

**UNITED STATES DEPARTMENT OF THE INTERIOR**

OFFICE OF THE SECRETARY

INDIAN AFFAIRS

Virtual Tribal Council Meeting

Thursday, October 21st, 2021

2:00 P.M. (EST) to 4:00 P.M. (EST)

**Olender Reporting, Inc.**

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**A P P E A R A N C E S**

2

**Elizabeth Appel**, *Moderator*

3

Director of Regulatory Affairs &amp; Collaborative

4

Action, Office of the Assistant Secretary --

5

Indian Affairs

6

**Bryan Newland**

7

Assistant Secretary of the Indian Affairs

8

**Kathryn Isom-Clause**

9

Deputy Assistant Secretary of Indian

10

Affairs

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**Maria Wiseman**

12

Deputy Director, Office of Indian Gaming, Bureau

13

of Indian Affairs

14

**Rose Petosky**

15

Counselor with Office of Deputy Assistant

16

Secretary

17

**Sam Clone**

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Assistant Secretary of Indian Affairs, Counselor

19

of the Assistant Secretary of Indian Affairs

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**Stephanie Sfirdis**

21

Counselor with Office of Deputy Assistant

22

Secretary

1                                    **A P P E A R A N C E S - Cont'd**

2            **Cole Miller**

3            Vice-Chairman of the Shakopee Mdewakanton

4            Community

5            **Robert McGhee**

6                                    Vice-Chair

7            **Lucy Taylor**

8            Vice-President, Prairie Island Indian Community,

9            Mdewakanton Dakota Tribe

10           **Melanie Benjamin**

11                                    Chief Executive

12           **Brian Weeden**

13                                    Chairman of Mashpee Wampanoag Tribe

14           **Tehassi Hill**

15                                    Chairman of Oneida Nation

16           **Kelly Dennis**

17                                    Chairwoman, Shinnecock Indian Nation

18           **Josh Riley**

19                                    Choctaw Nation

20           **Chairman Fairbanks**

21                                    White Earth

22           **Kitcki Carroll**

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A P P E A R A N C E S - Cont'd

**Lance Gumbs**

Shinnecock Nation

**Philimon Two Eagle**

Executive director of the Sicangu Lakota Treaty  
Council

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**P R O C E E D I N G S**

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BRYAN NEWLAND: (inaudible) -- here on behalf of the Department of the Interior -- (inaudible) -- all-star cast from our office, here in the Office of the Assistant Secretary

Welcome to our -- to our Tribal consultation session with the Department's efforts to restore Tribal homelands.

Liz Appel is joining us today as well. She is the person who organizes all of our consultations, puts these events on, and so I want to thank Liz for that.

I think before we meet again, I want to make sure that we are -- can you please mute your phone or your screens if you're not speaking?

Before we begin, we are going to start in a good way, as we always try to do. We have invited Tribal Chairperson Payment from the -- (inaudible) -- Tribe to give us an opening prayer -- (inaudible).

CHAIRMAN PAYMENT: Excuse me, yes, there

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1 is a lot of feedback.

2 BRYAN NEWLAND: (inaudible) -- can you  
3 mute your phone, please. Thank you.

4 Thank you, Bryan, and I just --  
5 (inaudible).

6 (Speaking foreign language.)

7 CHAIRMAN PAYMENT: So, I just did a very  
8 quick morning blessing in which Objibwa --  
9 (inaudible), and I gave direction, or gave  
10 thanks to each direction and also to Mother  
11 Earth, to our waters and to our first  
12 sustenance, which is our mother's milk.

13 But I also did -- (inaudible) -- prayer,  
14 which is -- it's almost like a rhetorical  
15 question -- (inaudible) -- are you my relative,  
16 and I know a lot of tribes have a very similar  
17 sort of blessing or prayer, and it's rhetorical  
18 because we are relative. We're all related.  
19 We're all in this together. In our --  
20 (inaudible) -- changing, there's a big circle  
21 with the spikes. Each spike represents each one  
22 of our spirits, and we are all connected. We

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1 are all responsible for one another.

2 And when we look at these issues as they  
3 relate to land-owned trust, the circumstances  
4 are all varied and different. There's very  
5 common circumstances, but none of us are  
6 complete or whole without everybody being  
7 complete and whole. And we owe it one another  
8 to support that and to support an Administration  
9 that we've seen so far that has been very  
10 positive, very forthright in helping us to find  
11 solutions to get to that.

12 We want -- we're anxious and we want to  
13 see movement, but we want to help this  
14 Administration to get to the point, so we give  
15 the input. And so, my blessing is that we --  
16 that we share, and we say just the right things  
17 so that you can hear it, and that we help you as  
18 partners with coming up with solutions for  
19 making that happen.

20 So, -- (speaking foreign language) -- and  
21 -- (speaking foreign language) -- for asking me  
22 to do our blessing.

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1           BRYAN NEWLAND: (Speaking foreign  
2     language.)

3           Thank you for being here. We appreciate  
4     your blessing for us all to get started in a  
5     good way and thank all of you for joining us  
6     from across Indian Country today. We know how  
7     busy you all are in the challenges you face in  
8     running Tribal governments on a day-to-day  
9     basis. And so, we're very grateful that you've  
10    taken some of your time to be with us here.

11           So, I want to make sure a couple of things  
12    that I share, everybody who's on the line from  
13    our office and the Office of the Assistant  
14    Secretary in addition to Liz Appel and myself,  
15    we have Deputy Assistant Secretary Kathryn Isom-  
16    Clause on the line. We also have a number of  
17    counselors -- all of our counselors from the  
18    Office of the Assistant Secretary, and in no  
19    particular order, they include Maria Wiseman,  
20    Rose Petosky, Sam Clone, and Stephanie Sfirdis.  
21    And all of our counselors, along with Deputy  
22    Assistant Isom-Clause, are very closely involved



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1 in all the issues that we're going to be  
2 discussing today.

3 We sent a Dear Tribal Leader letter out to  
4 all of you noticing this consultation, and as  
5 part of that, we shared a number of questions to  
6 frame this discussion and to solicit feedback on  
7 some particular things.

8 And so, I want to set the table for this  
9 afternoon's discussion by walking through those  
10 questions again, and we've laid them out in  
11 several different categories.

12 So, the first focus is on the Land into  
13 Trust process. And the first question we have  
14 asked you is, does the Department's Land into  
15 Trust process adequately allow the tribes to  
16 consolidate land holdings in or near existing  
17 reservations?

18 The second question is, does the  
19 Department's Land into Trust process adequately  
20 allow tribes to establish homelands for landless  
21 tribes?

22 The third question is, how can the

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1 Department improve its Land into Trust process  
2 to facilitate the protection of sacred sites,  
3 conversation, and the exercise of civil and  
4 criminal jurisdiction?

5 And the fourth question on that front is,  
6 for tribes in Alaska, how should the Department  
7 approach the Land into Trust process to  
8 adequately account for factors that are unique  
9 to Alaska?

10 We've also asked a couple of questions on  
11 leasing and rights of way. The first question  
12 is, are the Department's existing regulations  
13 governing agricultural leasing on Indian lands  
14 adequate to protect the interest of tribes and  
15 the Indian landowners?

16 The second question is, are there any  
17 changes needed to the Department's leasing and  
18 rights of way procedures to clarify taxing  
19 jurisdiction in the Indian Country and to  
20 promote economic development in the Indian  
21 Country?

22 We've asked three questions regarding

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1 sacred sites and treaty rights. The first is  
2 what steps can the Department take to assure  
3 that tribes have the ability to protect their  
4 sacred places and access those sites to exercise  
5 religious rights.

6 We ask what steps can the Department take  
7 to protect the exercise of off-reservation  
8 treaty rights, including habitats for treaty  
9 resources?

10 And finally, what actions can the  
11 Department take in relation to other agencies to  
12 ensure the protection of sacred sites and treaty  
13 rights?

14 And the last question that we pose to you  
15 all is what is the most pressing need for  
16 protection and restoration of Tribal homelands  
17 that the Assistant Secretary for Indian Affairs  
18 can help address?

19 So, these are the questions we've -- we  
20 are seeking feedback on, these issues, Land into  
21 Trust leasing, sacred sites, protection of  
22 treaty rights are at the foundation of this

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1 Administration's agenda for Indian Affairs here  
2 at the Department of the Interior. Before I  
3 turn the mike back over to Liz Appel, I just  
4 want to also note that this is a government-to-  
5 government consultation, so we are going to  
6 prioritize comments from elected Tribal leaders  
7 and designated Tribal representatives for  
8 federally recognized tribes. We have had -- one  
9 of the challenges with these virtual settings is  
10 we've had a number of issues with folks gaining  
11 access here who are not representatives of  
12 federally recognized tribes, and so we're going  
13 to do our best to moderate the conversation to  
14 prioritize comments from Tribal leaders.

15 We'll also add that -- ask you to be  
16 respectful of other Tribal leaders' time as well  
17 in your comments, and if you want to come back  
18 and make second or third comments, just please  
19 be sure everyone else has had an opportunity to  
20 speak first.

21 So, with that, I'm going to turn it over  
22 to Liz Appel. I am going to step away from my

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1 computer momentarily and I will be back on in a  
2 few minutes. Thank you.

3 LIZ APPEL: Thank you. If you would like  
4 to make a comment, please press the raise hand  
5 button on your screen or if you're joining us by  
6 phone, please press star nine to raise your  
7 hand. And as a reminder, this is a formal  
8 Tribal government-to-government consultation,  
9 and we ask that only those officially designated  
10 representatives of federally recognized tribes  
11 speak at this time.

12 And it looks like our first raised hand is  
13 from Cole Miller. Could you please introduce  
14 yourself, your title, and your tribe?

15 COLE MILLER: (Speaking foreign language.)

16 My name is Cole Miller. I'm the Vice  
17 Chairman of the Shakopee Mdewakanton Community.

18 I wanted to make some comments here on --  
19 first of all, I want to say thank you for the  
20 opportunity. We appreciated the consultation.  
21 I'm here on behalf of the rest of my business  
22 counsel, Chairman Keith Anderson, and Secretary

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1 of Treasurer Rebecca Crooks-Straton, and we're  
2 asking today for you to commit to taking  
3 immediate action and specific action to approve  
4 three of our long pending applications in the  
5 trust.

6 We're frustrated over the status right now  
7 where there is a moratorium placed on these  
8 applications due to this current Administration  
9 trying to reaffirm -- I've got it in my notes  
10 here. The decision that was made on December  
11 2nd, 2016, by the Obama Administration, we have  
12 not changed our status since then, and your  
13 office is currently having the moratorium  
14 replaced -- placed on our applications to  
15 reaffirm that.

16 I'm sorry, I'm having technical  
17 difficulties here. We want you to take personal  
18 action. Of course, I lose my notes. It is --  
19 okay, here it is. The Obama Administration  
20 inexplicitly required the same lengthy analysis  
21 -- okay, the same analysis that was done in 2016  
22 is being done again to us and it is holding up

1 our application.

