that were put, what kind of determination was made for us to be answering those kind of questions to see how this land is going to be put into trust for us?

It is almost like what I would refer to as like a two-edged sword for us to be answering these kinds of questions here.

And going back to the basic reason why land is being put into trust, like I said earlier, so I wonder why there wants to be a change in this process that we have now.

And another part of that is why do we have to send everything straight to central? Why was the region taken out? If we have questions about the status of our application, who do we go to? We have to go all the way to D.C. to find out what the status is on this. Why don't you just leave it here within the region where we have a good working relationship with the people there?

And another question that I have is:

This consultation that you are doing here, what do these non- -- I guess, like, counties, townships, what kind of impact do they have in what these questions are that are being asked of us and determining if there's
going to be a change in how the process is going to be moving forward?

I would suggest to just go back and read the original intent of the IRA and take it from there.

And how we want to use our land that we acquire is to make our determination for our people stronger, better, it should be up to us to make that and try to make this as smooth as we can trying to acquire the land.

We're not going to be asking for the whole state of Wisconsin, even though we should, and so -- but what we need for our people is to move around freely, to be able to do what they need to do on the lands. Because no matter what happens, these people in the outside governments that are around us, they're going to benefit. They will benefit by what we do. Because we are a people that have learned to adapt to our surroundings. That's why we're still here. We still have our ceremonies. We still have our language. We still have our ways of life that we have.

And we just progress along with our surroundings.

Like I mentioned earlier, with this prayer, with our ceremonies, that is what we thrive on. And just to make our living better from way back when our government began, when we lived in wigwams and moving forward into living and to adapting and living
in tar paper shacks and moving forward progressing with
our surroundings until we came this far. Now the
federal government is trying to restrict us from living
life the way our ancestors made in their ceremonies.

So congress enacted the IRA to restore land
bases and restrict the taking of lands from tribes.
Many lands given to the Ho-Chunk in an allotment were
seized through illegal taxation or for sale by local
counties and non-Indians.

One of the things to think about is,
with this new administration that was coming in here,
they talked about streamlining. But in the process of
making it and streamlining it, they really make life
difficult for everyone. It is quite obvious. I don't
want to go too far into that.

The spirit of the IRA was well intended.
The intention of the IRA was to create a mechanism to
provide communal lands to Indian people that reversed
years of Indian policy that decimated our land base and
destroyed our culture. The IRA allowed lands to be
returned to tribal hands, rather than individual
allotment tracks. The DIA is still dealing with the
consequences of the allotment era today in the forms of
fractionation and probate.

The tribe is able to create economical
opportunities on land afforded to us through the IRA.

With the income generated, we are able to provide for
the general welfare of our tribal members living both
on and off our lands. We are able to pass laws that
govern our people and regulate activities on our lands.

Each amendment to the CFR 151 strays further and
further away from the original intention of the IRA.

The proposed revisions are not in the
spirit of what congress intended when passing the IRA.

Restricting the ability for tribes to place lands into
trust is contradictory to the 73rd congress goal of
restoring tribal homelands.

Something that often gets overlooked is
that the IRA is one of the few post World War I
legislations regarding Indian policy. A great number
of warriors fought for the U.S.A. abroad. Many of our
Ho-Chunks did that. I feel that part of why this
legislation was passed was because of the sacrifices of
those men. The federal government was trying to right
their wrong when trying to deal with Indian lands.

I’d like to express these kinds of words
here at this time. And once again, I would like to
thank you for your time. (Native language spoken.)

Thank you for listening.

M R. SCHERER: Thank you, President
Cleveland.

Could we now hear from Assistant Tribal Administrator Blanchard from Shakopee.

MS. BLANCHARD: Shakopee will reserve verbal comment today, and we'll provide written comment forthcoming.

MS. HART: Thank you.

MR. SCHERER: Could we hear from the director of real estate for the Mille Lacs Band.

MS. DONAHUE: Good morning. My name is Bridge Donahue. I'm with the Mille Lacs Band of Ojibwe.

I would like to thank all the tribal leaders who spoke before me and all of their comments.

The proposed addition of criteria for the tribes' connection to the land and whether a tribe can effectively exercise its governmental and regulatory powers at the site is especially disturbing.

How much of a connection is sufficient? How effective must the tribal government be?

The objective of off-reservation acquisitions for economic development projects to similar criteria required for off-reservation gaming makes no sense. Any increased scrutiny of gaming acquisitions would stem from 25 USC 2719's
limitations on and exceptions for gaming on trust lands acquired after October 1988. The IRA has no such limitations.

These proposed fee-to-trust changes would add huge obstacles to tribal economic development projects. And this comes at a time when DOI is holding secret meetings with industry groups promising to relax NEPA, to help promote economic development on public lands for non-Indian interests.

Loosening Indian trader regulations and NEPA while tightening fee-to-trust regulations makes no sense if the goal is to help tribal economic development and reduce regulatory burdens on tribes. Combined, the changes would help non-Indians with their economic and energy development projects in Indian Country and elsewhere but hinder a key program that tribes need to facilitate tribal economic goals.

Creating a two-phase Secretary review and approval process for discretionary off-reservation trust acquisitions so that certain resource application information would be required only if the application meets the threshold criteria to reach the second phase of review and approval. What are the threshold criteria? This needs to be defined. Is there going to be a time limit for this review process? This will,
ultimately, slow down the fee-to-trust process time.

The ASIA (phonetic) admits NEPA is a lengthy and costly process. NEPA is another hurdle to the fee-to-trust process with potential significant delays in itself. By postponing the date that NEPA can be initiated, any additional environmental work, if a CATEX is rejected and an environmental assessment is ordered, it cannot and will not be made apparent in the fee-to-trust process, therefore prolonging the ultimate notice of decision.

NEPA is supposed to be performed pre-decisional. There is no point to have the application partially approved prior to the NEPA when NEPA is just another step where the application can still be denied.

Distinguishing acquisitions for gaming from off-reservation trust acquisitions for other non-gaming purposes? What is the purpose? Will there be two wait lists for the review of the Secretary?

Will the application still be reviewed in the order of receipt? There's already a process 25 CFR Part 292 in place for extra requirements for off-reservation gaming applications.

Whether the acquisition will facilitate the consolidation of tribal land holdings and reduce
checkerboarding patterns and jurisdictions.

Checkerboard reservations often have land holdings that way because they did not have any boundaries defined by any treaty. These tribes are attempting to consolidate their lands with every fee-to-trust application that is filed. They should not be scrutinized for putting a property into trust that is 10 miles away from current reservation land because there is another fee property only 2 miles away. This regulation criteria is unnecessary and should be eliminated from the final regulation updates.

The 30-day delay. This is pointless.

There's already a 30-day publication period that needs to be complied with. This is a redundancy and should not be put back into the regulation. Statute of limitations for federal court is six years, anyway. So what is the point of adding a 30-day delay?

Explicitly stating that the Department will comply with court orders to take land out of trust. This is excessive language that, when read by opposition to the tribe's application could add a potential amount of appeals and court cases in an attempt to reverse the Secretary's decision. Has one of these cases ever happened? If it has, did the Department comply? If the Department complied, then
why add this to the regulations?

Identification of the unemployment rate on the reservation. Tribes without current minimal resources could be hindered by any expensive studies that need to be required. What is the threshold for an analysis? Part 292 already requires anticipated impacts on the economic development, income, and employment of the surrounding community, so this is redundant to list in Part 151.

Regarding the MOUs, as you may or may not know, Mille Lacs County is in huge opposition to us. They canceled our law enforcement agreements two years ago. We have not had any -- we had an Uncuff Our Cops rally at the capitol a few months ago, because our tribal police really have no authority in Mille Lacs County because they don't recognize us.

Any kind of agreements with Mille Lacs County is off the table. For us -- for the Department to look at us and scrutinize whether or not we have an MOU would be unfair and unjust because there is no way. We've been in negotiations for two years, and they will not recognize our boundary. They will not recognize us. So that would be extremely unfair for us to have that as part of the review process.

Thank you for your time and
consideration.

MR. SCHERER: Thank you very much. We have another representative of Prairie Island, who is the last individual who signed up to present comments. This is the assistant secretary treasurer, Ms. Urich or Urich.

MR. FLUTE: Excuse me, I just signed in.

MR. SCHERER: We are going to open it up.

MR. FLUTE: There was online registration. I had a confirmation.

MS. HART: Okay. We're going to open it up, so I will --

MR. SCHERER: We are happy to open with you if you would like to speak.

MR. FLUTE: (Native Language spoken.) And that's my connection to the land. That language that I just spoke.

Before I read some comments, I want to say that I am a little dissatisfied with Secretary Zinke's proposed changes and you representing him. I would speak to him if he were here the same. I'm going to speak to you respectfully, to your positions.

The consultation between the Sisseton Wahpeton Sioux tribe is based on our treaties, the U.S.
Constitution. Article 5, treaties are the law of the land, federal statutes, executive orders, presidential memorandums. Your trust responsibility is to all tribes and the inherent sovereign authority of our respective tribes.

So the Sisseton Wahpeton Sioux tribe disagrees with the entire provisions, proposed changes to 25 CFR 151, the parts that are being recommended for changes, for all the reasons that were recently and previous before we were spoken. We concur with those.

But, also, in addition, for consultation to be meaningful, the consultation must be timely. It means the Department of Interior doesn't initiate consultation after drafting proposed changes to important regulations, but well before. It should be well before.

Here, the secretary has unilaterally established an agenda and unilaterally drafted proposed regulations without ever identifying the need for the proposed change. The secretary must initiate consultation to discuss whether any changes to regulatory language, any language, is even necessary. In other words, the secretary must first consult with tribes about the underlying concerns, not the perceived solution.
Sharing information -- consultation requires sharing information. The Department has provided no information about the need for change to off-reservation regulations. Mind you, I am a reservation tribe or a treaty tribe, where I have great respect to the other tribes that are recognized by the federal government. We need to collaborate about the perceived problem or difficulty and then, if necessary, we can discuss an agenda.

Here, the Department is saying that consultation means the Indian tribes are treated no different than any member of the public who is invited to comment on proposed regulations. We are not cities. We are not states. We are tribal Nations. We are sovereign Nations. I think that needs to be clarified with the Secretary.

Honestly, consultation is meaningless without honesty. In October, I received the letter stating that this consultation was going to be about off-reservation lands. Then in December, we get one that says they are going to be talking about on-reservation lands. So I think the Department needs to clarify what their intentions are, because this looks -- is it heads or tails, or is it both? I don't know.
So in conclusion, I’m here today to listen and learn why the Department has set an agenda, why the Department is proposing changes to these regulations. It is not possible to consult without that information.