2 LIZ APPEL: Did we lose you?

3 COLE MILLER: I've got kids at my house.

4 LIZ APPEL: No problem.

5 COLE MILLER: That's the end of my comment  
6 there.

7 LIZ APPEL: So, there's an analysis that's  
8 being done again, being required again that was  
9 done in 2016?

10 COLE MILLER: Exactly.

11 LIZ APPEL: Okay. We will make sure that  
12 we follow up on that. Thank you for your  
13 comment.

14 We'll move on to our next -- we've got  
15 Vice-Chair McGhee. Vice Chair Robert McGhee.

16 ROBERT MCGHEE: Yes, can you hear me?

17 LIZ APPEL: Yes, thank you.

18 ROBERT MCGHEE: Yeah, first of all, I just  
19 want to say thank you to the administration and  
20 Assistant Secretary Newland for understanding --  
21 you know, undertaking this review. As you all  
22 know, the 2009 *Carciari* decision placed a cloud

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1 over the Land into Trust process for more than  
2 twelve years now. So based upon the notes that  
3 we were provided, this is number ten. So, this  
4 is the most pressing issue that we have.

5 While the Department and opinions work to  
6 clarify the process as we say from the past  
7 Administration, those opinions are too easily  
8 rescinded. As a result, we urge the Department  
9 to refine and improve on the Obama  
10 Administration's efforts to improve the Land  
11 into Trust process by adopting regulations  
12 utilizing the approach set forth in the 2014 M-  
13 Opinion to determine whether a tribe is under  
14 federal jurisdiction in 1934.

15 This approach will advance the  
16 Department's goal for promoting Tribal  
17 sovereignty and provide much-needed certainty  
18 for the Land into Trust process.

19 Poarch Band of Creek Indians believe  
20 regulations must include clarification of three  
21 items. First, finding that a tribe entered into  
22 a treaty with the United States should be



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1 conclusive evidence that the tribe was under  
2 federal jurisdiction. As the 2014 M-Opinion  
3 stated, treaties, themselves, explicitly  
4 established Federal jurisdiction over tribes.  
5 The regulation should make clear that any  
6 treaty, tribes -- (inaudible) -- tribes are also  
7 under federal jurisdiction. This rule is  
8 supported by the Federal Court decision and  
9 accounts for the variety of circumstances that  
10 cause changes in Tribal policy and organizations  
11 while ensuring community treaty tribes and their  
12 successors.

13 This also aligns to the Department's prior  
14 decision, finding that a treaty -- a ratified  
15 treaty still in effect in 1934 presumptively  
16 demonstrates the establishment of a political-  
17 legal relationship between the United States and  
18 the signatory tribe.

19 Specifically, we ask the Department to  
20 issue the following rule: A tribe is a  
21 successor to a treaty if it is -- if it  
22 descended from the tribe that signed the treaty

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1 with the United States and has maintained an  
2 organized tribal structure since the signing of  
3 the treaty.

4 Second, the Department should also adopt  
5 the following two rules regarding the  
6 implications of trust land under Federal  
7 jurisdiction determination:

8 Number one, if the United States held Land  
9 into Trust for the benefit of the tribe before  
10 1934, the is trust land places the tribe under  
11 Federal jurisdiction.

12 Number two, this rule should extend in  
13 some instances beyond land that is formerly  
14 denominated as trust land for a particular  
15 tribe.

16 We know at times lands that are not held  
17 in the name of a tribe, nonetheless, are still  
18 understood to be for the benefit of the tribal  
19 community. The Department's regulations should  
20 acknowledge this reality. In particular, they  
21 should state that the land held in trust for an  
22 individual member of a tribe presumptively

1 establishes that the tribe was under federal  
2 jurisdiction if either one, the land was  
3 intended to be used by the Tribal government but  
4 placed in the name of a Tribal leader, or two,  
5 the tribe can demonstrate that the Tribal  
6 leadership had some evidence of a relationship  
7 with the federal government to such.

8 Finally, the rules should clarify that the  
9 unilateral actions or inactions on part of a  
10 federal official does not remove the tribe  
11 status as being under federal jurisdiction. We  
12 ask that the regulation should reaffirm that  
13 once it is determined that a tribe is or was  
14 under federal jurisdiction, such determination  
15 cannot be removed without an expressed  
16 congressional action.

17 As you are aware the Supreme Court in the  
18 McGirt decision acknowledged that even when  
19 Congress removed some Tribal rights, such  
20 actions affect only the rights or aspects of the  
21 relationship that were specifically removed.

22 As the 2014 M-Opinion recognized, evidence

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1 of executive officials disavowing legal  
2 responsibility cannot in itself revoke  
3 jurisdiction absent express congressional  
4 action.

5 In closing, on behalf of the Poarch Band  
6 of Creek Indians, I want to, again, thank you  
7 for starting with this reevaluation. We believe  
8 once recognized as a political body by the  
9 United States, a tribe retains its sovereignty  
10 until Congress affirmatively acts to divest that  
11 sovereignty.

12 These regulations will provide a crucial  
13 opportunity for the Department of Interior to  
14 clarify the law, strengthen the Nation-to-Nation  
15 relationship, and lay the foundation for a  
16 greater tribal government of self-reliance.

17 Once again, I appreciate this time, and  
18 thank you.

19 BRYAN NEWLAND: Thank you, Vice-Chair  
20 McGhee. I appreciate those comments. And I was  
21 trying to -- you know, we record these to make  
22 sure that we're capturing everything and we're

1 all taking notes and I was furiously trying to  
2 keep up with you but encourage you to submit  
3 those comments in writing as well.

4 ROBERT MCGHEE: Yeah, we definitely will  
5 have some more well-written comments, and such  
6 submitted by the -- I think the November 5th  
7 deadline, so thank you.

8 BRYAN NEWLAND: Great. Thank you so much.

9 LIZ APPEL: We have a number of other  
10 hands raised but someone informed me that due to  
11 technical issues they aren't able to raise their  
12 hand. If Vice-President Lucy Taylor from  
13 Prairie Band Potawatomi would -- if you are able  
14 to unmute yourself, would you mind going?

15 LUCY TAYLOR: Sure. My name is Lucy  
16 Taylor and from the Prairie Island Indian  
17 Community, Dakota -- Mdewakanton Dakota Tribe,  
18 and I thank you again for allowing us to be --  
19 participate in this consultation.

20 Much of our historical property was cited  
21 in the United States through the Treaty of 1851  
22 and our remaining reservations land were

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1       forcibly taken from us on the Dakota Conflict of  
2       1862. This left our land literally landless.  
3       BIA later required small parcels in trust for  
4       us, but our current reservation is small,  
5       located on an island, and forces several  
6       economical issues, flooding.

7               The Corp of Engineers built a dam on the  
8       Mississippi River. This dam continues to  
9       routinely flood our reservations, threaten our  
10      homes and our livelihood.

11              We also live next to a nuclear power plant  
12      where it has above-ground storage tanks. We  
13      live 700 yards away from the nuclear waste and  
14      have so in the past twenty years.

15              We appreciate the title of this  
16      consultation include the phrases -- the phrase,  
17      protection, and restoration of Tribal homelands.  
18      We suffer from both a failure to protect and a  
19      failure to restore. The Federal government has  
20      failed to protect our current reservation land  
21      base and the damage done by that failure can  
22      only be addressed by the restoration of some

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1 historical property to us so that we have some  
2 land located on safe distancing from flooding  
3 and nuclear threats.

4 You ask -- you have asked questions about  
5 leasing and right of way. There is no valid  
6 lease or right of way for the Corp of Engineers  
7 flooding a part of our reservation. We have  
8 never been compensated for this defacto easement  
9 over our land. You have asked about whether  
10 landless tribes are at a disadvantage under the  
11 Department Fee to Trust regulations. Of course,  
12 they are, and so are the tribes such as ours  
13 with a very limited land base.

14 For tribes like ours, we do not have a big  
15 reservation boundary within which is acquired on  
16 reservation land. Most acquisitions must go  
17 through the more -- the more off-reservation  
18 process.

19 In 2001, the Department acknowledged the  
20 difficulty landless tribes face when it  
21 propagated amended fee-to-trust regulations in  
22 an attempt to address the problem.

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1       Unfortunately, the regulations were withdrawn  
2       before they went into effect.

3               In conclusion, we will submit more written  
4       comments about how the fee-to-trust process  
5       disadvantages landless tribes and tribes like  
6       ours with a very limited land base.

7               Prairie Island Indian Community strongly  
8       believes that the Federal government got us into  
9       this mess, and it must take a productive  
10      proactive role to address it. Thank you.

11              BRYAN NEWLAND: Thank you, Vice-Chair. I  
12      appreciate your comments today.

13              LIZ APPEL: Next up we have Chief  
14      Executive Melanie Benjamin.

15              MELANIE BENJAMIN: Good afternoon. Can  
16      you hear me?

17              LIZ APPEL: We can.

18              MELANIE BENJAMIN: (Speaking foreign  
19      language.)

20              I want to start out first by saying --  
21      (speaking foreign language) -- to Chairman  
22      Payment for speaking on our behalf for this



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1 meeting and I really appreciate that. Thank you  
2 for this opportunity to have my comments, and  
3 also for holding the session.

4 Our people go by the name of the Non-  
5 Removable Mille Lacs Band of Ojibwe. And we  
6 have that name for a good reason. Our ancestors  
7 refused to be removed from our homelands in  
8 east-central Minnesota in the 1800s and early  
9 1900s, but they endured several hardships as  
10 they resisted the pressure to move away.

11 But we stayed and we survived, even though  
12 we lost most of our homelands and waters, we did  
13 keep some.

14 Today we have a fee-to-trust application  
15 pending before Interior which would restore and  
16 protect a few parts of the homelands wrongfully  
17 taken from our ancestors. These applications  
18 have been pending for years but were stalled by  
19 the previous Administration.

20 We were pleased in April when Deputy  
21 Solicitor withdrew the previous Administration's  
22 M-Opinion and reinstate the 2014 M-Opinion about

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1       how to determine whether a tribe was under  
2       Federal jurisdiction in 1934.

3               We were pleased with the guidance of the  
4       Deputy Solicitor that gave the field solicitors,  
5       telling them that if the solicitor has ever made  
6       a past determination that a tribe was under  
7       Federal jurisdiction, no further analysis is  
8       needed.

9               What we do not understand is why the  
10       Midwest office is claiming that Interior has  
11       directed the Solicitor's office to reexamine  
12       previous Interior's determination that our band  
13       was under Federal jurisdiction in the 1930s.

14              We do not understand why or how our status  
15       could be questioned when Interior has a long  
16       track record of defending our status as being  
17       under Federal jurisdiction in the 1930s. But in  
18       2014, the Solicitor's office already examined  
19       the question for the Mille Lacs Band. This fact  
20       is well documented in litigation in Interior  
21       Board of Indian Appeals when the Solicitor's  
22       office defended the BIA's determination that the

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1 Mille Lacs Band was under Federal jurisdiction  
2 in the 1930s and thus eligible for trust land.

3 Despite all of this today, the Midwest,  
4 BIA regional office will not approve the Mille  
5 Lacs Band's application until the Midwest  
6 Regional Solicitor's office, once again, reviews  
7 the question, once again analyzes history, and  
8 once, again, compiles new analysis that can  
9 support a determination that the Mille Lacs Band  
10 was under Federal jurisdiction in the 1930s.

11 This makes no sense to us. At Mille Lacs,  
12 we have to deal with one of the most hostile  
13 counties in the State of Minnesota and that is  
14 exactly why the Solicitors had to defend that we  
15 are under Federal jurisdiction so many times.

16 Mille Lacs County fights us on everything  
17 we do, and the Interior has always been our ally  
18 and defended our status, so we do not understand  
19 why this is happening now.

20 Currently, our band pays the Midwest BIA  
21 office large sums of money every year to pay for  
22 processing our fee-to-trust applications. But

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1 we don't understand that if they're not even  
2 going to review our applications.

3 I'm asking you to tell the Midwest office  
4 and field solicitor that another new analysis  
5 under the Federal jurisdiction is not required  
6 for the Mille Lacs Band and other tribes when it  
7 was already performed in 2014.

8 I also urge you to tell all Federal  
9 employees under your line of authority to  
10 abandon these reparative procedures that cause  
11 needless delays and decision making. We do not  
12 need another round of analysis from the  
13 Solicitor of decisions that the Solicitor has  
14 already made. If this cannot be fixed  
15 immediately, I would like to request a meeting  
16 with you and the Solicitor so we can get this  
17 issue resolved.

18 (Speaking foreign language). Thank you  
19 for listening to us.

20 BRYAN NEWLAND: (Speaking foreign  
21 language.)

22 Chair Benjamin, and I appreciate you

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1 raising those concerns with process. We're  
2 trying to get it to a better place and that's  
3 why we're here and your comments are very  
4 helpful in that regard.

5 LIZ APPEL: Okay, next up we have  
6 Chairwoman Andrews-Maltais.

7 CHAIRWOMAN ANDREWS-MALTAIS: Good  
8 afternoon and thank you so very much for hosting  
9 this forum today and the work that you're doing.  
10 And I just want to say a special thank you for  
11 the extra effort, Assistant Newland that you and  
12 the team made with regard to helping us avoid an  
13 auction of a very important piece of cultural  
14 patrimony, a treaty agreement, or lack thereof  
15 of 1617.

16 That brings us to where -- some of the  
17 problems that we're facing. If we were to go  
18 down the questions and not try to take them  
19 individually, currently the Department's Land  
20 into Trust process really doesn't adequately  
21 allow for consolidation of land holdings and/or  
22 a free flow for reacquisition of our homelands.

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1           You know, as I mentioned, 1670, our people  
2       have been impacted, the Wampanoag People of Gay  
3       Head Aquinnah, as well as the Eastern Woodlands  
4       Indians, have been impacted by colonial land  
5       takings and land thefts for centuries. Going  
6       back to the Treaty of Paris, United States, the  
7       newly formed United States was supposed to honor  
8       and uphold those treaty agreements with other  
9       countries when the United States was able to  
10      gain its independence.

11           However, since then none of our  
12      information and none of those treaty obligations  
13      and/or responsibilities have been maintained by  
14      the tribes, particularly in the east.

15           What we face now is a constant  
16      encroachment and a constant attack on our rights  
17      and our lands. We have had requests into the  
18      regional office for assistance and protections  
19      where we have private citizens as well as local  
20      municipalities attacking our jurisdiction, but  
21      right now the most pressing is we've got private  
22      citizens claiming that they have rights of

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1        easement across Tribal lands that are held in  
2        trust by the United States in contravention to  
3        Federal law and statute but yet as we ask for  
4        assistance from the Solicitor's office in the  
5        region and/or anyplace, we get nothing in  
6        response.

7                We continuously face this challenge and  
8        what happens in the northeast inevitably will  
9        happen anyplace else in the country as evidenced  
10       through the *Carcieri* issue, which also brings us  
11       back to the regions as Executive Director  
12       Benjamin mentioned, there's redundancy in the  
13       evaluations when we're looking at Land into  
14       Trust.

15                When a tribe has legislative language that  
16        has prospective language and/or has been  
17        acknowledged as having a relationship with the  
18        United States and/or any stolen lands have been  
19        considered inconsistent with the 1799  
20        Intercourse Act establishes that the United  
21        States feels strongly or felt strongly and  
22        acknowledge that this tribe would have had a

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1 relationship or did have a relationship with  
2 United States and those lands would have been  
3 protected. And we had to turn over or  
4 relinquish aboriginal title.

5 That as part of the M-Opinions in a  
6 language should, in fact, be sufficient to be  
7 able to protect not only contiguous land but  
8 also lands that we are asserting that we have  
9 rights to put into trust. We have contiguous  
10 land that has been challenged because we have an  
11 internal agreement that within the tribe's  
12 entities, and yet that application has been held  
13 up now for about five years.

14 We have other lands that we've been  
15 looking to put into trust that have been put on  
16 a sidetrack because of the *Carciari* issue and  
17 nothing has been able to move forward on a lot  
18 of these issues because of the transition of  
19 administration, but clearly, if we don't have  
20 our solicitor's offices working with the tribes  
21 to defend our rights and advocate for the tribes  
22 to be able to get this Land into Trust to



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1 restore our homelands, we're not being serviced  
2 by our Federal partners which this is the time  
3 for the stellar team that we have together, now  
4 is the opportune time for us to be able to  
5 correct this and move forward.

6 With regard to defending tribes, looking -  
7 - (inaudible) -- the Interior, the Solicitor's  
8 office as well as looking at justice, U.S.  
9 attorneys to ensure that all the tribes have  
10 that standing and have that Federal partnership  
11 to defend our rights and to defend our homeland.

12 Too often we're faced with having to go up  
13 against deep-pocketed or well-financed  
14 litigation with regard to our jurisdictional  
15 issues and with regard to our opportunities for  
16 our Land into Trust. Sacred sites and sites of  
17 cultural ceremony should be able to have a  
18 streamlined process in order to be able to put  
19 into trust. These are not for development,  
20 these are for protection and preservation and  
21 oftentimes if we don't have the opportunity to  
22 get these parcels into trust, we are paying an

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1       exorbitant amount of real estate taxes on these  
2       places, and particularly in the northeast where  
3       real estate prices are so astronomically high.  
4       In our area, this is a crippling effect when you  
5       have no economic development.

6               We also need to figure out why tribes are  
7       still continuing to pay real estate taxes on  
8       lands that are held in fee when churches and  
9       other non-profit organizations are not held to  
10      the same standard and they are not sovereigns  
11      with the Government-to-Government relationship.

12              I'm trying not to take up too much time  
13      because I know we have a lot. Well, with that I  
14      would reserve time to come back if there's time  
15      at the end to follow up. But again, thank you  
16      very much for the opportunity in hosting this  
17      forum, and really appreciate the work that  
18      you're doing. I know it's a heavy lift, you've  
19      got a lot of stuff to do and a very short amount  
20      of time, but I think together we can certainly  
21      find a way to stay within the lines but  
22      streamline the process so we can get our lands

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1 into trust and restore our homelands because  
2 this view reminds me of the first thing that the  
3 -- half a million-acre goal that was set up back  
4 during the Obama Administrations. So, let's see  
5 if we can get that and then some in this  
6 Administration -- (speaking foreign language).

7 BRYAN NEWLAND: Thank you, Madame Chair, I  
8 appreciate your comments. And I want to respond  
9 to one thing in particular and draw it out if  
10 others on the consultation want to add to it.  
11 You referenced the streamline or special process  
12 for sacred places to be acquired in trust,  
13 especially if it's to conserve or protect those  
14 places and not develop them.

15 This Administration has made it a priority  
16 to engage in a conservation effort, 30 by 30, 30  
17 people of lands by the year 2030. And one of  
18 the things that we came into these positions  
19 well aware of is that our Land into Trust  
20 process is currently situated, almost presumes  
21 that tribes would only acquire lands for  
22 development, and that goes back to the Indian

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1 Reorganization Act itself, which at the time a  
2 lot of people were anticipating would be used as  
3 a corporate model for travel governments.

4 And so, we're hoping to hear from Indian  
5 Country ways that we can improve the Land into  
6 Trust process so that we can support tribally  
7 led conservation efforts and Tribal efforts to  
8 protect sacred places and cultural sites,  
9 because as we see the current process doesn't  
10 fit neatly with that priority. So, any specific  
11 comments or recommendations you would have,  
12 Madame Chair, or others on this consultation,  
13 you're certainly welcome.

14 LIZ APPEL: Okay. And our next comment  
15 comes from Chairman Weeden, Chairman Weeden, you  
16 are unmuted. Could you speak?

17 BRIAN WEEDEN: Hi, -- (speaking foreign  
18 language) -- I said good day, my name is Bear  
19 Heart. I come from Mashpee, and I live in  
20 Mashpee. My name is Brian Weeden, and I am the  
21 chairman of the Mashpee Wampanoag Tribe. The  
22 Mashpee Wampanoag Tribe greatly appreciates the

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1 Biden Administration's focus on protecting and  
2 restoring Tribal homelands.

3 We have great confidence in the leadership  
4 of Secretary Haaland and Deputy Secretary  
5 Newland, and we appreciate that they have asked  
6 for our views in this consultation.

7 As we stand here today, however, we still  
8 are awaiting the Department of Interior to  
9 respond to a federal court's order, still  
10 waiting to know whether the Biden Administration  
11 will confirm the status of our reservation or  
12 follow in the Trump Administration's footsteps  
13 in trying to disestablish our reservation.

14 For those of you who do not know us, the  
15 Mashpee Wampanoag people have lived in what is  
16 now southeastern Massachusetts since time  
17 immemorial, and we have been fighting to retain  
18 our homelands since our ancestors first welcomed  
19 and saved the Pilgrims from starvation.

20 Despite our continued occupation of these  
21 same lands since before European contact, the  
22 Federal government's abject failure to protect

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1 our rights to our aboriginal territory directly  
2 resulted in our tribe becoming landless and  
3 unrecognized.

4 We were forced to reestablish our  
5 recognition through the brutal Part 83 Federal  
6 Acknowledgment Process. Our recognition was  
7 finally restored in 2007. We then immediately  
8 sought to end our landlessness by petitioning  
9 the Department to establish a reservation  
10 through its authority Under the Indian  
11 Reorganization Act that was finally done in  
12 2015.

13 I want to highlight that in March of 2020,  
14 while we stood alone defending the status of our  
15 reservation in Court and in the midst of the  
16 COVID-19 pandemic, the Trump Administration  
17 announced that it had intended to take our  
18 reservation out of trust, contrary to the  
19 Department's longstanding policy and Assistant  
20 Secretary Tara Sweeney's earlier promise to hold  
21 our Land into Trust until litigation had been  
22 resolved.