Looking at a couple of these proposed changes and questions that the Secretary, who is representing President Trump, is asking, the main one that disturbs me the most is the historical attachment you have to the land. That is a slap in the face to every single one of us. These original lands were ours. We were here first.

Those treaties that were established, that was the law of the land. Not all of those treaties were upheld, and there were some that were abrogated and some that, like with the Great Sioux Nation, we were lied to. My tribe was lied to.

Half of Minnesota, this is (Native Language spoken.) We gave up a lot, half of Minnesota, all of Minnesota, eventually. You look at North Dakota, South Dakota, they bear the names of Dakota people. These towns bear the names of our ancestors, Winnebago, Neshoba, Dakota. They all have names of our people. We might be different by language, but we share universal commonalities, compassion, respect for
the land.

So I urge you -- and I say this humbly, and I say this respectfully to Secretary Zinke. I understand he was a Navy SEAL. I'm an Afghanistan veteran. Being in Afghanistan for a year, I learned how valuable to the good citizens of Afghanistan, not the Taliban, but those local nationals, why their lands were important. Our own Secretary shouldn't have to ask what our historical values are to the lands we are going to put into trust. (Native Language spoken.)

MR. SCHERER: Thank you, Chairman Flute.

MR. VAN NORMAN: Hi there. You had another sheet out front. I signed up.

MS. HART: You are on top.

MR. VAN NORMAN: Thanks. I'm Mark Van Norman. I'm a member of the Cheyenne River Sioux tribe. I'm here today as counsel to the Oglala Sioux tribe. We have our council here from the Oglala Sioux tribe, tribal council, and President Weston has a letter that we'll deliver to you.

And the Oglala Sioux tribe is a federally-recognized tribe, one of the tribes of the Great Sioux Nation, signatory to the 1851 and 1868 treaties. Our preliminary comment is no regulatory
amendments are needed at this time. The Secretary should restore authority to BIA regions to acquire land-in-trust on behalf of Indian tribes and individual Indians.

The Secretary should mandate that the BIA regional directors prioritize and expedite the acquisition of Indian lands for tribes and individuals to enhance, restore to justice, promote Indian self-determination, support self-government, encourage economic development, foster cultural survival and community wellness.

Under our 1851 and 1868 treaties, the Great Sioux Nation reserved 21,000,000 acres of land in western South Dakota from the low water mark on the east bank of the Missouri River as our permanent home and 44,000,000 acres of land in Nebraska, Colorado, Wyoming, Montana, and North Dakota that is unseated Indian territory from and among our original territory. The United States took many of these lands in violation of the treaties, 7,000,000 acres in the Black Hills taken, in 1888, 11,000,000 acres to facilitate statehood for North and South Dakota, and another 6,000,000 acres thereafter. So it looks like about 70,000,000 acres were taken from the Sioux Nation throughout that period.
In the Meriam Report, which led to the enactment of the Indian Reorganization Act, the United States recognized that too much economic damage had been done to Indian tribes by taking these lands. In accordance, the Indian Reorganization Act was a remedial statute to return to promoting self-government and economic revitalization for Indian tribes. It is to promote Indian self-determination and preserve Indian sovereignty, promote tribal self-government, in the delivery of tribal government services, including housing, education, community wellness, cultural preservation. It fosters tribal corporations, business and economic development, and the restoration of Indian homelands.

So these broad purposes provide the background for any regulation, and regulations should serve to help tribes to reacquire their homelands. The purpose of the Act prevents the loss of Indian lands, secure Indian lands, restore federal lands to Indian tribes, restores Indian lands, mineral rights, and waters to purchase relinquishment and exchange assignment with state and local taxation, promote economic development, forestry management, range management, protection of the soil, proclaim Indian reservations, promote Indian education and healthcare
and preserve the existing rights of Indian tribes.

So the objective of the regulations, as they currently are and any future regulations, should be to carry out the Indian Reorganization Act's remedial purposes. It should take steps to achieve these goals, not make the recovery of Indian lands more difficult.

Right now, the Department is slow to act on all trust applications, including on-reservation applications. There's a lot of technical standards and legal documents. The BIA is tasked by law to maintaining legal title to Indian lands, and the BIA should be the one to facilitate that kind of recordkeeping and assist the tribes with those issues.

The Department should deem on-reservation Indian land acquisitions to be categorically excluded. After all, the reservations were reserved as Indian homelands, and the lands are to be used as Indian homelands. So there is no change in purpose.

So any time that acquisitions would preserve Indian sovereignty and promote Indian self-determination, foster Indian business development, encourage Indian economic development, enhance tribal self-government, promote agricultural, forestry, animal husbandry, restoration of the soil, promote the
delivery of tribal government services, enhance tribal
government and community institutions, or provide for
Indian nation infrastructure, the lands should be taken
in trust.

The Act does not provide different
standards for on-reservation and off-reservation, but
puts these categories in the same sentence within or
without the reservation.

The Department should defer to the
tribes' goals in reacquiring Indian lands, because that
furthers Indian sovereignty, self-determination,
self-government, business development, economic
development, and provision of tribal government
services as intended by the Indian Reorganization Act.

The Department should recognize that the
recovery of sacred sites and sites of historical
significance or occupation are very important to the
sustainability of Indian nations and should give
special priority to such acquisitions, whether on or
off the reservation. There should be categorical
exclusions from NEPA for these issues.

There shouldn't be a different standard
for business or economic development because business
and economic development are part of revitalizing
tribal economies. That's the purpose of the Indian
Reorganization Act.

As far as gaming goes, we have Section 2719 of the Indian Gaming Regulatory Act. When the tribes follow that, then there are supposed to be no further burden on Indian land-into-trust process.

Nothing in this section shall affect or diminish the authority and responsibility of the Secretary to take land into trust, period. It doesn't say new standards for off-reservation gaming in Section 151. So to the extent this effort is motivated by that issue, it is contrary to the statute.

When tribes seek to take land in trust for their permanent home, the United States should defer to that. Indian trust land is an essential part of the territorial component of Indian sovereignty. It is protected by Indian treaties and self-governed by Indian nations and tribes in furtherance of our original inherent sovereignty. The Secretary should not change the rules for pending applications.

Concerning on-reservation acquisitions, the views of state and local governments are entitled to little weight. When the United States acquired claims to its territory, for example, through the 1803 Louisiana Purchase Act, they recognized that Indian tribes owned the land and that the United States should
deal with Indian tribes through treaties based on mutual consent. That treaty should be considered a covenant with the land and the United States should adhere to the original bargain.

The original territorial organic acts expressly recognized that Indian rights were to be preserved. These are the foundations for the states. So the original policy at the time of the constitution was "The utmost good faith shall always be observed towards the Indians." In their liberty and property, they shall never be invaded. That is in the ordinance in 1787.

But the constitution framers wanted to continue that forward, because it was a framework for new states to be admitted to the union. And so they reenacted that in the first congress upon ratification of the constitution in 1789. So that's very clear about what the policy of the United States is.

Though that original policy and those territorial acts is carried forward in the subsequent territory acts, the Indiana Territory Act, the Michigan Territory Act, the Wisconsin Territory Act. And preserving the original Indian rights is in those territory acts.

So when you think about where do the
states come from? They come from those territorial acts. They come from their statehood acts that are based on the territorial acts. All those territorial acts preserve provisional Indian rights. So out here in the west, for example North and South Dakota, the states were required to disclaim all right, title, and interest to Indian lands. And they also recognized that the federal government would acquire additional lands for federal purposes, and they agreed to that. We the people of the state of South Dakota and we the people of the state of North Dakota, they agreed to that as part of becoming a state. So they shouldn't be objecting to these trust land acquisitions now. They were on notice that our Indian lands were permanent homelands because that was federal law under the treaty. And they shouldn't be taken to have a right to object to what was already the law when they became states.

The Indian Reorganization Act authorizes Indian nations and tribes to negotiate with state and local governments, not the Secretary on behalf of the tribes, but as a matter of self-government. So the MOU requirement should not be included in any federal regulation because that's a voluntary matter. That's up to us if we want to talk to the state and local
tribes, not up to the United States. It would be
contrary to the statute to have any requirement for
state and local agreements, and it is contrary to the
framework of the constitution.
So we'll submit these comments. These
are preliminary comments, and we will, you know, have
further comments.
M R. SCHERER: Mr. Van Norman, I have one
clarification on the NEPA. Were you meaning to say
that you didn't think a NEPA requirement was necessary
for the discretionary acquisition on and
off-reservation?
M R. VAN NORMAN: I'm saying, where it
has already been Indian lands in the past, it should be
no surprise to anybody that it is going to be Indian
lands in the future. It shouldn't even be by NEPA to
begin with.
M R. SCHERER: Thank you.
M R. VAN NORMAN: Thank you. Next
Chairman.
M R. TRUDELL: I am the Chairman for
Santee Sioux Nation and would like some floor time.
M R. SCHERER: Absolutely. Next we have
one addition to the list, Chairman Flying Hawk from the
Yankton Sioux.
MR. FLYING HAWK: (Native Language spoken.) I just wanted to say thank you for coming here to listen to us and to speak just a little bit with our language. I believe that is our strength. And the comments, the statements that have been made, I have been saying that.

Historically, we are a people. We are human beings. And throughout history, as this land was discovered, as it was claimed, 1300's, 1400's, 1492, I think, is the date that comes to my mind, being in school and learning. We do learn. And I think a statement has been made that we learn how to live, and we will continue to live.

So I believe the question was: Why is it important to focus on why land recovery is important to my tribe? And the importance of it is that it is where we live and where we have our being. And it is -- I am from the Ihanktonwan Nation. That is translated as the end of the village. It is generally recognized as the Yankton tribe.

So we have a lot of learning. Even though, historically, from the 1300's, we've been coming and living together and still, I believe, haven't learned. I look at the statement that we are the same but yet we are different, and then also
reversing that and saying we are different but yet we
are the same. We are all going towards the same place.
We all are trying to work and achieve the same humanity
goal. We live together.

We have challenges within our tribe and
within all of our nations on this North American
continent. We are citizens of our tribe. We are
citizens of our state. We are citizens of America.
And we are Native Americans. And there are challenges
and struggles that we see today within our communities,
within our state, and within the country.

What have we learned from that? We are
a people that have been here and have endured those
challenges and yet are still here. So to acquire those
lands that have been our land that we lived on, the
land that has our blood lying in there is a simple
question.

We do have an answer to why these
meetings are being held. I believe our Chairman from
the Sisseton stated it simply the other day at our
meeting. Our protocol, our etiquette, our processes
are with a piece of wood and a piece of stone, and we
put those two together, and we have some smoke. And we
talk, and we agree.