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1           At about the same time the Trump  
2           Administration stacked the deck against us by  
3           withdrawing the Department's longstanding  
4           *Carcieri* test, the 2014 M-Opinion, on which our  
5           fee-to-trust arguments is based. The Trump  
6           Administration issued new guidance designed to  
7           make it nearly impossible for newly recognized  
8           tribes like ours to meet the *Carcieri* test, and  
9           as a result to have any reservation at all.

10           In June of 2020, a Federal District Court  
11           followed the Trump Administration's actions and  
12           instructed the Department to reconsider its  
13           position. It is now October of 2021, and we are  
14           still waiting.

15           You have asked for our views on the fee-  
16           to-trust process. We urge the Department to  
17           recognize that the process is particularly  
18           burdensome for newly recognized landless tribes.  
19           The establishment of an initial reservation is  
20           extremely costly and time-consuming, and it is  
21           imposed on tribes that can least afford either  
22           the time or the money. No reservation means no

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1 access to a wide variety of federal programs  
2 meant to assist tribes because they are tied to  
3 a reservation land base. No reservation means  
4 no ability to develop a meaningful, healthy  
5 Tribal economy or adequate Tribal employment.

6 Yet newly recognized tribes receive little  
7 technical assistance and no financial assistance  
8 from BIA for this purpose. Of course, making  
9 matters significantly worse and the misery that  
10 has been caused by the Supreme Court's ruling in  
11 *Carcieri*, tribes like ours now also burden of  
12 locating, collating, and explaining hundreds of  
13 years of documents relating to our relationship  
14 with the Federal government.

15 Mashpee strongly urges that all federally  
16 recognized tribes should be treated equally, and  
17 yet *Carcieri* has disproportionately burdened  
18 tribes that already face significant financial  
19 challenges.

20 Finally, even once our reservation is  
21 established nearly all of our future  
22 acquisitions will have to be processed on the



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1       burdensome and costly off-reservation standard  
2       because we have no outer reservation boundary  
3       within which to acquire on reservation land.

4               The current fee-to-trust regulatory  
5       structure places landless tribes and tribes with  
6       small non-allotted reservations at a very  
7       serious disadvantage.

8               For these reasons we urge the Department  
9       to consider converting its administrative  
10       *Carciere* test in the Federal regulations to  
11       prevent this sort of surprise attack change in  
12       rules that we saw from the Trump Administration.

13               Provide financial and technical assistance  
14       to newly recognized tribes, including for NEPA  
15       compliance, and consider whether there is a  
16       better way to implement NIGRA's initial  
17       reservation exceptions as the current  
18       implementation puts an onerous amount of  
19       political, financial, and legal pressure on a  
20       newly recognized tribe's first acquisition of  
21       land.

22               Provide a mechanism so that tribes with

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1 small, non-allotted reservations can have better  
2 access to the on-reservation fee-to-trust  
3 process to better assist us, establish  
4 reasonably sized reservations that are adequate  
5 for taking care of our people.

6 We are aware that the Clinton  
7 Administration proposed a land acquisition  
8 boundary approach to this problem. One that was  
9 withdrawn by the Bush Administration, and we ask  
10 this Administration would take another look at  
11 that concept.

12 Finally, we urge the Department to delay  
13 no further and finish its work on the issues  
14 remanded in our litigation against the  
15 Department as the delay is causing us great  
16 hardship.

17 In conclusion, Mashpee thank Secretary  
18 Haaland and Assistant Secretary Newland for  
19 taking on these crucial issues. Our tribe again  
20 thanks you for the opportunity to provide this  
21 input and welcomes the opportunity to discuss  
22 these challenges further.

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1 (Speaking foreign language.)

2 Thank you.

3 BRYAN NEWLAND: Thank you, Chairman  
4 Weeden. I appreciate your comments and I really  
5 do appreciate your very clear and specific  
6 recommendations for us as well to follow on your  
7 comments. They're very helpful.

8 LIZ APPEL: Next up we have Chairman  
9 Tehassi Hill.

10 TEHASSI HILL: Good afternoon.

11 (Speaking foreign language.)

12 Chairman for Oneida Nation. I would like  
13 to take a moment to say -- (speaking foreign  
14 language) -- to Secretary Haaland and Assistant  
15 Secretary of Indian Affairs, Bryan Newland for  
16 hosting this consultation.

17 Protection and restoration of our  
18 homelands is a critically important issue that  
19 is atop our minds every day. And we appreciate  
20 the opportunity to provide feedback as to how  
21 the Department of Interior can be helpful.

22 Today I will touch on about four issues

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1 and the remainder of the issues will be in our  
2 submission as written.

3 Fee-to-trust process, the issue is BIA  
4 turnover in critical positions. The Oneida  
5 Nation, like other Tribal Nations, experience a  
6 lengthy fee-to-trust process. Our frontline  
7 staff has indicated that contributing factors  
8 include high turnover in critical positions that  
9 are required to fulfill functions of the fee-to-  
10 trust process. When there is turnover in a  
11 position, training and development is required.  
12 Once the person gets trained, it seems the  
13 individual stays for a bit and then leaves the  
14 position. Thus, the high turnover stalls the  
15 application process. As a solution, the Nation  
16 is asking the Department of Interior to consider  
17 conducting an assessment and consider providing  
18 an incentive program to enhance the timeliness  
19 of the fee-to-trust process.

20 Another area is the IBIA appeals. The  
21 Nation is also very concerned that the process  
22 at the Interior Board of Indian Appeals is

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1 broken. From our perspective, it appears that  
2 municipal challenges can indefinitely delay a  
3 trust application by filing an appeal.

4 The Oneida Nation currently has eight  
5 applications at the IBIA awaiting a decision.  
6 To give an example, the Nation submitted an  
7 application in 2006 and it remanded back to the  
8 Secretary and has been awaiting a notice of  
9 decision for over three years. According to our  
10 BIA Midwest Regional office, IBIA appeal  
11 decisions are taking over three years. This is  
12 too long and encourages municipalities to  
13 continue filing appeals even if they are  
14 frivolous.

15 This in turn delays the Nation's progress  
16 to providing housing, economic development,  
17 infrastructure on the reservation.

18 This brings me to talk about the 151  
19 regulations and the municipalities' ability to  
20 challenge the Nation's fee-to-trust application.  
21 The Nation believes that a lot of weight has  
22 been given to these challenges, thus resulting

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1 in more appeals, and extending the length of  
2 time to process the notice of a decision.

3 Some of the challenges presented are  
4 frivolous, especially in circumstances whereby a  
5 municipal challenges the existence of a  
6 reservation of a tribe. We would ask that the  
7 Department of Interior look closely at the 151  
8 regulations and any administrative process  
9 relating to a challenge and to mitigate the  
10 amount of weight placed upon these types of  
11 challenges.

12 Another topic, the Department of  
13 Interior's proactive engagement in litigation.  
14 The Oneida Nation, like many other tribes,  
15 continues to engage in litigation with local  
16 governments. Recently the Nation won a federal  
17 case which many called the Big Apple Fest case.  
18 Again, the Village of Hobart tried to impose its  
19 special events permit on the Oneida Nation,  
20 although the outcome of the case favored Oneida  
21 Nation and the United States Department of  
22 Interior filed an amicus brief on behalf of the

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1 Nation, we had hoped the United States would  
2 have been more proactive in protecting the  
3 reservation boundaries and the Nation's  
4 sovereignty and jurisdiction.

5 As early as 2009, the Village of Hobart  
6 claimed the provisions of the 1838 treaty  
7 establishing the Oneida reservation were mute  
8 and -- and that it possessed full municipal  
9 authority over everyone, including the Nation on  
10 all fee lands within its boundaries.

11 Since we know it is only a matter of time  
12 before -- until Hobart's claims would result in  
13 litigation, a letter in 2009 sent to the Deputy  
14 Solicitor of Indian Affairs, we formally  
15 requested the Department of Interior take action  
16 to defend the reservation boundaries and the  
17 Nation's sovereignty and jurisdiction by  
18 agreeing to join the Nation as either a co-  
19 plaintiff or a co-defendant in litigation  
20 against Hobart regarding the reservation  
21 boundaries.

22 In a letter, we laid out the explicit

1 details that impact Hobart's actions on the  
2 Nation's sovereignty, the legal basis for  
3 defending the reservation boundaries, and United  
4 States Trust responsibility to protect the  
5 reservation and the Nation's sovereignty.

6 The letter resulted in a meeting with the  
7 then Solicitor Thomas but little else. When the  
8 Big Apple Fest case arose in 2016, we were  
9 essentially starting from square one with the  
10 Department of Interior. We again asked for  
11 assistance and were advised that we should avoid  
12 litigating the reservation boundaries and should  
13 instead claim sovereign immunity from  
14 enforcement to the Village ordinances.

15 Because this response was unsatisfactory  
16 and the suggested course of action likely would  
17 have been -- likely would have been successful,  
18 the Nation filed suit on its own to protect the  
19 reservation and its sovereignty. In the end,  
20 the Seventh Circuit ruled in favor of the Nation  
21 on the exact same legal grounds laid out in the  
22 2009 letter to the former Deputy Solicitor.



1           In the course of litigation, the process  
2           for engaging the United States as an amicus  
3           curia was cumbersome and lengthy and at the  
4           Court of Appeals stage would have been concluded  
5           -- would not have been concluded at the time for  
6           the United States to file a brief if we had not  
7           obtained German for the purpose of mediation.

8           We feel the Department of Interior needs  
9           to be more proactive in the approach in  
10          litigation matters whereas the tribes are  
11          protecting their sovereignty and jurisdiction of  
12          homelands.

13          Another issue with the Village of Hobart  
14          is the covenants. The Oneida Nation Reservation  
15          expands across two counties, six municipalities.  
16          The Nation has a good working relationship with  
17          all the governments except for being the Village  
18          of Hobart. The Village is 99 percent within the  
19          reservations boundaries and has a long history  
20          of litigation with the Nation.

21          The Village believes the Nation and our  
22          boundaries have been extinguished. Although

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1 this question has been answered several times in  
2 Federal Court, the Village has employed a  
3 strategy that would apply restrictive covenants  
4 to land within the Nation's reservation  
5 boundaries that specifically state without  
6 express written consent for the Village of  
7 Hobart, no owner of interest in any subject real  
8 estate shall transfer any interest in the  
9 subject real estate to any individual, entity,  
10 organization or sovereign nation or during the  
11 period of ownership, take any action that result  
12 of which would one, remove or eliminate the  
13 subject real estate from the tax rolls of the  
14 Village of Hobart, two, diminish or eliminate  
15 the payment of real estate taxes levied or  
16 assessed against subject real estate and/or  
17 three, remove the subject real estate from the  
18 jurisdiction of the Village of Hobart, including  
19 but not limiting to zoning authority and  
20 controls.

21 This restriction shall apply to the  
22 transfer of an interest in an entity that is an

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1 owner of the subject real estate if as a result  
2 of the transfer of any items of the above occur.

3 The Nation feels these restrictive  
4 covenants are discriminating land ownership and  
5 illegal, immoral, and modern redlining. This  
6 tactic is of great concern, and we would  
7 appreciate engagement of the Department of  
8 Interior to assist in addressing this issue.

9 And as noted at the beginning we have  
10 additional points that will be written and  
11 submitted. Thank you.

12 BRYAN NEWLAND: Thank you for your  
13 comments, Chairman Hill, and in particular we  
14 are -- the Department is very concerned about  
15 this restrictive covenant issue which we have  
16 seen in a few places now and is something that  
17 is on our radar, we're paying attention to. And  
18 I appreciate all the other points you've raised.  
19 I look forward to reading your written  
20 submission as well. Thank you. Liz.

21 LIZ APPEL: Once again, if you'd like to  
22 make a comment, we have a comment from

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1 Councilwoman Kelly Dennis.

2 KELLY DENNIS: (Speaking foreign language)

3 -- from the Shinnecock Indian Nation, hello, my

4 friends, -- (speaking foreign language).

5 Thank you, Assistant Secretary Newland,

6 and Secretary Haaland for speaking, or for

7 allowing us to speak and offer comments on this

8 topic.

9 The Shinnecock Indian Nation was newly

10 recognized in 2010 and we do not currently have

11 trust land, but we do not consider ourselves to

12 be a landless tribe. We have owned and occupied

13 our homelands in and around the Town of South

14 Hampton on the eastern end of Long Island from

15 time immemorial. After over 4,000 acres of our

16 lands in the Shinnecock Hills were stolen from

17 us in 1859 in violation of the Indian Non-

18 intercourse Act, including any of our sacred

19 sites, our Nation now primarily holds

20 jurisdiction over Tribal territory at Shinnecock

21 Neck, a peninsula that juts out into the

22 Shinnecock Bay encompassing approximately 900

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1 acres. That's where a lot of our Tribal members  
2 reside. And we also hold Westwoods in Hampton  
3 Bays that encompasses approximately 100 acres  
4 along the Peconic Bay.

5 There are over 1,589 enrolled Tribal  
6 members and about, again, half live on that  
7 reservation at Shinnecock Neck.

8 We are really looking forward to  
9 confirming that our lands are held in restricted  
10 fee and that, you know, just having time and  
11 again, we really face roadblocks with several  
12 economic development projects and important  
13 infrastructure grants without the status of  
14 having our lands in restricted fee confirmed and  
15 that our land is indeed within the boundaries of  
16 an Indian reservation and is Indian Country.

17 But after receiving federal recognition in  
18 2010, ten years ago, we really should be at a  
19 place now where we're obtaining additional lands  
20 to be held in restricted fee or, you know --  
21 and/or can submit applications to put new Land  
22 into Trust.

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1           Really the most urgent matter for  
2           Shinnecock Indian Nation is to secure new land  
3           in trust or restricted fee for housing, Tribal  
4           administration, and meaningful economic  
5           developments where our current homelands really  
6           are facing erosion and the impacts of climate  
7           change as we're almost completely surrounded by  
8           water and have really faced a lot of damage  
9           during recent storms, superstorm Sandy being one  
10          of them that really damaged our homelands and  
11          put a lot of our Tribal members at risk.

12           So previously, Chairman -- thank you,  
13          Brian Weeden, from Mashpee spoke and our Nation,  
14          our Shinnecock Nation agrees with the September  
15          2015 Mashpee record of decision in which the  
16          Department of Interior classified its authority  
17          under the Indian Reorganization Act to accept  
18          trust title on behalf of Indians living on  
19          reservation as of 1934. And they also  
20          recognized the Department's very -- past very  
21          racists and mistaken treatment of the Shinnecock  
22          Nation 80 years ago.

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1           So, we really hope that we can take these  
2 things into consideration. We look forward to  
3 follow-up and to submitting additional written  
4 comments and speaking with you personally.

5           (Speaking foreign language). Thank you.

6           BRYAN NEWLAND: Thank you, Councilwoman, I  
7 appreciate your comments here today and taking  
8 the time to join us.

9           LIZ APPEL: And we have an additional  
10 person facing issues with the raise hand  
11 function. We have Riley Josh here on behalf of  
12 Chief Gary Batton of Choctaw Nation.

13           JOSH RILEY: Hi, can you guys hear me?

14           LIZ APPEL: Yes, thank you.

15           JOSH RILEY: Great, thank you. Sorry  
16 about that. I have technical difficulties.

17           (Speaking foreign language) -- to  
18 everyone. My name is Josh Riley. I'm here on  
19 behalf of Chief Gary Batton and the Choctaw  
20 Nation. We have just a few things we want to  
21 discuss and then we'll obviously submit written  
22 comments that will be a little bit more robust

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1 and more detail. But just a few things we  
2 wanted to hit on here.

3 First thing, Land into Trust, one of our  
4 biggest issues at the Choctaw Nation, Land into  
5 Trust is the BLM legal description are causing  
6 our applications to be slowed down. So, we  
7 would, you know, welcome conversations with the  
8 BIA on how we could look at different processes  
9 or maybe help recruit people into the area of  
10 surveying and things like that because they're  
11 just so few surveyors that are C Fed certified  
12 that are able to do these surveys so these  
13 applications can move through a little quicker.

14 Moving past to trust leasing right away,  
15 we kind of have the same issue on leasing.  
16 There's only one review appraiser for the entire  
17 Eastern Oklahoma region. So, you're talking 45  
18 percent of the State of Oklahoma, almost 20  
19 tribes in Eastern Oklahoma and there's only one  
20 review appraiser. So, it significantly delays  
21 any of those appraisals for leasing and rights  
22 of ways.



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1           So sacred sites, we're going to have some  
2 pretty robust comments there in our writing.

3           And then moving to the, I guess, overall  
4 category here and the most pressing issues, I'm  
5 going to sound like a broken record. I've been  
6 -- with every conversation I've had with DOI --  
7 DOJ, members of Congress for the past two years  
8 is the exact same thing that you're going to  
9 hear out of me. The most pressing issue of the  
10 Choctaw Nation is the Supreme Court decision in  
11 McGirt.

12           The Federal government has not responded  
13 to the decision in McGirt. The Federal  
14 government has left the tribes essentially to  
15 fend for ourselves out here in Eastern Oklahoma  
16 and to respond to probably the greatest win in  
17 the Supreme Court history for the Eastern  
18 Oklahoma tribes, but yet all we hear from our  
19 federal partners is oh, congratulations, what a  
20 great win. But they offer nothing other than  
21 just congratulations, what a great win.

22           So, we are deeply concerned. Again, I

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1 have said this a hundred times, I'm saying it  
2 again, we're deeply concerned with the BIA's  
3 budget proposal to Congress, why that amount was  
4 so low. Then we are also concerned with the  
5 congressional appropriations process and that  
6 amount was not increased. We just say the FY  
7 '22 budget out of the Senate, again, no money  
8 for tribes in Eastern Oklahoma to respond to  
9 McGirt. So, we -- we're out here trying to do  
10 what we can but we're not receiving help, you  
11 know, from the DOI.

12 It's frustrating that DOJ was able to ask  
13 for a massive increase for their budget so that  
14 the FBI is taken care of to respond to McGirt,  
15 but yet the BIA couldn't secure more funding for  
16 the tribes in Eastern Oklahoma to respond to  
17 McGirt, so the Federal government took care of  
18 themselves while not taking care of the tribes  
19 in Eastern Oklahoma that they have a treaty and  
20 trust responsibility to protect.

21 So, we're frustrated. We're spending a  
22 lot of money to respond with little to no

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1 assistance from the BIA and the DOI. So that's  
2 probably the most pressing issue. We have a few  
3 others.

4 One thing, I think, when we are talking  
5 about restoration of Tribal homelands, we've got  
6 to look further than just Land into Trust  
7 issues. We all have Land into Trust issues, but  
8 let's look at real restoration of Tribal  
9 homelands. I think that the DOI should  
10 immediately begin consultations with each  
11 individual tribe to identify Federal lands that  
12 are located in or adjacent to the reservations  
13 and what it would look like for the Federal  
14 government to return those lands back to the  
15 tribes from which they were taken.

16 Specifically, on the Choctaw Nation  
17 reservation, we have a massive U.S. Forest that  
18 I don't know, many folks on the line are  
19 probably familiar with the lawsuit that the  
20 Choctaw Nation and the Chickasaw Nation filed  
21 just, you know, in the last ten years against  
22 the DOI. Regarding that, we came to a

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1 settlement. It was a very small settlement, but  
2 no land was, you know, transferred back to the  
3 tribes.

4 So, you know, for us in particular, we  
5 have this whole process of -- and evidence of  
6 this land being taken from -- by the Department  
7 of Interior from the Choctaw Nation and its  
8 members and then sold to timber companies and  
9 then bought right back from -- by the USDA so  
10 they could turn into a national forest. So, you  
11 know, it's just ripe with fraud and, you know,  
12 for the Choctaw Nation, we would appreciate  
13 conversations about how the Federal government  
14 can actually, you know help us.

15 I know obviously USDA land is not DOI land  
16 and that's a little different, but I think we  
17 can talk about things like interagency transfers  
18 of land from other agencies such as USDA maybe  
19 to DOI, and then maybe DOI can transfer those  
20 lands and trust to tribes, I don't know, but I  
21 think those conversations need to happen.

22 So, I appreciate the opportunity to speak

1       today. I've got a lot more to say but we'll  
2       just, you know, make sure it's in our written  
3       comments and -- (speaking foreign language).

4                BRYAN NEWLAND: Thank you so much. There  
5       was a lot in there and I'd be happy to have a  
6       follow-up conversation with you and Chief Batton  
7       and others about post-McGirt. I'm particularly  
8       interested in the response that you feel has  
9       been lacking or we're not forthcoming in the  
10      budget request and I'll -- I just want to take  
11      this opportunity to add that the budget is  
12      developed, especially in law enforcement  
13      matters, in coordination across the  
14      administration and McGirt has been a forefront  
15      of a lot of the conversations that we've had  
16      with the Department of Justice on both law  
17      enforcement prosecuting justice facilities and  
18      the like.

19              But I say that not to dismiss your  
20      concerns but as an invitation to learn more  
21      about what other pieces you think are lacking  
22      and what we can do better.

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1           With respect to the -- thinking more  
2       broadly about restoring Tribal homelands, I  
3       appreciate you raising that specific point.  
4       That is something this Administration has been  
5       giving a lot of thought to and I think it's  
6       evidenced by things like the return of the  
7       National Bison Range to the Salish and Kootenai  
8       tribes up at Flathead and the restoration of the  
9       Bears Ears National Monument just two weeks ago  
10      by President Biden under tribally led management  
11      and stewardship for the monument.