But today I realize that we do have
challenges. We need to put things down on paper. That's where it begins. We have something that was written and was called a treaty. And from that treaty, there was some trust responsibility that is there. And we believe in that. We believe that the government is telling us that these things are there. We need to have these lands. The Yankton land was considered a checkerboard land. The reservation boundaries have been recognized. It is within the county. But yet, within that county, there are lands that are ours and recognized as ours and yet still others are lands that belong to the community, our neighbors. And we just want to reacquire those if they are available.

And to help us become economically feasible, to be able to stand on our own and to not be looking at the government to help us, we need to be able to stand back up and be on our own feet again.

So it is a simple question. We do have our rules. We've been asked to have some protocols, some what our language says the world had. Those are just protocols that each of us as tribes have, and we will come up with a protocol that fits us as tribes overall throughout the country.

So I just wanted to say that much and say thank you.
MR. SCHERER: Chairman.

MR. TRUDELL: (Native Language spoken.)

Hello. I already handshake you. Thank you for bringing your process this way. I'm old school. You know, I don't read all of the letters all the way through saying you have to pre-register to talk. That's not even our way. Number one, it is not our way, you know. The opportunity to speak should be for everybody. Everybody’s thoughts should be shared with everybody. That's how you determine something positive or good may happen or whether it is bad and shouldn't happen.

I want to thank my (native language) over here, Mr. Flute hiding in the corner over here, the chairman from Sisseton. He already gave some history on who we are. And we are the Mdewakanton Wahpekute Santee Sioux. We own this whole state, part of Wisconsin, Iowa, Canada, all over.

The government did everything they could to diminish us as a people. Now you hear Prairie Island. You hear Shakopee, Lower Sioux, Flandreau Santee Sioux, Santee Sioux, Nebraska. You know, they've done a lot. They took all this land from us, never paid us properly, never paid us properly for the things that were supposed to be provided by treaty.
They relocated us, you know, to Fort Thompson, to Crow Creek and later to Nebraska. Not out of the goodness of their heart, they put us down there to shield the white settlers from the Oglalas. It wasn't out of kindness. They moved us from some barren country to a little less barren country. I wanted to share that much.

And our ancestors, they fought so that we could be here today. They hung 38 of them over here in Emanate, the largest mass hanging this country ever had or ever has had. Then that wasn't enough, so they kidnapped two of our people out of Canada and brought them back and hung them, also. Then they talk about how we are a savage people.

When Little Crow came back up into this country, they killed him, cut his head off and paraded it through the streets. We have a tragic history with the non-Indian people.

Many years ago, we tried to move forward. We tried to have our kids understand, you know, that you need to move forward. You can't move forward if you have hate in your heart. You have to heal yourself.

Prior to our reservation in Nebraska, I think it was originally 159,000 acres. We lost half of
that in one shot under the Dawes Act. What is happening now with the reorganization of the land-into-trust issue is almost echoing the Dawes Act. It's another way to diminish Indian lands and Indian people or the ability of Indians to move forward and grow.

Now, we have a reservation board just like Yankton and everybody else talked about. Our boundaries have not been diminished. The opportunity to buy land, because they only make it once, is very limited. A lot of us live in very sparsely-populated areas. In the county that we live in, there's less than 10,000 people. To limit us by enlarging the process that you have to go through to acquire land off-reservation, will do great harm to us tribes because we don't have population base. We have nothing to tax.

If we wanted to purchase land in Sioux Falls, South Dakota, I think the first- or the third-fastest growing city in the country, we should do that. We should be able to do that. We can do that if we want to pay taxes and all that. To give us an edge economically, we should have the ability to put that into trust.

Now, I really argue whether, you know,
we should put land into trust for the government or
not, because somehow that seems like it is not ours
anymore, you know, just by the terminology of that.

Putting land into trust off-reservation at
this time is hard enough. I think we have been trying
to put 7-point-some acres into trust for, I believe,
ten years now. We can't get that done. It is not even
gaming. It is an existing business we bought south of
Yankton. Actually, about 20 miles down the river from
our home. Very, very difficult. I don't know who
keeps making it more difficult.

And so as a tribe and, I guess, as an
elected leader of that tribe, I propose on behalf of
our tribe any change, any proposed change, some
discussion with the tribes directly prior to that so we
can formulate what we think works best for us.

Also, on behalf of the tribes of the
Great Plains, we would like to bring a consultation to
our country, Rapid City, Pierre, somewhere in that
area, Sioux Falls, you know, where there's more access
for our people to come and to share their thoughts on
that.

I know that you've heard everything
already. I can't tell you any more than what has been
told already. There have been some very, very strong
submissions this morning, you know. I'm sure not going
to try to top any of that. I'm not that, whatever you
want to call it, articulate. Thank you.

M R. WRIGHT: I'm Larry Wright, Junior.

I'm chairman of the Ponca Tribe of Nebraska. I want to
thank my elders for speaking here today, for Chairman
Flute for the prayer, and I want to echo the sentiments
that have been shared so far, the technical aspects of
why this is not a good idea.

From a historical context, what this
means for my tribe, you know, 2017 marked the 140th
anniversary of when the federal government removed my
people from the South Dakota-Nebraska border down to
Oklahoma against our will, took our land.

Before that, the federal government took
the last 96,000 acres that we signed with the treaty
with the federal government away from us, including
that land, in the 1868 treaty, Fort Laramie made us
trespassers on our own country, made us criminals in
their eyes. And we moved.

The federal government later terminated
our people. We were one of the last tribes to be
terminated in the '60s. These actions were done by the
federal government against us. Took our land away.

Today, we still have less than a thousand total acres
of land that have been restored to our tribe through various means, some by donation, some by the best way that we could to finance that and pay for that.

Today, we're in the middle of buying more of our historic land at a price tag of $6 million. And what's that worth to us? That's been in the hands of white families since we've been moved. That land includes the burial site of our people, one of our last leaders, traditional leaders. So what is that worth to us? For $6 million, our people said do it. We don't know how, but do it.

And so to put more strings on us to buy that land -- and it is in the same county as Chairman Trudell is talking about. So we end up getting pitted tribe against tribe sometimes in these situations. It is the federal government's doing. But here yet today, we bought other land that contains historic sites.

My tribe was terminated in the '60s, and we were reinstated in 1990. And 27 years, it has taken us to get just 1,000 acres. We weren't allowed a reservation. We were allowed service areas. We are spread over 12 counties in Nebraska, two counties in Iowa, and a county in South Dakota. Tribes know what it is like to have services in one geographic space, but we have to duplicate services across those
counties. From one end of our service area to the
other, it is a four-hour drive, so we have to have
offices in each of our sites.

So off-reservation, on-reservation, we
get caught up in that, and it is a struggle. It makes
this a cumbersome process. A year ago, we heard the
Trump administration, the transition team, say they
want to make it easier. This is not easier for us.

When we talk about economic development, all of those
kinds of things, we face more hurdles.

Part of our Restoration Act said that
we'd have 1500 mandatory trust acres in our Knox and
Boyd County. It took us almost two years or a little
longer to get a small parcel put into trust in that
mandatory acquisition. So that process currently is
cumbersome. It shouldn't be. It delays the process.

It is historic land for us. It has cultural meaning.

When we try to do other opportunities in
other areas, when it is for economic development, we
face increased scrutiny. To give you an example,
recently, as we celebrate -- not celebrate -- remember
the 140th anniversary of our people being forcibly
removed to Oklahoma, there was a community along the
south border of Nebraska that had a trail. And on that
trail, it was deemed that that trail is a hiking-biking
trail, but it was the exact trail that the people, my
people, were removed on to Oklahoma.

    And the people down there wanted to deed
that land to the tribe to honor and remember what our
ancestors went through, our people that died along the
way.

    The first thing that opponents came out
and fought is: Are they going to put a casino down
there? Now, mind you, this is a hiking and biking
trail. It was 20 miles long and about a 150 feet wide.
That's about almost as long from here to the front
desk, it seems like. Which you can see, that's the
first thing people default to. All we did is they
deeded the land to the tribe.

    I want to thank Chairman Flying Hawk.
This last year, we finalized a deal where his tribal
nation had land that was located by our agency grounds.
They reached out to us. They sold us that land,
government-to-government. They didn't ask us what we
were going to do with the land. They didn't ask us if
we were going to do a casino. We have that respect for
each other.

    The federal government did this to us.
It is the federal government's job to take care and
make this process seamless between the federal
government and the tribes. They took our land. It is
their job to help us get it back when we deem that
that's appropriate.

We are held to different standards when
it comes to what we do with our land. Governments,
federal administration, Trump, Baa, whomever, they are
allowed to change their mind. When governors come in,
when mayors come into their cities, they are allowed to
change their mind. But when tribal governments go to
put land into trust, and we have different
administrations as well, when they change, we're not
allowed to change what we want to do without increased
scrutiny.

So I stand with the other tribal leaders
here today to say this process shouldn't be more
cumbersome on us. It is the federal government's job
to make this easier for us. (Native Language spoken.)

MR. SCHERER: Would anyone else like to
speak?

MR. WIGGINS: (Native Language spoken.)

My name is Mike Wiggins, Junior. I'm the tribal
chairman from the Bad River Band of Lake Superior
Chippewa. I want to just make a couple of comments,
not to go into detail on some of the complexities or
technical aspects of the changes that are being made.
We've heard such beautiful testimony that was already given to some of those points.

What I wanted to just say is and, I guess, express to you is a humility that I'm carrying as I sit there and listen to all of these things that are going on. Part of what's taking place, as I sit here and listen to all of this stuff, is a reexperiencing of those mechanisms and those things that happened in the past that put us in such a humble place, as far as a land base, as far as resources and things like that, that accompany that thought of nation building as a tribe, that accompany that thought of survival into perpetuity as a tribe.

When I was a little kid, I'd go out into the woods with my dad, and he used to teach me how to hunt. He said the first thing you do when you get out here and find a place to kind of wait is to clear a nice quiet spot for your feet. He said you need that little bit of space in case you have to turn around or in case you have to do something without making a bunch of noise.

I always think about that. That little mechanism, that little thought of needing a little place for your feet.

So when I think about how we lost our
land, when I think about our connections to all those
places around Lake Superior -- you know, our tribe Lake
Superior Chippewa, we are Ojibwe people. We go way
back to when we are Gichigami, Lake Superior people,
and Madeline Island, the Apostle Islands there was the
heartbeat of our Ojibwe nation. No matter where we go
around that lake, the water, the rocks, all of that
stuff, we are connected to that.

To hear some of the technical aspects,
you know, put forward, that notion that we have to
reassert and try to convince men in suits in Washington
that we have a connection to some of these places is
really difficult to try to wrap the mind around,
because we have old memories. And what happened then
is like a blink of an eye to what's going on today.

Another part of that humility that I'm
experiencing today is the fact that I'm dealing with
people in poverty, rural people that don't have access
to urban populations for economic development that are
mired in severe unbelievable poverty. Tack onto that,
as we all know, some of the chronic health conditions
that are plaguing our people, some of the things
related to diabetes and social justice issues, like
access to traditional foods and things like that. It
makes for a really bleak picture in terms of the
challenge that we're up against.

I'll say this. We are survivors. Every tribe in here is full of survivors, full of unbelievably resilient people that will survive into perpetuity. The question that remains is: How is that going to look? How is that going to look?

Listening to what was said and reading the proposed changes reminds me of when we resisted a massive mining project in the headwaters of our namesake river, the Bad River. We resisted resource extraction in a place that serves as a recharge for all of the groundwater aquifers underneath our tribal home.

Part of that responsibility is looking towards the federal government, at their trust responsibility that they carry as it relates to protection of our places where it relates to protection of our people.

When I think about the trust responsibility and some of these details that are here, I was thinking to myself -- I remember in the old days when we used to be angry that some of the proposed changes and some of the things that govern us by way of our relationship with the feds was too paternalistic. It was too much like the father trying to take our hand
and guide us to some type of good place.

Today, sitting here looking at what's taking place and some of those things that are put up as potential obstacles, I don't even see paternal as a notion of some of those documents that reference the Great White Father. I'm not like, that's not even fatherly. That leaves me with the feeling you don't like us anymore.

These are vital pathways to survival that are represented in land acquisitions, which is just, at a base, giving us a place for our feet.

So think of all those babies, thinking of all those generations that are still on the way and how that population, our people, is growing. And we're already in a little finite amount of acreage that is our reservational homeland. Some of these things are really, really important to structure for the future.

Trust responsibility, as I found out in that resistance to resource extraction, ends up being like smoke. Everybody can talk about it. It would fill this room, and you could see it. You could feel it. You could be immersed in it. Then when it comes time to get a little bit of that trust responsibility to help protect us, all of a sudden, you are trying to grab on, and this thing keeps disappearing all around
you. Just like smoke, you can't get ahold of it.

The mechanisms of trust responsibility,
the true integrity of trust responsibility is contained
in the minutia and the details of the proposed changes
that you are putting forward. Like so many chairmen
said, that trust responsibility is connected to
treaties. It is connected to blood. It is connected
to old, old stuff. That is alive today just like it
was a blink of an eye ago.

So when you think about how you approach
the tribes, what you are hearing from all of these
leaders that have all these people they are trying to
take care of is don't put roadblocks. Try and help us.
That's what you are here for. That's what we look to
you and to President Trump for. It is a humble thing
related to survival. It is a humble thing just related
to space.

And then the last thing I want to
mention is more of a little editorial rant. I watch
these people in the state of Wisconsin, these
foreign-born corporation owners roll into the State of
Wisconsin on land that's provided to them. The Foxconn
Corporation, with Governor Scott Walker, the land was
provided for them. Roads are going to be repaved.
Heaven and earth are going to be moved for these people
to the tune of $4 and a half billion of taxpayer money
to set these guys up to open up shop.

This is the same administration that has
killed land-to-trust -- not so much land-into-trust
applications, but off-res gaming possibilities that
were structured to benefit through those
intergovernmental agreements all the communities around
them.

So when I look at what's taking place
for foreign-born corporations compared to what I'm
experiencing here today as a tribal leader looking at,
you know, some of the processes to get lifelines,
economic development and other lifelines for us, it is
just unbelievable. It boggles my brain.

And it leads me to the bigger picture,
which scares me, too. Because a lot of times, this is
where I see the federal government not taking care of
their own non-tribal people with the shrinking of
national parks and things like that for corporate
profit-driven projects. I don't know if all the
intergovernmental agreements and all of the
prove-your-connections to the land and all of that is
put up for them guys the way it is here today.

Money is not a connection to the land.

That gives them the ability to destroy and do whatever
they want, because of the fact that they persuade
people to just look away, and they play greed. Blood
is a much stronger connection to the land than money.
And, you know, I wanted to just point out that
discrepancy that's there, because this is all happening
in a place where we're trying to survive and take care
of our people.

So please think about things from a
little more of a paternalistic aspect. Please remember
trust responsibility. And that smoke is actually made
of that ink on that paper right there. And we're here
at a base asking for help because this is nation
building. This is survival. The lens of this is
forever.

And we're taking care of things like
water. We're taking care of things like land. Our
reservation is like a cleansing filter for Lake
Superior. We don't develop a lot of things that most
people would see as profit centers on shorelines and
stuff like that, because our responsibility is to seven
generations from now. I want those children to
experience the same type of experiences I experienced
there. And that responsibility tempers that notion of
economic development in a lot of ways.

We are doing all this stuff as citizens
of the United States, too. We are doing all this stuff
as people who understand we're in the fresh water
stronghold of America and that we have a responsibility
to protect this for everybody.

And when we look at the government and
at that relationship, reciprocate that. Reciprocate
that. And remember that when there's no tribal leaders
around and there's just non-tribal men in suits that
don't think about those things, that don't think about
the children, all those babies on the way and the
things that we have to. (Native language spoken.)

M.S. HART: Thank you.

M.R. SCHERER: We'll go here first.

M.R. RED WILLOW: We'll just make this
mike here a little bit taller. But (Native Language
spoken.)

First of all, I'd like to thank
Mr. Flying Hawk for his prayer and also his words
there. And this month here, January, we call wiotehika
wi, the moon of the hard time. And so, also, I'm part
of the executive committee of the Oglala Sioux tribe,
the fifth member.

There is the president, vice president,
secretary, treasurer, and the fifth member. And the
president and the vice president are elected at large
by the membership. And the treasurer and secretary and
the fifth member are selected by the tribal council.
So I'd like to also thank the tribal council here for
having faith in me to elect me to that position fifth
member for the second term.
    But I have also been a part of the
tribal council for two terms, and I have testified
before these commissions. I was first elected in 1976
when Public Law 93-638 came out, and we had testified
repeatedly regarding those regulations, after that, the
contracting of law and order, education. I testified
regarding health services. All our treaty rights that
are guaranteed in the 1868 and '51 treaties that our
attorney Mark had previously gave you testimony on
concerning the Oglala Sioux tribe.
    So 40-plus years in giving testimony
before various commissions, various events like this.
Now, kind of erase from your mind right now that you
are representing a subpart of the government. In our
past, there are representatives that negotiated
government-to-government. One of the first times I was
involved in a real government-to-government testimony
or talks was our Chief Frank Fools Crow, after the
Wounded Knee Occupation of 1973 and subsequent contract
for law and order, met with Gerald Ford to discuss
getting law and order back to Pine Ridge Reservation
under our own control, rather than the Bureau of Indian Affairs.

So for our tribal leaders here to be
giving testimony before you is kind of like an elder
talking to a teenager or a child here and trying to put
forth and get across the idea that we have a sovereign people. We are guaranteed these lands.

And then to try to talk about putting
land into trust on lands that we own by treaty, in some
of our elders, that doesn't sit. You can't discuss --
or it is an idea that is foreign. We are putting lands
into trust and have put lands into trust in our sacred Black Hills at a place called Pe' Sla, also our sacral Bear Butte. We have lands there within our treaty territory that are ours, but we are purchasing that back. I suppose, at some point in the future, we'll be reimbursed for those moneys that we spend in getting our treaty lands, buying back our treaty lands. That's a foreign concept to some of the elders.

These hearings, some of them, especially in the current climate, I would say that you are here to hear our game plan to, probably, put further stopgaps in what we want to do. It might all seem clear and aboveboard that you want to hear stuff that
you want to work with us on. But, in my experience,

some of these hearings are actually to flush us out and

let you know what our game plan is so that you can

further stymie our efforts in regaining some of our

treaty lands.

So there's a lot of talk about blood

being shed for our lands. One of our great leaders was

asked before one of the commissions that was brought to

our treaty lands. That is our great leader Tasunka

Witco. He was brought before a commission, and the

general that was there representing the U.S., I believe

his name was -- our Lakota people called him what

Wichackiamini (phonetic). He was a three-star general.

So the question was posed to our Chief Crazy Horse, so

where are these lands that you claim are yours? So in

response to that question, Tasunka Witco, Crazy Horse,

answered, "My lands are where my dead lie buried."

"The lands are where my dead lie buried." That

response said it all. That is where our lands are,

some of these lands that we are asking that, perhaps,

we need to get back into trust are actually lands where

our ancestors spilled blood in defense of our country.

So it is foreign to some of us to think

that, well, we need to put some of our lands back into

trust. But, yet, this is the mechanism that we must
bow down to try to make this current administration
understand where we're coming from.

So in that sense, that is what I -- and,
I suppose, in the future, Great Spirit willing, that
there are more hearings, more testimonies, in other
areas, in other subjects that our treaty rights
guarantee that we will be making. My children and
grandchildren will probably be before some of these
committees to give testimony, also, in guaranteeing our
rights as an equal part of the government.

In June of this coming year, the
International Indian Treaty Council is meeting. They
will be having their annual meeting in our sacred Black
Hills at Bear Butte, and all Nations across the globe
will be attending that to discuss such matters as those
that were approved ten years ago in the Indigenous
Rights of Native People's. I'd like to invite all
native nations that want to come. A lot of it is
repatriation, also. We need repatriation laws.

So that's the extent of what I would
like to say to you today (Native language spoken.)

M.R. SCHERER: Thank you very much. I
think that now might be an opportunity to take a quick
ten-minute break. As mentioned at the beginning of the
consultation, we'll extend the consultation time for
1 the amount of time that we're out.

2 (Recess.)

3 M R. SCHERER: As you approach the mike,

4 say your name and your tribe. If you are in a

5 leadership position, as well, in the tribe, express

6 that as well. If you are not and you are representing

7 a tribe as legal counsel or whatnot, please make that

8 note.

9 M R. STEVENS: I think it is still

10 morning. Good morning. My name is Ernie Stevens. I

11 represent the National Indian Gaming Association.

12 You heard earlier, I'm an Oneida from

13 Wisconsin. You heard our councilman give our position

14 on behalf of the tribe. So I just wanted to say a few

15 things so I could try to emphasize the importance of

16 what's happening here.

17 I think that the leadership has

18 articulated a beautiful message here today. And I

19 won't be too partial to my region that I come from, but

20 this is where I come from. We have some of the most

21 articulate leaders and professional people that support

22 them in Indian history, and a whole bunch of them are

23 here today. So I think that -- I know you understand

24 me.