12           And that is something that we're really  
13      interested in doing, and when you talk about  
14      broadening the scope of what we mean by  
15      restoring Tribal homelands and it's why we've  
16      included reserve treaty rights and sacred places  
17      in this consultation as well because as you  
18      correctly note, they are all related.

19           So, Josh, I welcome you to follow up  
20      directly with our team on a conversation about  
21      post-McGirt and how we can work more closely  
22      together and appreciate your comments. I look

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1 forward to the written comments.

2 JOSH RILEY: Absolutely, thank you.

3 LIZ APPEL: Our next comment comes from  
4 Chairman Fairbanks.

5 CHAIRMAN FAIRBANKS: Can you hear me?  
6 (Speaking foreign language.)

7 Chairman Fairbanks here over in White  
8 Earth and I'd like to say -- (speaking foreign  
9 language) -- to all the other leaders that were  
10 before me that brought up some good, good  
11 content, and I'd also like to thank Bryan  
12 Newland and also Secretary Haaland for listening  
13 to us today and -- (speaking foreign language) -  
14 - for that.

15 But back home in White Earth here, you  
16 know, I have a couple things I wanted to address  
17 and talk about. One of them is our water. You  
18 know, I've been reaching out to the Department  
19 of the Interior, especially with Line 3 that  
20 went through -- you know, that was going through  
21 the corridor, that was going through the heart  
22 of our treaty seated territories. And you know,

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1 and that's one thing that kind of we fell on --  
2 I feel like we fell on deaf ears because, you  
3 know, this year, and this is an example, of  
4 course, we are in a drought year, but you know,  
5 we only harvested around 10,000 pounds this year  
6 of our big lake we have up north of White Earth  
7 here.

8 And two years ago, and this is an example,  
9 we harvested around 170,000 pounds of our own  
10 wild rice, and this year we only got 10,000  
11 pounds. And the pleas that went out to the  
12 Department was, you know, I know that we've been  
13 in a Court case with the State of Minnesota over  
14 this, too, is like you know -- and this is what  
15 really hurt us a lot was, you know, the State of  
16 Minnesota issued these water permits for this  
17 pipeline that really, really kind of affected  
18 us, and you know, today I'm still kind of  
19 baffled at the Army Corp and also the Department  
20 of the Interior didn't kind of, you know, step  
21 it up and help us and at least look at some of  
22 the -- you know, the environmental issues that



1 was happening along here, along this corridor.

2 And I know that -- and this kind of just  
3 comes back to what I'm talking about is our  
4 homelands. You know this is our homeland. This  
5 is the reason why we're sitting here where we're  
6 at is because of wild rice. This is our  
7 prophecy our Ojibwa prophecy. And I'm just  
8 making a plea here that, you know, that we have  
9 to start looking at our water and we have to  
10 start protecting our resources and our water  
11 more and more and more because I was talking to  
12 one of the State representatives this morning  
13 before I got on this call that we have to look  
14 at our water rights and we're doing -- I'm doing  
15 everything I can here. My counsel and myself,  
16 you know, we're looking at protecting what we  
17 have left for our future generations, and I  
18 think all of us across Indian Country are doing  
19 the same. We're looking at our water.

20 You look at the water problems we're  
21 having over in Michigan. We look at the water,  
22 look at the droughts that we had this past year,

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1       you know, it's something that we have to --  
2       really have to work on is really protecting what  
3       we have left. And on over at the Fred Lakes,  
4       you know Chairman Seeky (phonetic) might say a  
5       few words, too, but you know, this is one thing  
6       that we have to look at is we have to think  
7       about our future generations when it comes to  
8       our water.

9               And I guess the other part of this is what  
10       I want to talk about was you know, some of the  
11       trust, putting our Land into Trust. I know that  
12       you know, when I talked to Bryan here a few  
13       months ago down in, I think it was Lower Sioux,  
14       that we talked about some of the issues that was  
15       happening in Minnesota and we brought it up to  
16       him, and I know that we were going to talk and  
17       that we haven't had a chance to sit down and  
18       talk more about it, but with some of the Land  
19       into Trust, I know we used mandatory trust, our  
20       WELS Act that puts it in and we need like an  
21       opinion from DOI to see how that's going to work  
22       for us.

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1           So, you know, that's one thing I hope  
2           Bryan reaches out to me and we can sit down and  
3           talk about that a little more in-depth.

4           But I just -- you know, I'm really  
5           pleading to the Secretary and also Bryan and the  
6           staff that, you know, please help us, you know,  
7           help all the tribes that are needing to protect  
8           their water. I know Line 5 is up there now.  
9           You know, I look at my brothers and sisters to  
10          the east and to the west and south and north of  
11          us that we have to sit here, and I just really  
12          want to protect what we have for our future  
13          generations.

14          So, I want to say -- (speaking foreign  
15          language) -- and thank you for your time.  
16          (Speaking foreign language).

17          BRYAN NEWLAND: (Speaking foreign  
18          language). I appreciate your comments today and  
19          you will note that the fact that we have tribes  
20          from Minnesota, the Land of Ten Thousand Lakes  
21          now talking about an issue like drought and  
22          water rights is -- I think just emphasizes the

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1 need for all of us to continue our work to  
2 address climate change. Because those are  
3 things that people in your homelands have never  
4 had to think about and consider before. So, I  
5 appreciate you raising that for all of us.

6 LIZ APPEL: And once again, if you'd like  
7 to make a comment, please click the raise hand  
8 icon at the bottom of your screen. We did get a  
9 chat comment from Chairwoman Andrews-Maltais.

10 Our tribe, like many tribes, are under  
11 constant assault of land easements and Tribal  
12 sovereignty forcing us to expend critical funds  
13 we simply do not have on expensive endless  
14 litigation.

15 We are asking DOI to defend all Tribal  
16 land rights. Would DOI commit to work with DOJ  
17 or independently to write a declaration letter  
18 that proclaims and informs all non-tribal  
19 government instrumentalities that Tribal lands  
20 held in trust are owned by the U.S. and  
21 therefore any question and/or legal challenges  
22 to any exercise of governmental authority,

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1       taxation or jurisdiction be directed to the U.S.  
2       as our fiduciary trust fee

3               This may not only alleviate the oppression  
4       of local hostile governments, it will serve to  
5       notice these hostile governments and/or  
6       individuals that the tribes enjoy tribal  
7       sovereign immunity, and they must sue the U.S.  
8       as title owner of the property.

9               And in the meantime, we have a hand raised  
10       from Chairman Payment. Oh-oh, are you muted,  
11       Chairman Payment?

12               CHAIRMAN PAYMENT: Can you hear me now?

13               LIZ APPEL: Yes, thank you.

14               CHAIRMAN PAYMENT: Right. Somebody showed  
15       me how to change the color of your hand on here  
16       so it kind of matches now. Except for if I go  
17       like this, it doesn't.

18               But anyway, what I wanted to say was --  
19       what I wanted to say was I do have some very  
20       specific concerns, but we believe we're trying  
21       to address those administratively. But I do  
22       want to say that we have a team right now that

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1 we have not had before, a full complement, along  
2 with both a -- we believe a legislature and a  
3 president that are supportive.

4 So, we have an opportunity right now to  
5 get it right. And obviously, there's ebbs and  
6 flows depending on who is president, and I'm  
7 also really confident with the people -- and I'm  
8 not blowing smoke here -- but people that are in  
9 key positions to be able to help get the policy  
10 right.

11 Chairwoman Andrews said earlier, you know,  
12 the priority and the goal that was clearly  
13 established under the Obama Administration gave  
14 something to look to and it was an optic that  
15 was allowed for reporting annually about how  
16 we're doing. And that gave me great hope. And  
17 those accomplishments, especially with the  
18 Mashpee and also with the Alaska land and trust.

19 And so, you know - and a lot of that was  
20 burned and fallowed in the last four years, but  
21 we have that opportunity now. And so, at the  
22 National Congress of American Indians just last

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1 week we voted to call for a new strategic plan  
2 and asking the current Administration to consult  
3 with tribes, to write that new strategic plan,  
4 to put your fingerprint on it. Because we know  
5 the people that are in the role now have it in  
6 their hearts. We know from their past advocacy.  
7 We know that it will look the way we want it to  
8 look from Indian Country if the people that are  
9 in the roles right now.

10 And so, I just want to say something  
11 reinforcing. You're hearing a lot of requests.  
12 You're hearing a lot of pleading with Tribal  
13 leaders to get it right and to finally do it  
14 right, but I also want to offer that we know  
15 that you guys when you accept these roles, are  
16 in positions where you're going to get arrows in  
17 the back and you're in thankless jobs, so it's  
18 good that you're self-motivated for these jobs  
19 and you know what needs to happen no matter what  
20 comes your way.

21 But just to know, and I said this to the  
22 secretary last week, she often says that she

1 stands on the shoulders of her ancestors. But  
2 the rest of us are here to lift you up, to  
3 strengthen you so that you can do what it is  
4 that you know needs to be done.

5 There's none of us on this call that  
6 really need to tell you intricately what you  
7 know needs to be done, but we will reinforce it  
8 so that you have our voice backing you so that  
9 you can write those policies and put those  
10 procedures in place for the time that we have  
11 because it's not permanent. We know it's not  
12 permanent. And so, for as long as we have,  
13 we'll stand with you.

14 And so, whatever you need to include in  
15 it, we will say it, but we want to get there out  
16 the other end and strengthen you in that  
17 process. So that's it. (Speaking foreign  
18 language) -- and I'm in a good mood today, so  
19 you got my best.

20 BRYAN NEWLAND: (Speaking foreign  
21 language). Thank you, Chairman Payment and I'll  
22 tell you, those of you who have served in Tribal



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1 government know as well that the affirmation of  
2 the work you're doing, and support really does  
3 mean a lot and it's very motivating not just for  
4 me but everyone on our team wants to know and  
5 make sure that they're part of a mission that's  
6 going to make a difference.

7 So, I really appreciate you sharing that  
8 with our team here. Liz?

9 LIZ APPEL: Okay, our next comment comes  
10 from Kitcki Carroll.

11 KITCKI CARROLL: Good afternoon, Assistant  
12 Secretary Newland. I just hope I'm not going  
13 out of line. I was waiting for the Tribal  
14 leaders to go first out of deference and  
15 respect.

16 I want to build on some comments that all  
17 the Tribal leaders made, particularly what the  
18 Chairwoman Andrews-Maltais and Chairman Payment  
19 just made a moment ago. I think it's important  
20 to recognize that even though we're having a  
21 Department of Interior consultation today, we're  
22 talking about an issue that touches all branches

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1 of the Federal government, and all those  
2 branches bear responsibility towards the  
3 ultimate goal of rebuilding, restoring,  
4 protecting homelands.