25 And I've known Paula for years. Kyle,
you are new, but I know that you know what you are doing or you wouldn't be where you are. So I emphasize that because I think that it is important that we appreciate and understand that we don't get into a formality here. And these leaders here have spoken from their heart. They have spoken from their community. And they represent all of our children, all of our elders.

I stand here with Gay, one of the most important elders still working very hard on behalf of tribal leadership. She will go down in history. Right now, we could call her a living legend. These are the kind of people we have. Nobody really retires, I don't think, in Indian Country. We just keep working. And her late husband Tim Wapato was one of the most dynamic fighters in Washington.

I have a bunch of scribbling here. I won't get into too much detail or try to read my writing. But I think that the emphasis that I would like to say -- first of all, I'd like to introduce Andy Ebona as our treasurer and then Danielle Her Many Horses, the deputy executive director. She's a lawyer and a very powerful Oglala woman. She's one of the ones on the front lines in Washington, D.C. Then Debbie Thundercloud is our chief of the staff. She's
the former chairlady of the Oneida Nation in Wisconsin.

I apologize if I miss anybody.

But I just can't emphasize enough that we have to fight. And this can't be a formality. We have to stand our ground. Just again, Paula, is a veteran. Kyle, I met you last night. I trust that you are a dynamic, hard-working leader, like I said, or you wouldn't be where you are. You have to document this. You have to hear us. You have to fight those folks to understand us.

I'm not saying to get fired. But there's a lot of Indian people that got fired in Washington, D.C. because people didn't listen to tribal sovereignty, didn't stand by tribal government. Again, I'm not telling you to get fired. I'm telling you to stand your ground and fight for us.

I think, from my standpoint, when I brought -- I brought Geoff Freeman to Oneida. He kind of came there wanting to visit me. He's the president of the AGA, American Gaming Association. We drove around Oneida, and I explained to him that this is so important for us.

It is so important for my father, who is living today in the Anna John Nursing home. Ernest Stevens, Senior, just wanted to restore homelands.
Even though he built our casino and built our school, he just wanted to restore homelands. That's really what it is about.

So I think the lawyers and the leaders here have said it much more articulately than I could ever say it. The emphasis that I make here is that we have to stand our ground and get our message across.

So I wanted to tell you just about my father, that he was with the -- under the Nixon administration, he was an appointee. I think, he was deputy director or deputy commissioner in charge of economic development and education. In that era, my father could call the Nixon Whitehouse any time he wanted. That era was one of the most important eras of our history.

I told that to the Secretary Zinke, and Secretary Zinke said, "Let's make this one better."

The only way we're going to be able to do that is that we have to work hard. We have to stand our ground. And you guys are going to have to take them on.

Because we're here. We're proud. We're professional. We're polite. But I can't say it enough how much we need you to take our message back to these folks.

And the Secretary Zinke was at the museum at the inauguration. He's been in Indian
Country. And at the same time, we have concerns about the way things are going. We have to make this process legitimate, and we have to have a great product that comes out of this.

So, again, I can't emphasize enough that we have to fight and you guys become us. You can't imagine. You've got it on tape. It is there. This is one of the most valued and important presentations today. This day should go down in history, because these tribal leaders are here with their teams to fight for our tribes, for our people, for the future of our governments standing strong so we can have the kind of land that we need.

Not just for gaming, we like our gaming. We have gamed since time immemorial, and we'll continue to game. It is really not about that. It is about the restoration of the homelands. I know I am preaching to the choir.

Again, I'll say the first thing I said. Fight for us. Fight for the leaders. These are beautiful hard-working people. Thank you.

M. S. HART: Thank you.

M. R. HOGEN: Good morning. I'm Phil Hogen. I'm a member of the Oglala Sioux tribe, but I'm here today in my capacity as special counsel to the
Lower Brule tribe. And Chairman Gourneau is in the room with us from that tribe. I'm not going to do a shotgun blast on everything you are talking about, maybe just a rifle shot. With respect to Point Number 9 on your list of questions that deals with MOUs, it asks do the MOUs serve a worthwhile purpose in promoting cooperation and so forth with local and state governments. Undoubtedly, they do. Should they be addressed in the process? Probably, they should be addressed. I've seen the work in a variety of circumstances, and it really can -- buy them a new fire truck, and they'll provide the service, those kinds of things. But in terms of the tribes negotiating power, it is important when those have to be in place. That is to say that you've got to have an MOU for this service or that service before we put the land into trust really puts the tribe in a bad bargaining position. So if you say propose what you might be able to do, that's sure easier to do. But once the land is into trust, the tribe would be in a much better negotiating position to actually get what they need and what they want and what will work for both parties as far as an MOU is concerned. The Lower Brule Sioux tribe is very
possibly the poster child for the problems with the process. For 20 years they fought in litigation with the State of South Dakota to get an off-reservation track into trust. Now, as they go forward with things like a two-part determination, it is a little hard to turn around with somebody you've been fighting in court with for 20 years and say we want to cut a deal, you know, before we can take that next step. And so, hopefully, that perspective can be taken into consideration.

The Lower Brule Sioux tribe and I would like to thank you very much for coming out here. I've had the privilege of sitting on your side of the table on some of these kinds of things. At the end of the day when we get back to the office in D.C. or whatever and say, okay, what are we going to do as a result of this productive consultation that we've had, sometimes we would say, you know, I don't know that we need to change that much. And that can be a success. I mean, you don't have to say, well, we thought about doing this, but after hearing what was said, we maybe don't need to take all of those steps. If you don't make huge changes, you won't have failed in your mission. You will have succeeded. We wish you well in that.

Thank you.
MR. SCHERER: Thank you. Chairman for
Lower Brule Sioux.

MR. GOURNEAU: Thank you, Phil. (Native
Language spoken.) Boyd Gourneau, Chairman of the Lower
Brule Sioux tribe. We will be having some testimony.
But, you know, we are going to have to work with
whatever the government decides. It is unfortunate.
We would like you to invite you to our region and to
bring Mr. Zinke with you. He is a decision-maker. He
should be at the table. No offense to you two. He
should be here.

First of all, you know, I personally
look at the old saying, if it ain't broken, don't try
to fix it. It is a process that we have worked around
and made work. And when there's changes to laws, you
know, and the effect -- we look it as a Trojan horse.
It's unfortunate we have to look at it that way. You
know, that's how we view it.

You know, because a lot of our lands
were lost under the guise of the federal government and
some of the administrators there. We have lots of
horror stories. Every one of them -- we've all had
them negative experiences, and it was at the hands of
the federal government. So forgive us, you know, in
that aspect.
As we apply for our own land, it is with the thought of creating a fair quality of life for our people. And, you know, we can do it without this Part 151 or if you take our comments and truly incorporate them into 151 for the betterment of our people and our tribes. Generally when you deal with these, it is not one size fits all. Every tribe is unique. Every nation is unique. We ask you to look at that. (Native Language spoken.)

MR. SAZUE: Hello. Good morning. My name is Brandon Sazue, Chairman of the Crow Creek Sioux tribe. I didn't bring any comments or anything. I'm just going to speak from my heart and, maybe, comment later.

We should be here on a government-to-government consultation, not like this. We should be sitting here with a chanunpa on the buffalo robe talking to Secretary Zinke himself. I don't know why they don't ever choose to come and send someone else. No offense to you guys. But that's my statement.

Because what I see is an attack on all tribal nations. It is more so with this president and with these people in government now. I've never seen such a tax on Native Americans that bad before. Why
can't we just be left alone? I mean, you already
killed our ancestors. You raped and murdered our
children. And you already took our lands. What else
are they going to take from us?
I'm not going to have any MOUs with the
counties. What rights do they have to the reservation,
to people that are sovereign? So I don't see this as a
government-to-government consultation. I want that for
the record.
And in the future, we need to see the
Secretary. Thank you.

M.S. HART: Thank you.

M.R. DOSSETT: Hello. John Dossett, with
the National Congress of American Indian. NCAI has
passed a resolution. I think some of you were in
Milwaukee. It was a very large meeting. It was an
election year, so we had a big crowd of tribes. We
unanimously passed a resolution raising great concerns
about the proposal to amend 151.
And, also, you know, it is contrary to
the purpose of the Indian Reorganization Act, to
restore the lands for tribes. I think the tribes here
have talked a lot about that.
I wanted to, maybe, focus my comments on
why it may not be good for the Department of the
Interior to change regulations in this way. Obviously, it is not good for the tribes. There is a reason. I mean, the Department tried to change these regs in 1999, and NCAI was very involved in that process. It got really political. It turned into a big mess. Congress got involved with everybody. Eventually, those regs didn't get anywhere. A similar thing happened in 2006. These regulations can be kind of a tar baby. We've seen it multiple times.

I think here, the way these regs are set up is there's a series of factors to be considered, and the Department of Interior really has broad discretion to apply them to a variety of different situations. But what your proposal seems to do is narrow that discretion. I think that's where you are going to create problems for yourself, as well as for the tribes.

I guess, in theory versus practice, you know. The theory is it would be good if there were cooperative agreements with states and local governments, yes. But in practice, you know, when you go out and -- some of these counties, you know, you are never going to reach an agreement. It is not going to happen. You will create a barrier to yourself. You'll have a good acquisition. Maybe you will want to do
habitat restoration. Maybe there is an important
cultural site. But that county is never going to buy
into it. It will be a barrier for the Department of
the Interior, as well as the tribe.

In theory, every tribe has a reservation
that is adequate for their needs. But when you
actually look at the maps, you know, a lot them don't
have a reservation boundary at all or it is like the
description of the Prairie Island reservation, where it
has a nuclear power plant right on top of it. When you
go look at the maps and look on the ground, there's a
reason the statute says on- or off-reservation.
Congress understood it was necessary to take lands into
trust of-reservation. Okay. So if you create this
high bar for off-reservation acquisitions, I think the
Department is going to regret that later on, as well.

I'm thinking, you know -- I know Warm
Springs, out in Oregon, they are doing a lot of
off-reservation habitat preserving. I've seen a lot of
it along the river. It is amazing what they are doing
out there. And the federal government is paying them
to do it. The Bonneville Power Administration is
taking federal revenues and paying the tribe to fix up
habitat. That's a federal program. Now you guys are
coming along saying, well, sorry, we're going to slow
down on the off-reservation acquisitions. You guys are
going to want to talk with the Bonneville Power
Administration about that. It is at odds with some of
the programs the federal government is pushing on.

I guess, you can create a general
standard and apply it to the different situations, you
know. The land issues in the Dakotas are very
different than they are in Southern California or
Florida or Alabama or all over the country. This idea
that you are going to have one standard to apply
generally, I think, is not going to work out very well
for the tribes or for the Department.

I think the idea of injecting gaming
into these regulations isn't going to work and is
likely to lead to litigation.

The idea of having a two-stage process
and doing the NEPA at the end also violates the statute
and is going to lead to litigation. And so none of
this is going to work out very well.

One suggestion, I thought Mark Van
Norman's words were very good about working on
categorical exclusions instead. That seems to fit
better with the desires of this administration, to
limit regulatory -- this administration is all about
let's have less regulations. This proposal is for more
One way to meet those goals would be to -- I thought the categorical exclusions for off-reservation acquisitions would be really very helpful.

Maybe focus this discussion on improving the title review process and improving the NEPA process, making it go quicker for those acquisitions that there's broad agreement on.

Instead of trying to revise these regulations that are likely -- just given the experience over the last 20 or 25 years, it is unlikely the Department is going to be successful in actually getting to a new regulatory regime here.

I guess I'll leave my comments to that.

Yes, the tribes are definitely opposed to these regulations and would like to not see them move forward. I, also, think there's reasons for the Department of the Interior to think this over for themselves. It will make life more difficult for the Department. It will lead to a lot of litigation for the Department. That's not in your interest.

Thanks very much.

M S. H A R T: Thank you.

M R. A Y R E S: Jason Ayres, real estate
officer for the Keweenaw community. For those of you that don't know, Keweenaw Bay is located on Keweenaw Bay, Lake Superior, up in Michigan's Upper Peninsula. We are located or surrounded by a rural county that goes by the name of Baraga County. Baraga County is drive-through county. If you are stopping in Baraga County, you are coming to the tribe's casino. Otherwise, you are driving through it to get to Houghton, to get to Duluth, to get to Sault Saint Marie.

Off-reservation trust acquisitions are very important to us. We are hundreds of miles from large cities, Green Bay being the closest one about 200 miles away.

And so, you know, to see these proposed regulations come out like they did, the initial consultation sessions, and then kind of a back pedaling to put these consultation sessions together is very disappointing, but par for the course, really. Of course, I'm not here to blame you guys. I know you guys are the messengers.

The announcement for this session itself is insulting. I would almost bet -- and I'm not a gambling man -- that whoever put together this announcement knows very little about Indian tribes.
That's based on a couple of the questions.

Like one of the chairmen said earlier,
when I initially read this consultation announcement, I
had to stop after the first question and put it down.

It is very insulting that the Department of Interior
would put out a question to the tribes, "What should
the objective of the land-into-trust program be?"

I would bet that all of the tribes here
have a strategic plan that their first priority under
lands would be to reacquire traditional homelands.

Then it goes on to ask, "What are the
advantages/disadvantages of operating on land that is
in trust?" I can't believe that the Department of the
Interior is asking us these questions. I mean, I
initially was going to prepare written comments for
this, but I couldn't do it. I couldn't even begin to
do it.

So, I guess, what I would like to do is
read a paragraph from our resolution that we approved
for the initial consultation deadline. Tribal
sovereignty in its purest form is the ability of tribes
to determine their future, as opposed to the Department
and administration dictating what Indian society looks
like by diminishing tribes' legal rights, political
power, putting limitations on their economic systems,
and influencing tribal culture and social structures
through policy born of an entirely different life
perspective.

These proposed regulations are in direct
conflict with the Bureau's mission statement to enhance
the quality of life, to promote economic opportunity,
and to carry out the responsibility to protect and
improve the trust assets of American Indian tribes and
Alaska natives.

Keweenaw Bay Indian community is opposed
to these proposed regulation changes. Thank you very
much.

M S. H A R T: Thank you.

M R. S C H E R E R: Is there anyone else who
would like to share some remarks?

M S. T W O L A N C E: I will. I'll just hold
it. My name is Courtney Two Lance. I'm with the
Oglala Sioux tribe.

One of the questions, it was Number 9
regarding M OUs. In 2007, Oglala Sioux tribe, we
received funding to do the secure transactions. And we
put our proposal together. And one of the things that
I was told is I had to send it to the solicitor for
their opinion. And I did get a response back on March
13th, 2008. The solicitor was M arcia K imball. She
said that the MOU between the tribe and the State of South Dakota was a government-to-government document and it was tribal law. And so, basically, they have no business in approving anything that the tribe comes up with.

So when it came to that as a question, I was like, why do they want to get involved in something that the tribe -- if we are going to practice or we're going to exercise our economic sovereignty, then why do they want to get involved in something like that?

And what was your guys's -- mine are more questions to you guys. We tried to get a nursing home for our elders. In the state of Nebraska, they are still fighting us on some regulations where we can only have so many of our people in that home.

We also looked at excess property in Hot Springs, South Dakota. And the veteran's home up there, we wanted to get that property because it was excess property and we were the closest tribe to it. We had a total of 1500 homeless veterans. So we wanted to get that property and put it back into trust so we could put our veterans there.

The State of South Dakota will fight any of the Sioux tribes. They are not going to be that cooperating when we want to put something into trust.
So what I looked for in your proposal is how you want to improve this process for us. I haven't found it. You are asking us to build your program for you. It is not going to happen if we don't know what you guys are going to do for us. You know, we're constantly battling.

I'm one of the younger members, but I've listened to our tribal town reps in the past, our tribal presidents. They tell me this is what's happening, this is another thing happening.

In the last, what, two years, we tried to get the property up by Rapid City back into trust for the Sioux Nation. It is still a fight. They have only been able to put so much, which is all rock and hills. No big deal. They got it done. But the real, I guess, economic part of it for us, that's a problem.

So where are your suggestions that we can look at? How are we going -- I mean, if we are going to build your program for you, as per one of the questions, then how would you come to us and say we have a problem here, tribes we need you to fix this for us? There's nothing. I found nothing. I've had our regional director and I've had attorneys. Can you find me something so I can look at this? We found nothing.

And so in the end, you are asking us to fix this for
you, you know, and using the word "consultation" to cover that. Okay, this is what the tribes say.

No. We want to know what you say. We want to know where you are going wrong. We want to know how the tribes are going to benefit from these regulations. I don't see it happening, not right now.

And like I said, there's so many problems state by state.

If you go to South Dakota, you better be cruising around with somebody that can get you out of jail, because they will constantly racially profile you. When it comes to anything like this, to have a backup like this from the solicitor that says we really don't have no business in what the tribes want to do.

I want to see a proposal. I have not seen your proposal. I've just pulled everything that I could pull when I read it, and it just -- it doesn't solve any situation. I've seen nothing to help us get that veterans home for our veterans. I'm looking to help them as much as I can. But how are you going to help us? I want to see that.

And please give us a follow-up. Don't just record us and take it back, look, we met with the Indians. No. I want to see a follow-up to, maybe, Gay, who can provide that to us.
Thank you.

MR. HALLORAN: I thank you. My name is Joe Halloran. I'm a shareholder at the Jacobson Law Group doing trust work for about 25 years.

I want to ask the indulgence of the tribal elders and leaders here that I speak and ask for that opportunity.

Here's my experience over time and my concern with the proposal. Deed-to-trust work has never been advanced in Indian Country by centralizing authority in Washington, D.C. As a matter of fact, the efforts to centralize authority under the Bush administration created a system where tribes' efforts to deed land went to die, to be honest with you.

So your solutions, how does fee-to-trust work improve? How does it work at a local level? I would encourage you to review these rules to decentralize authority as much as possible, to give authority, enhanced authority, and responsibility to your regions and to your agencies. They're the people we have relationships with. They know the land.

And since this administration has been in power, there has been a cooling of sense of authority and ability to do things that we've become accustomed to over 8 to 12 years. The flow of land
into trust has slowed down, not speeded up, and it is
my humble opinion that that's intentional.

I'll highlight a couple of points that
have been raised. Mr. Hogen and Mr. Dossett speak to
the MOU process. It can't be underestimated that that
is a process that gives authority and evaluates the
interest of people that you are not there to serve.
MOUs flow naturally from a government-to-government
basis. Make no mistake about it. Counties and
municipalities come to tribes for MOUs when they want
something, okay, when they want something.

So this creates a real hierarchy of
haves and have nots. Tribes with resources may be able
to negotiate to hold their nose and achieve an MOU.
Tribes with fewer resources and poorer relationships,
typically smaller rural tribes, won't have that role.
So you need to think about whose interests are being
advanced in an MOU process. That process will go just
fine and, in effect, better when you are not empowering
one of the parties over the other. So where that MOU
process fits in and encouragement in an after-the-fact
process is great.

We have to address jurisdictional issues
anyway. It is a 151 requirement. That doesn't mean
that we have to satisfactorily address them to the
interest of the non-tribal governments. I offer that.

Two, in decentralizing, the good folks I
work with here in the Minnesota agency and the region,
in Miami agency, in the eastern Oklahoma region. We
have the eastern Michigan agency. They need help.

They don't need someone in D.C. sitting on a decision
that they then have to wait for. That's not empowering
at all. That doesn't move land. They need resources
and staff. You know what else they need? They need
their discretion recognized, their authority to
evaluate things on the ground and evaluate the interest
of going forward.

So I would encourage you to look at the
rules from a perspective of removing authority from
D.C., not into a vacuum, but into your front-line folks
who have the relationships with counsel and realty
staff. I think they have a much better understanding
of how things work than someone who has had their
authority stovepiped up to them in D.C. That didn't
work under the Bush administration, and this feels like
a renewed effort to centralize responsibility and slow
down trust transfers.

With respect to the current practice, I
would offer just a couple of observations on recent
developments. If you want to focus on some real
functional pieces, I echo the effort Mr. Dossett spoke
to about addressing categorical exclusions from NEPA.

That would be enormously helpful. The NEPA process is
expensive and time limited. That would be one piece.

Another thing I'd like you to look at is

the 151 rights require that, upon application, the
Department shall issue a notice. It is called notice
to taxing authorities. Okay. Shall. What you need to
demonstrate, really, is a resolution and a deed.

That's how it used to work. We have got a deed. We
have a resolution.

What's happened now is the agencies have
set up -- I don't believe this to be true with the
Minnesota agency, but I've seen agencies develop an
internal policy of what they think is required for a
complete application before they will take action on
the application. And it is a very interesting setup,
because there's nothing to appeal if there's not a
complete application because there isn't a federal
action that's been requested.

So if I object to the Miami Indians
requiring a survey for a parcel of land that is a
quarter of a quarter, I don't have the ability to
appeal that because they won't acknowledge that there's
an application pending.
So clarifying what triggers the beginning of an application is essential. And if you read the bare language and provide authority to your agencies that, upon receipt of an application, it demonstrates a request by a tribe, and marketable title, that application is live. It is the only way tribes can address additional regulatory burdens agencies are putting on the application process that are not required by regulations.