5 So, to a comment that was made earlier, I  
6 just want to underscore the point that we feel  
7 the Federal government as a whole bears the  
8 responsibility to protect our homelands  
9 regardless of what that land status is. But  
10 particularly within the space of fee-to-trust  
11 acquisitions, you earlier stated some of the  
12 challenges that Tribal nations are up against  
13 within that process. So, I want to offer a  
14 couple of specific thoughts within that space.

15 You know, as mentioned by most all of the  
16 Tribal leaders on this call so far, this  
17 relationship is with the United States, the  
18 Federal entity, not with local municipalities or  
19 States, but particularly within the fee-to-trust  
20 base in our effort to resolve and fix *Carcieri*,  
21 we often found ourselves in the space of Tribal  
22 nations engaging with these local municipalities

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1 and states, which is just not correct or  
2 appropriate.

3 One of the things that the municipalities  
4 often put forward as a reason for their  
5 opposition to fee-to-trust acquisitions is the  
6 loss of Federal taxes off their tax rolls. And  
7 one of the things I want to put out there, and I  
8 understand that this is not just DOI  
9 responsibility, but it bears consideration by  
10 other Federal entities, but there is an  
11 inconsistent piece to what's going on right now  
12 in the process space that's causing inequity,  
13 which is the other bureaus within DOI have an  
14 offset for those fees to trust acquisitions in  
15 the form of payment in lieu of taxes.

16 With fee-to-trust acquisitions within the  
17 BIA space, there is no such tax offset. So, we  
18 feel that it's critically important just from a  
19 fairness perspective that the BIA, just like its  
20 sister bureaus within Interior, have access to  
21 an offsetting tilt to push back against that  
22 opposition by local municipalities and states.

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1           We also feel that doing so will really  
2 narrow down what the real argument is, and I  
3 think everybody on this call recognizes that.  
4 It's not necessarily just about taxes, it's  
5 about fundamental opposition to our inherent  
6 sovereign rights and authorities.

7           So, if we can take off the tax loss issue  
8 off the table, then that really reserves then  
9 the issue of taking anti sovereignty positions  
10 as what we need to really work through.

11           You have heard already the comment about  
12 setting targets like the Obama Administration  
13 did. The Trump Administration had set targets  
14 for approval of applications but not fee-to-  
15 trust actual acquisitions. And even though they  
16 had the targets for reviews, it was very hard to  
17 get reporting on how those review approvals or  
18 denials were going.

19           But in addition to going back to an Obama  
20 Administration era approach to setting acreage  
21 acquisition targets, there also should be  
22 correlating resources that are allocated,

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1 requested, appropriated to make sure that there  
2 are resources to do the actual processing.

3 You know, you've heard already on this  
4 where there are tremendous delays. That has to  
5 do with process failures, but it also has to do  
6 with resource failures to have the appropriate  
7 people in place to do the reviews, do the  
8 processing, to do the evaluations, et cetera.

9 So oftentimes when we get into the  
10 budgetary space, we're talking about Tribal  
11 Nation dollars and those are extremely important  
12 and absolutely, but at the same time tribes  
13 suffer when the Federal government isn't  
14 appropriately asking for an adequate number of  
15 resources to fulfill their non-individual trust  
16 duties.

17 The other thing that I would say for  
18 consideration, too, is there are other examples  
19 and Federal processes that don't allow the  
20 Federal government to take as long as they want  
21 to do what they want. You can look no further  
22 than the contracting compacting space where

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1       there are some time parameters tied to that.

2       And if the United States doesn't do its part,

3       the tribe isn't expected just to sit back and

4       wait indefinitely for the United States to take

5       its steps and proper actions.

6                So built into setting targets, both from a

7       review and approval target, there also should be

8       a piece that really sets some time parameters.

9       Because you've heard it before. You know, five

10       years taking -- to get a fee-to-trust

11       acquisition done is actually on the good side.

12       You know, we've heard examples of 15, 20 plus

13       years and the tribes having to start the process

14       all over again. That's just unacceptable and

15       absurd and I think anybody with rational

16       thinking knows that that's absurd and

17       unreasonable.

18                So, there is definitely to your point of

19       this consultation of improving processes, clear

20       opportunity to tighten this thing up. But to

21       the point that I want to underscore, that the

22       Chairwoman made in her comments and in the chat

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1 room here, supporting all of that is an  
2 expectation as trustee -- not just DOI but the  
3 entire Federal system, even though we are all  
4 aware of the conflicts that are embedded in  
5 that, take a position of absolute defense of  
6 protecting our homelands.

7 Because what the Biden administration is  
8 also strong promoting, you know, is this idea of  
9 justice, this notion of justice, this idea of  
10 fairness and equity and rebuilding  
11 infrastructure, rebuilding economies. We agree  
12 with all of that, but to the points that have  
13 already been made, you cannot do that without a  
14 strong homeland base to provide for the needs of  
15 your citizens. It's as simple as that.

16 So, anything that the administration can  
17 do to take advantage of this very moment in time  
18 to pull all this together will have, as you've  
19 already heard, multi-generational positive  
20 impact.

21 So, thank you for the time to allow me to  
22 offer some comments.

1           BRYAN NEWLAND: Thank you Kitcki. You  
2        raised, as always, a number of really good  
3        points. And I want to respond to a couple of  
4        them.

5           One with the -- your last point about the  
6        need for homelands. For us, and I think for  
7        many people on this consultation, it is even  
8        more inherent or essential. It goes beyond the  
9        need for economic development and governance.  
10       To ensure that every tribe has a right and  
11       access to homelands is the very nature of  
12       existence as a Tribal people, is based upon  
13       living together as Tribal people. And if you  
14       don't have a homeland where you can carry on and  
15       sustain Tribal life ways, that threatens the  
16       continued existence of indigenous people as  
17       Tribal people.

18           And that's something that all of us here  
19        understand, and it underpins the push to protect  
20        and restore Tribal homelands here.

21           But I appreciate you raising that. On the  
22        -- all agencies having a responsibility or a



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1 share of the trust responsibility, you're  
2 absolutely right. I can tell you from my  
3 experience, having been here under President  
4 Obama's Administration, that this Administration  
5 has dialed it up to eleven on coordination among  
6 agencies.

7 Already in eight months, I've been a part  
8 of more interagency working groups and task  
9 forces than I was in three-and-a-half years here  
10 at the Department, or our office was in three-  
11 and-a-half years my first go around. And a lot  
12 of that is being coordinated through the White  
13 House counsel.

14 And on the need to put money and resources  
15 into our capacity, I hear you loud and clear.  
16 You know, one of the unfortunate byproducts of  
17 self-determination era, which on the whole has  
18 been just remarkably successful as a federal  
19 policy, is that we, the Federal government, are  
20 now competing with you for the best and  
21 brightest and most talented people across Indian  
22 Country.

1           And so, it is a good problem to have that  
2           so many talented folks, whether they're  
3           engineers, or surveyors, or professionals, or  
4           specialists want to go back to their Tribal  
5           communities and use their talents for Tribal  
6           governments, it's made it more difficult to fill  
7           a number of key positions here at the  
8           Department.

9           And so that's a reality that we're  
10          conscious of and we take seriously our need to  
11          build up our staffing capacity here at the  
12          Department, get some talented folks in, train  
13          them up and make them even more attractive  
14          Tribal employees in the future, we hope.

15          So, I appreciate you raising all those  
16          things. Liz?

17          LIZ APPEL: Thank you. Our next comment  
18          comes from Tribal Representative Lance Gumbs.

19          LANCE GUMBS: Good afternoon. And I'd  
20          like to thank the Secretary and the Assistant  
21          Secretary for this consultation. I'd like to  
22          start out with just the title of the

1       consultation because there is a -- you talk  
2       about restoring lands from fee-to-trust, but  
3       there is another set of land holdings, and so  
4       I'd just like to follow up on some comments that  
5       my counsel representative, Kelly Dennis made  
6       earlier because the restricted fee is where my  
7       Nation, Shinnecock, is looking to continue with  
8       our -- in the way that our Nation is looking to  
9       continue with our landholdings.

10               The Shinnecock Nation holds lands that  
11       have been recognized since before the  
12       establishment of the United States as restricted  
13       fees. For centuries the status was recognized  
14       and protected by the State of New York, which  
15       pre-dates the whole Federal notion of trust land  
16       or the trust lands that are held by various  
17       other tribes around the country.

18               For us and all of the tribes in New York  
19       State, the United States turned its attention to  
20       New York Tribal status, each one, in turn, was  
21       acknowledged, each one of the tribes was  
22       acknowledged and their landholdings was

1 acknowledged in a restricted fee status. So,  
2 for us, for some years -- in 2010, the Interior  
3 Department acknowledged the uninterrupted status  
4 and sovereignty of the Shinnecock Nation when we  
5 were finally acknowledged, and especially in the  
6 context of a sovereignty, and that is one of our  
7 goals, obviously, to protect our sovereignty and  
8 the rights that we have.

9 But we want the Federal government, the  
10 BIA, to look at the restricted fee status as  
11 well. So, we're asking the United States to  
12 take action promptly to clarify the restricted  
13 fee status of our lands so that we will no  
14 longer need to allocate scarce resources to  
15 balance state and local governments in Court.

16 We feel that the confirmation of  
17 restricted fee lands would be an efficient  
18 route for expanding in our tribal land base.

19 And there are many examples out there in  
20 terms of what this would do for us, including,  
21 you know, upholding tribal jurisdiction over our  
22 lands.

1           And the Secretary is pretty familiar with  
2           restricted fee lands as only New York State and  
3           New Mexico have tribes that have this status.  
4           It is also listed in the regs, in 151, 152,  
5           where it names the types of landholdings that  
6           tribes have. It talks about trust land. It  
7           talks about fee land, and it also talks about  
8           restricted fee lands.

9           And so, it is our request once again that  
10          the Department takes a look at the restricted  
11          fee way that our lands are held and clarify that  
12          for us.

13          I'd like to also talk about the Department  
14          should clarify and defend Tribal jurisdiction  
15          despite outside claims of right of way. For the  
16          Shinnecock, for us, this directly affects one of  
17          our economic development projects that has been  
18          in New York State right now with our monument  
19          sign project. We predate the rules and regs as  
20          to when our land was stolen, or as the New York  
21          State tries to say, they did this lease or this  
22          right of way with our tribe in 1958, which was

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1 completely bogus. And so, we're in Court now  
2 defending this right of way or this so-called,  
3 you know, lease that they have, but it predates  
4 the rules and regs that were established for  
5 right of way and leasing.

6 So, we would respectfully request that the  
7 Department look into this and especially those  
8 leases that they're claiming on these right of  
9 ways that states are claiming that predate, you  
10 know, the rules and regulations.

11 And the last thing, the last point that  
12 I'd like to bring up is the Shinnecock, at  
13 Shinnecock, we have a litigation request pending  
14 on a Non-Intercourse Act claim and we were told  
15 that we were -- we had to be put on hold back in  
16 1973 when we first started this process because  
17 we were not Federally recognized.