Another example here in this region, and I think others, is the legal description review process. Now, very helpful. I get it. You know, it is to uncover issues. But it isn't a marketable title issue. It is a total acreage. Is it encumbered by an easement? And the BLM has been a required prestep to review the legal description of the land applied for before the notice will be issued.

Now that might sound okay in practice.

But if the BLM doesn't have the resources to process those as quickly as they would like to -- and sometimes legal description reviews are taking eight, ten, twelve months. Now a whole fee-to-trust application six years ago used to take me twelve months from beginning to end.

We don't even have a notice to taxing
authorities because the LDR process has been placed as
an acquisition prerequisite. That can't stand. I'm
all for legal description review. I understand the
Department of the Interior needs to know exactly what
the legal description is that they are requiring.
There may be a discrepancy in acreage. They may find
an unrecorded easement, whatever. They do a good job.

It is not an application requirement.
We need to get the applications moving. The Department
of the Interior, by imposing the LDR process has,
roughly, doubled the time for fee-to-trust applications
to process, simply by waiting. That's not the agency's
fault. Okay.

One other item that I would -- actually,
two other items that I would offer. Looking for
solutions at how land issues, generally, can be
improved, I would ask you to consider and would like to
make a record of two matters.

Number one is tribes who have been
actively engaged in the Indian Land Consolidation Act
had liens on those properties by using money to acquire
fractionated interest on their reservation. I was at a
consultation a year and a half ago with Mike Black and
Larry Roberts where the Ilka (phonetic) lien waiver
decision was, apparently, on the desk ready to be
signed. We've been waiting 18 months. That's a real impact for tribes that would like to have those liens removed from the properties that they have acquired under the ILka.

One other issue that I think is truly unique to this region is the issue of the 2415 claims restriction on trust applications. The 2415 list was a list of properties that Congress determined to extend indefinitely the statute of limitations by which the United States could bring a claim for trespass or improper lien or force-fee title. In this region, it has been interpreted, strangely, as a cloud on the tribe's title that has to be removed before the property can clear a PTO, preliminary title opinion.

The claims list has nothing whatever to do with the tribe's title. It has everything to do with the preservation of the United States's ability to bring claims on behalf of former LIT's and land holders.

So for 24 months we have been requesting direction from the assistant secretary and/or the Secretary to the regions that simply states 2415 is not a marketable title issue. There are tribes -- and it really affects the Chippewa communities in Minnesota much more than the Sioux communities. There are
thousands of acres of on-reservation land that applications for trust transfer are ready to go, title is clean, you know, Phase 1 is done. And the interesting thing is, they have to be put into a separate category and laid to sit because they will not clear a PTO.

That has a real effect. Every year the tribe is paying taxes on those properties. And the 2415 list is not a marketable title issue. We would request specifically that that direction be provided.

It is basic title law.

I think that is all I have. I appreciate your time.

Again, leaders and elders, I appreciate your indulgence. Thank you.

M.S. JEFFERSON: Hello. My name is Tina Jefferson. I don't think I need the mike. I better have it anyway.

The reason why I'm standing -- thank you, first of all, for inviting the members, ordinary people.

The reason why I'm standing before you today is because I wanted to tell you about some of the things that my mother told me about what you are speaking about, the sovereignty, the self-determination
the self-reliance, that you eventually want the tribes

to be, the self-Indian determination, which the
government has been working towards for many years.

And I want to tell you how all this land

issue, you know, if the government really wants these

issues to be resolved, they should give us our land

back, especially if we are buying it and we want it

back. Put it into trust or put it into our care. That

would be truly sovereignty, because the people hold

sovereignty, not the governments.

Since the creation of your 25 CFR and

all the other things, you totally have taken the people

out of the process. We no longer have rights. You

only speak to our governments. That's why I was glad

you gave me this opportunity today to speak to you,
because we do need that voice from the people, because

we are the ones who hold sovereignty, not a government,

not a person saying they are representing us. The

actual people are the ones who are sovereign.

We are the ones who live on the land,
survive on the land, and I've noticed that we have

become corporate. We're nothing but corporations

anymore. I don't want to be treated corporate. I like

harvesting off the land. I like living off the land.

I don't want to have to go to work. The education has
been forced on our people. It is a good thing for us
to know how to communicate with the rest of the world,
but it is not necessarily our goal as a people.

You know, we want to go back to our
heritage, back to our old ways. We want to be able to
know, you know, how to hunt and trap and survive. And
we're at a conflict right now in all of our
communities. Do we move forward, or do we move
backwards to be those people that we really are?

Our heritage and culture is very
important to us as a people. And land never used to be
something that we had ownership of, but now we have to
have ownership of it. And we need more because, in
order for us to sustain as a people and move forward
and to be a viable force, we need more land for our
people, because our populations are growing. And it
should be that we as a people should be able to decide
what happens on our land.

And our government and all that should
be ours. It shouldn't be something that, if the United
States doesn't want to be our parent anymore -- we
didn't want you to be our parent anyways. We want you
to cut those strings. Let us be who we are. Give us
our land back.

I know President Trump and Zinke have
been watching what they have been saying and doing.

They would love for us to have our own lands and be in control of ourselves. We would love that, too. That would be the ultimate goal here, for all of us as people to have our own land and be in control and decide what happens on those lands.

Because we don't even have the process of the Bureau or anybody else to help us out anymore. If I have a problem as an individual member, I don't have a right. I can't -- the Bureau won't see me. The council won't hear me. If they don't want to hear what I want to say, they shut me down and be done with me.

We as a people need to have those rights reinstated. We need to have -- along with the land and all those things, those rights.

I remember my grandparent, my great grandmother, her mother was Lina Campbell, she was the one who started, the very first person to file for the docket, which started this whole thing about land. She told me. I was a young girl when she was still alive. She told me, someday, this is -- these issues are going to be yours, to come up and stand, just like I heard a gentleman saying my grandchildren and children will be here. I'm here today standing because my grandmother told me this is your job.
Sometimes we just want to be complacent and be normal people and not have to deal with this, because it is not a good thing. No one understands. Even our own people in the United States don't even understand their own constitution. And me, as Native, I have had that shoved down my throat all my life. Read this. Learn this. Do this. And sometimes us young people didn't want to be -- I don't want to do that. I want to be over here with my friends. I don't want to be an Indian. It is not fun to be an Indian. There's a lot of work doing that. So I stand here before you today to tell you, if you really want us to be -- tell them, tell Zinke and Trump. If you want us to be independent, give us our land back. Give us freedom from you. We don't want to be you either. We don't want to be part of you. We want to be in control of ourselves. We are a sovereign nation. We are as people, and we have been this since this was our mother, Turtle Island. We've been here thousands of years. We are not going anywhere. And we want what rightfully belongs to us. That's where this is going to with these days and ages, with all of these movements and things as Native people. Thank goodness for Facebook and social media. We can finally reach out to each other.
We are not millions of miles from each other. We can speak to each other now. We can be coming together as a people to tell you and other people that we want to be us. We want to be who we are, and we want to be in control of our things. And we think we're better stewards of ourselves.

We have listened to you. We have let you guide us all these many, many generations now. And it is just nothing but turmoil to our people. We need to be able to be in control of ourselves. That is all I have to say. Thank you.

MS. HART: Thank you.

MR. SCHERER: Is there anyone else who would like an opportunity to speak?

So we just want to take an opportunity to address a few of the things that we heard. Part of a consultation, as opposed to what is a listening session, is opportunity for some level of dialogue. That's what we'll try to provide.

And, you know, I think, part of the reason -- I think there were a few comments about the IRA. And I think part of the reason that we have this 151 process is because the IRA sort of allowed the Secretary, in his discretion, to acquire, purchase, et cetera, et cetera. And so part of this, you know,
going back to the '80s, '88, '95, what we are trying to
do now is to try to make that discretion a little bit
more transparent for tribes that are going to be
acquiring land, putting money on going through the NEPA
processes, which are often expensive. That's part of
what we are trying to do.

And it seems like, largely in this room,
the comments have been pretty uniform. But I can tell
you it is not necessarily what we see both at interior
or in litigation. There are tribes that, you know,
speak to Paula's team, my team, and submit briefings in
court when the United States is defending or
oppositional to a tribe that talk about additional
restrictions on off-reservation acquisitions. So it is
interesting. It is helpful to hear there's sort of a
uniform voice here. But, you know, it is the case that
it is not uniform throughout Indian Country. We see
that both in calls we receive and in filings in court,
where you are seeing slightly different formulations of
these things.

Part of the reason we're trying to have
this consultation -- I did hear a point as to what is
the proposal. I think some of this needs to be
seriatim. One of the things we're trying to do is,
because we're hearing different things, trying to get a
sense of what is -- what works, what doesn't, what you
are thinking, and then come with a real proposal and
then, you know, have an opportunity for additional
comments at that point. I do appreciate that we didn't
provide you with something exact at this moment, but
that's one of the reasons why we're here. We have
heard different things both at the Department and in
court.

M.S. HART: Let me just give some
background. I'm the director of the Office of Indian
Gaming, and I basically said I don't think I should be
doing this because I'm the director of gaming and I
kind of wanted to look more like we are taking
non-gaming applications and applying gaming standards.
Yeah, we have 2719, and we follow that. And as far as
I'm concerned, you know, we have been winning in court.

But what has happened is, because I'm on
the gaming -- and I can't believe it, but I'm one of
the senior employees at the Department of Interior. I
was here through the last administration and now into
this administration.

So what happened is, as meetings came
up, this new administration has called me into the
meetings. And Kyle is right. We are hearing from
tribes where they are coming in and they are
complaining. They are asking for the administration to
do things. So what happened is, from January 19th to
August, we were hearing complaints from tribes, groups
of tribes coming in, individual tribal meetings.

So based on that, we put together what
we put out here in October. We put together amendments
that we were hearing tribes wanted. So we, basically,
addressed the concerns that were brought to us at the
Department. We put out the October 16th draft with
those questions. And then we heard at NCAI that, you
know, that wasn't the majority of the tribes.

When we push -- when I and Kyle push
back with the administration and say, wait a minute, I
don't think this is what tribes -- maybe this one tribe
or maybe this tribe that has come in, but this is not
the majority of tribes, you know, I get back, well,
that's not what we are hearing from tribes. What we
are hearing from Indian Country is this is the change
we need.

So I think what we are hearing is you
guys now are speaking up. Now I can go back to the
administration and say, listen, we have had all these
tribal leaders, here's our list. And they were
unanimous. They are opposed to this. For me, it has
given me the opportunity to speak on your behalf
because I've now heard you. And now I can go back and
talk to the administration. We've listened. We've
heard them. They may not be able to get up to
Washington and have a face-to-face meeting with you.
But that's what we are doing here. That's why it is so
important to hear everyone speak. And we gave
everybody an opportunity to speak.