18 Well now, since that time, 32 years later,  
19 I will say from 1978 to 2010, we now are  
20 acknowledged and this request, this land  
21 litigation request is still out there pending  
22 for stolen lands that were taken from us in

1 1859.

2 So, we're asking the Federal government to  
3 step in and uphold their trust responsibility to  
4 us in terms of helping us to defend our land  
5 claim for this stolen land that was directly in  
6 violation with the Non-Intercourse Act at that  
7 time.

8 We will have more in our written comments  
9 as we move forward, but I thank you for holding  
10 this consultation and giving me or allowing me  
11 to just come back and speak a little bit more on  
12 our Shinnecock issues. Thank you very much.

13 BRYAN NEWLAND: Thank you, Mr. Gumbs.

14 LIZ APPEL: And our next comment comes  
15 from Philimon Two Eagle.

16 PHILEMON TWO EAGLE: I want to introduce  
17 myself. My name is Philimon Two Eagle. I'm the  
18 executive director of the Sicangu Lakota Treaty  
19 Council under the Rosebud Sioux Tribe. I just  
20 want to read part of our comments. We will be  
21 submitting a longer comment on all of the -- on  
22 the area.

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1           Dear Secretary Haaland, reading from the  
2           Sicangu Lakota Oyate Rosebud Sioux Tribe and the  
3           Sicangu Lakota Treaty Council, we represent the  
4           Sicangu Lakota people of the Oceti Sakowin  
5           Oyate, the Seven Council Fires Confederation  
6           also known by the United States as the Great  
7           Sioux Nation.

8           We are currently residing on the Rosebud  
9           Sioux Indian Reservation. Congratulations on  
10          your appointment as the first native person to  
11          be Interior Secretary. We also applaud  
12          President Biden and their omission action on  
13          Federal protections of original boundaries of  
14          the Bears Ears National Monument, which  
15          recognizes in part the sacredness of the area to  
16          many Native people.

17          We also acknowledge your history as a  
18          leader of the Kawaik Pueblo and Laguna and over  
19          your sacred mountains -- (speaking foreign  
20          language). We are encouraged that you may  
21          therefore fully understand our interest and  
22          claims to our sacred lands. Most importantly,



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1 Pa-ha-sa-pah or the Black Hills of South Dakota.  
2 Ha-sa-pah is part of our lands that were taken  
3 from us by the U.S. Congress in 1877. The Oceti  
4 Sakowin Oyate and the Sicangu people and the  
5 Sioux tribe never relinquished their claim to  
6 their sacred lands, including Paha Sapa.

7 For almost 150 years this has been an  
8 ongoing dispute and a barrier to harmonious  
9 nation-to-nation relationship between our --  
10 (inaudible) -- and the United States. We  
11 continue to seek this sort of reparations for  
12 the extreme injustices that have been brought  
13 upon our people by the United States.

14 By this letter, we seek to engage in good  
15 faith with you as a representative of the United  
16 States, or whether what opportunities may be  
17 available in this new political climate to  
18 evolve this dispute in whole or in part.

19 We further have been impressed by  
20 President Biden's memorandum on Tribal  
21 consultation and strengthening nation-to-nation  
22 relationships. Shortly after he took office,

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1       therein he recognized Native Nations as  
2       sovereign and rated a priority for the  
3       administration to respect the sovereignty and  
4       the self-governance and further committed to  
5       fulfill treaty responsibilities with Native  
6       Nations, with regular meaningful and robust  
7       consultation with Native Nations, cornerstones  
8       of Federal policy.

9               We emphasize that honoring the solemn  
10       promises the United States has made to Native  
11       Nations more than two centuries is particularly  
12       vital now. We seek perhaps with other --  
13       (inaudible) -- council fires and other Native  
14       Nations and peoples to sit down with you and  
15       engage the United States in high-level  
16       discussion on how we might fairly and  
17       permanently resolve these matters as nations,  
18       beginning with our sacred Paha Sapa, the Black  
19       Hills.

20              As you know, much of the Paha Sapa is  
21       controlled by the Federal government as the  
22       Black Hills National Forest. We are aware that

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1 much of that land has been classified by the  
2 United States as surplus land, meaning lands  
3 that are not necessary to the Black Hills  
4 National Forest.

5 Some of these lands are very sacred to us.  
6 In the past, we have been -- (inaudible) -- by  
7 the United States in -- (inaudible) -- to  
8 private entities without our consent or even  
9 consultations. An initial step and the partial  
10 resolution of the dispute over the Black Hills  
11 without meeting in any manner to compromise or  
12 release our claims to our -- (inaudible) --  
13 lands would be the immediate halting of all six  
14 lands -- (inaudible) -- and the transfer of the  
15 possession and control of the surplus lands and  
16 other Black Hills Federal lands back to the  
17 Oceti Sakowin Oyate.

18 This will enable us to fulfill our sacred  
19 obligation to -- (speaking foreign language) --  
20 the Great Spirit and -- (speaking foreign  
21 language) -- Grandmother Earth, to care for our  
22 ancestral lands and relatives, would provide

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1 free access to our people for important ceremony  
2 within our spiritual center and would contribute  
3 to an economic well-being of our people and the  
4 restoration of the shared governance and land  
5 base of our -- (inaudible). It is something  
6 that can and should be done.

7 We seek in complete good faith and  
8 fairness to establish a new 21st Century  
9 relationship with the United States, a fully  
10 strengthened Nation to Nation and decolonize  
11 them -- (speaking foreign language) -- a time of  
12 the treaty of peace in compliance with the  
13 international law, international human rights  
14 standards as well as our own laws, our history,  
15 culture, and traditions.

16 We will be submitting specific comments to  
17 the questions that you have on your Tribal  
18 leader letter. (Speaking foreign language).  
19 Thank you.

20 BRYAN NEWLAND: Thank you, Mr. Two Eagle.  
21 I appreciate your comments and the comments on  
22 behalf of the tribe today and for you taking the

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1 time to have us here.

2 Also, I want to take this opportunity to  
3 make sure folks are aware if you didn't see the  
4 Department of the Interior's release that we  
5 have. Two new political appointees in our  
6 office, Joaquin Gallegos, who is a member of the  
7 Jicarilla Apache Tribe, has joined our team last  
8 week as a special assistant. And on Monday,  
9 Wizipan Little Elk from the Rosebud Sioux Tribe  
10 will join our office as Principal Deputy  
11 Assistant Secretary. We are really excited  
12 about having them on board as well.

13 So, we are now twenty minutes out from the  
14 end of our consultation session today, I  
15 believe. And so, I want to give a warning for  
16 two final comments here before we wrap up today  
17 and remind you that we have additional sessions  
18 as well as a written comment period extending to  
19 November the 5th.

20 LIZ APPEL: and our next comment is a  
21 follow-up from Chairwoman Andrews-Maltais.

22 CHAIRWOMAN ANDREWS-MALTAIS: Hi again. I

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1 warned you. Just kidding.

2 Anyway, in response to one of the  
3 questions, and I think you've been able to hear  
4 pretty loud and clear that, you know, the  
5 leadership on this call and across Indian  
6 Country are really truly supportive of this  
7 administration, the Secretary, Assistant  
8 Secretary as well as everybody on the team to  
9 try to get it right and take this opportunity to  
10 swing for the fence so to speak.

11 And what specific actions can the  
12 Department take? Essentially, I think adding  
13 more staff, and whether it's in the form of  
14 solicitors to assist tribes in defending our  
15 rights, or whether it's staff to be able to do  
16 more research, but just inaction of support of  
17 the tribes and the Tribal Nations, and if we're  
18 able to request more funding out of the  
19 Department of Interior budget because if the  
20 Department of the Interior generates hundreds of  
21 billions of dollars in the lands that there are  
22 extracted industry, leases and everything else

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1 that the Secretary of the Interior is  
2 responsible for those interior lands, it's not  
3 too much to ask that more money from that  
4 revenue stream is dedicated to Indian affairs  
5 for the purposes of fulfilling the trust and  
6 treaty obligation.

7 The lands that the Department of the  
8 Interior currently has oversight over are those  
9 lands that have been taken, stolen, and were  
10 ceded through treaties, and those are Indian  
11 lands. Those lands are the lands that we paid  
12 for with the lives of our ancestors, those  
13 lands, and natural resources so the United  
14 States can be here today.

15 And so, I think when we're looking through  
16 the Federal budget as to where we can get more  
17 money, as a massive revenue generator, which the  
18 Department of the Interior is, I don't think  
19 it's unfair or unreasonable to expect that more  
20 funds can be taken from that revenue generation  
21 and repurposed and reallocated for the benefit  
22 of the people whose lands these revenues are

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1 generated from. Thank you.

2 BRYAN NEWLAND: Thank you, Chairwoman, I  
3 appreciate that.

4 Any additional comments?

5 LIZ APPEL: If you'd like to make a  
6 comment please press the raise hand button at  
7 the bottom of your screen, and if you're joining  
8 us by phone, you can press start nine to raise  
9 your hand.

10 BRYAN NEWLAND: While we wait to see if  
11 there are any additional comments, you may have  
12 noticed an additional letter or notice come from  
13 the Department regarding our boarding school  
14 initiative consultation. Deputy Assistant  
15 Secretary Kathryn Isom-Clause has provided  
16 updated consultation sessions in the chat, but  
17 we will be hearing from Indian Country on  
18 November the 17th, the 18th, and then the week  
19 of Thanksgiving, on November the 23rd, and  
20 there's a link that Kathryn has provided here.

21 So those of you who are interested in  
22 participating, please note that change.



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1           There will be one last call for comments.  
2           I really appreciate everybody participating  
3           today. I will say that I've got almost four  
4           complete pages of notes from today's session,  
5           which is a sign that we've got a lot of really  
6           helpful feedback and comments from all of you  
7           here, and a lot that we can take back and feed  
8           into our policy.

9           There's a question in the chat from Ms.  
10          Helgemo about previewing the White House summit.  
11          There is -- I really wish I could, Wendy, give a  
12          preview of what's going to happen at the summit.  
13          It will be a virtual summit coming up on the  
14          15th and the 16th of November. But you'll have  
15          to tune in if you want to know what's going to  
16          happen.

17          LIZ APPEL: And we also have a question  
18          about whether there's another session like this  
19          one, so I will provide that information in the  
20          chat. We do have two additional sessions, one  
21          on October 25th and one on October 26th, next  
22          week.

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1           BRYAN NEWLAND: All right, if there are no  
2 additional comments, we can close this  
3 afternoon's session. I know how busy all of you  
4 are serving your people and your communities,  
5 and I really appreciate the thought that you all  
6 put into engaging with us today. There's a lot  
7 for us to work with here. As I said, we'll wind  
8 this session up, and I look forward to reading  
9 your written comments and wish you all health  
10 and safety, and wellness with you, your  
11 families, and your communities going forward.

12           Thank you for your time today.

13           (Whereupon the consultation was concluded  
14 at 3:49 p.m.)

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**CERTIFICATE OF REPORTER**

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

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



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