We were in Sacramento on Tuesday,
basically, hearing the same thing. It was unanimous
out there that they oppose these.

Now it is up to Kyle and I, who are both
tribal members, to go back. And now when I speak, I'm
speaking on behalf of everybody who has spoke here. I
have stories. I have examples, just like I have
examples for what we put in the regs, what the
amendments were.

Tribes came in. There was a tribe that
came in. The land was in trust. They couldn't get an
agreement with the State. They came back to us and
said, how do we get this land out of trust, because we
can do commercial gaming but we can't do -- so
everybody was like, why would you want this? Why is it
in there? That is because a tribe came forward and put
that to this administration. How do we do that? So
that works its way into the amendment.
So there are situations. I'm not going
to name tribes. There are situations that the tribes
have come in and said, wait a minute, we don't want
off-reservation for any reason. These are not coming
from the administration. These are coming from
meetings we are having with individual tribes. And so
we are trying to address them.

And I think Kyle and I just had an
agreement on one of the issues that was raised that we
both disagree with the administration's point of view.

And when we push back, we need to be able to say,
listen, we went out to Indian Country and we heard what
was said. So it is very warm. We're not only the
messengers, but we're the worker bees. It is up to us
to make sure that people in Washington know what you
guys are saying.

MR. SCHERER: I think, a little further
to that, Paula and I sort of are a unified front on one
particular issue that was drafted. It came from a
tribe.

MS. HART: Right.

MR. SCHERER: It didn't come from the
administration saying this is what we are doing. It
was a suggestion from a tribe. That's how it sort of
worked its way in there. We have different views on
that. It seems you are sharing those views.

Just to sort of push back or to push
down a little bit on one of these other suggestions
we've heard from, actually, more than one tribe is sort
of this historic connection. I think, how that came
into play was trying -- this is just sort of something
to think about. Well, do we really want to be taking
land into trust for a California tribe buying land in
Chicago or a tribe from Florida purchasing land, you
know, in Oregon? And so that was sort of where this
came from.

It was, you know, sometimes influenced
by, you know, tribes that are in this area that were
trying to purchase land in New York. And maybe that is
acceptable because there is a connection to home, a
historic homeland. But do we want to then say it is
also not problematic or it is fine if this tribe is
buying land in Florida? Those are things animating
some of the language that you are seeing.

In almost all cases, those are things
that are coming from tribes. That's one of the reasons
we're doing this. We have some general -- we've heard
things on an individual basis and in groups.

M S. H A R T: I think, the other thing we
heard was the centralization. Why did it happen? Why
1 did it come forward? Because tribes came in and
2 complained that it is a black hole. They submitted
3 their application. It has been sitting at the regions
4 for, like, 15 -- I think, the length of time
5 applications have been sitting has been -- I was
6 actually -- I was appalled, because I think the gaming
7 applications -- and I'm trying as hard as I can to push
8 them out. There's been some non-gaming applications
9 that have been sitting way longer than any of our
10 gaming applications.

11 So what happened is this administration
12 came in and, when the tribes came in and complained and
13 said these applications are sitting way too long, they
14 said, let's pull everything in so we can see what the
15 problem is. That's -- I don't know that it is a
16 permanent thing. I think it was, basically, the same
17 thing as this. We want to find out where the problem
18 is, what the problem is. And that's why they pulled it
19 in.

20 Now, because they said the same thing to
21 me as director of gaming. They said, what about these
22 gaming applications? I had to go back and explain to
23 them, you know, each and every single application,
24 where it is, what's the holdup, all of that. So I
25 couldn't answer for the non-gaming applications. And I
know they were a long time -- they had a long --
they've been in with the bureau for a long time.

So those questions also came to this
administration by the tribes. So I don't -- Kyle is
here on behalf of the administration. I'm here because
I have been included with them, and I understand what
the problem is and why they did what they did. We're
not saying that that's a permanent solution. We're not
saying we are going to keep them in D.C. This
administration is looking at what the problem is. And
I think they'll, hopefully, quickly make a decision on
how to handle that problem.

MR. SCHERER: I also should mention, you
know, the MOUs or MOA's have been brought up a few
times. Again, this is something where people came --
tribes, tribal leaders, came and said, well, would it
be faster if we already had an MOU in place? Would
that speed up the process in a way that you wouldn't
have to engage in all the type of sort of other
criteria that is sometimes used in these decisions? I
think the answer was, yes. If there's broad agreement
with the community or county, that is a way to move
that application more quickly. But it was not meant as
a requirement.

And, certainly, there are realistic bad
relations, whether those are sort of sociopolitical or just pure racism, that might be an issue. We'd like to know that as well. I think a really informative moment for me yesterday was some of these very specific land-into-trust acquisitions that this particular city will not support for this reason. Or there were all these granular things that do need to be taken on an individual basis.

M.S. HART: I think, in that respect, when that was brought up, maybe we should have this MOU provision in there, I pushed back. I said, wait a minute, this is absolutely going to be unacceptable in Indian Country, because this is allowing the local communities to, basically, extort from the tribes.

And then they pushed back and said, well, Paula, what do you think?

I said, if we have to have this in here, because I'm not going to win the argument, then at least allow for the tribes to be able to tell us that they're racist. And I said, if that happens and I have a document that says they're racist or if you have a county like San Diego that has passed the law in that county that they are just outright opposing any gaming acquisition or any acquisition by an Indian tribe, then we have to weigh that heavily so that that application...
is up front.

And the tribes, right now, there's not a -- I never see an application where -- I'm talking about the gaming ones -- where the tribe has come in and put in writing that this is just -- they're all just racist. So I said -- when I pushed back, I said, okay, then, if you are going to make them do this, then we also have to allow the tribes to just come right in and say they're racist and we accept it and that outweighs everything else.

So if you look at our draft, that is -- it is on our website, what we put out there. You'll see, if you have it, but if you don't, you can explain why. And I said, as far as the gaming ones goes, we're going to weigh that very heavily. And I can -- we see examples now of that.

But this is all things that have been brought to us, and it was a reaction and how we wanted to respond to the tribes that have come in. Now, we're almost a year into this administration. This administration has met with a lot of tribes, but not nearly all of the tribes. And they have taken those comments that they've heard by tribes coming in, and they've tried to say, okay, maybe this needs to be done.
MR. SCHERER: We're also not at a point where it is sort of a proposed rule format, for that reason, that we haven't had an opportunity to engage in consultations. I appreciate it is not in a proposed format. We are sort of taking a pulse of where --

MS. HART: We did put something out. We listened. You guys didn't like it. We pulled it back.

We are now hearing that we need to have consultation in the Great Plains region, other regions. Sacramento has all the California tribes. Well, the Southern California tribes couldn't make it up to Sacramento, so we may need to do another one in Southern California.

So these are the things that we're taking back and that we're going to make our suggestions and say, okay, this is what we heard in Indian Country. But it does help me when I'm pushing back to say, listen, I was there and I listened, this is what the tribes say.

Prairie Island is a perfect example. We absolutely can use that to say to this administration, how is it going to work here? Those are things that they want to hear.

I will tell you we did get -- it was local communities. In one case, there were about 3,000 letters that came in all opposing a gaming acquisition.
It came in after the fact and everything. We had made our decision. This administration was reviewing all of the decisions. They looked at it. They called me in. They said, Paula, we understand there's 3,000 signatures opposing this. I want you to take a look at them and come back.

So I had my staff look through everything. We did a chart. We came back, and I said to him, I said, okay, Mr. Cason, in this case, I went through all of them. 90 percent said we don't want to live next to an Indian. How do you want me to weigh that?

And he looked at me, and he was like, that's the reason?

I said yes. I said me and this person over here, we could live on both side of you, and you wouldn't know which one of us was Native. But, yet, you have all of these letters that say we don't want to live next to Natives.

He said, well, Why do you think that is?

I said, ignorance.

And he said, I think it is outright racist.

I said, well, I think that's where racism comes from, ignorance. I said, okay, so how am
I supposed to weigh this? You tell me you think it is really important to look at these letters of opposition. How do you want to weigh these?

He said, well, we can't put weight on racism. So that was it, end of story.

But there was nothing in the application that said this is a racist community. There was nothing in the application. But if those people wouldn't have written in -- and that's what the letters said, they didn't want to live near Indians.

So we said, how do we get it in the application? How do we allow the tribes to say what is actually happening? So that's just one example. But we do -- we are pushing back. I do need to hear from you. I need to be able to say this is what's happening.

MR. SCHERER: The Prairie Island case was sort of informative and something we heard quite a bit in California, as well. Do we need, you know, a different category of off-reservation acquisitions for tribes that are landless or tribes that are bounded in a way, you know, where for historic reasons or whatnot, there's something?

You know, at the last consultation, it was a non-profit organization that purchased all of the
1 land around a particular rancheria, so now everything
2 is off-reservation. Things like that are informative
3 and helpful and things that we can take back and say it
4 needs work.
5        M.S. HART: If you look at the 151 regs
6 as they are, that information doesn't contain -- I hear
7 it. I have heard it all my years in my position. But
8 this administration now has come in, and they are
9 wanting to hear what it is, what is not being said.
10 They're also listening to the tribes that come in and
11 sit in front of them and say this is the case. It may
12 not be the case across Indian Country.
13        And so I felt like the conversation was
14 good, because now we have been out in Indian Country.
15 We have stories we can come back and say, under this
16 administration, this is what we did and this is what we
17 heard.
18        M.R. SCHERER: On that note, there is
19 additional time to submit comments. In the dear tribal
20 leaders letter, I believe it is February 28. There is
21 an opportunity, if you want to take this back to your
22 own communities. Or if you know there are other
23 communities that weren't able to participate at this
24 point, please feel free to submit those comments.
25        We have taken seriously the comments
that we maybe need additional consultation on some things.

Thank you very much for coming in.

Thanks to Annette and the regional directors who are here, as well. Thank you very much.

(Whereupon, the TRANSCRIPT OF PROCEEDINGS was concluded at 12:45 p.m.)
STATE OF MINNESOTA )
COUNTY OF ANOKA )ss.

BE IT KNOWN that I, Julie A. Brooks, took the
foregoing TRANSCRIPT OF PROCEEDINGS;

That the foregoing TRANSCRIPT OF PROCEEDINGS is a
true record of the testimony given;

That I am not related to any of the parties
hereto, nor an employee of them, nor interested in the
outcome of the action;

That the cost of the original has been charged to
the party who noticed the TRANSCRIPT OF PROCEEDINGS,
and that all parties who ordered copies have been
charged at the same rate for such copies;

WITNESS MY HAND AND SEAL this 18th day of January,
2018.

Julie Brooks, Notary Public, RPR
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