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UNITED STATES OF THE INTERIOR
OFFICE OF THE SECRETARY

Tribal Consultation on Protection and
Restoration of Tribal Homelands

MEETING

DATE: Tuesday, October 26, 2021
TIME: 1:04 p.m.
LOCATION: Client Managed Remote-DC
Zoom/Gov
Washington, DC 20001
REPORTED BY: Shondra Dawson, Notary Public
JOB No.: 4863638

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A P P E A R A N C E S

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1 P A R T I C I P A N T S

2 Bryan Newland, Assistant Secretary of the Interior

3 Elizabeth Appel, Director of Indian Affairs

4 Henry Cagey, Chairman of the Lummi Nation

5 Misty Napeahi, Council Member Tulialip Tribe of

6 Washington

7 Russell Buster Atteberry, Chairman Karuk Tribe of

8 California

9 Thomas Wooten, Chairman Samish Indian Nation of

10 Washington

11 Joel Blake, Chill Water Bay Indian Tribe

12 Mary Pavel, Tribe of Indians of Northwest Washington

13 Will Micklin, Attorney for Ewiiapaayp Band

14 Michael Toledo, Jr., Governor Pueblo Jemez of New

15 Mexico

16 Ned Norris, Jr., Chairman Tonoho O'oodham Nation of

17 Arizona

18 Glen Gobin, Tulialip Council Member

19 Debbie Bosley, Chair Confederated Tribes of Coos,

20 Lower Umpqua/Suslaw

21 Ladd Edmo, Shoshone-Bannock Tribes Business Secretary

22 Meredith Harris, Attorney for Port Gamble S'Klallam

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P A R T I C I P A N T S (continued)

Tribe

Cassandra Atencio, Southern Ute Tribe of Colorado

Lars Nelson, Inupiate Communities of the Arctic Slope

Arron Hockaday, Council for Karuk Tribe of California

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

2 MR. NEWLAND: Good afternoon. Good
3 morning to everybody joining us from out west. My
4 name is Bryan Newland. I am the assistant secretary
5 for Indian Affairs here at the Department of the
6 Interior and I want to welcome you all to our tribal
7 consultation on restoring and protecting tribal
8 homelands.

9 Before we begin today's session, I want
10 to make sure -- we'll ask you to mute my microphones,
11 please, if you're not speaking, and if you are joining
12 us a combine audio using your computer and your
13 telephone, you're going to need to keep both of them
14 muting or we'll get really nasty feedback like what
15 just happened.

16 Before we begin, we always want to make
17 sure that we start our gatherings in a good way,
18 properly, and we have asked and invited Yurok Vice-
19 Chairman Frankie Myers to provide us with a blessing
20 to open today's consultation session.

21 So, Mr. Myers, if you are here, we'd
22 love to have you on mute and offer us a prayer.

1 MR. MYERS: Yes. Thank you. (Another
2 Language Spoken) Frankie Myers. (Another Language
3 Spoken) Thank you for having me.

4 (Another Language Spoken)

5 Creator, thank you for watching over
6 us. I pray that you watch over every single one of
7 individuals in the call today, that you continue to
8 bring us towards balance in our individual lives, the
9 lives of our families, and our communities. I pray
10 that you continue to watch over our lands and help
11 restore balance to us as a people and to us as a
12 community. (Another Language Spoken)

13 Thank you for having me and allowing me
14 to open today's session. Obviously, this is an
15 important matter for all tribes and very much look
16 forward to hearing the conversation and being a part
17 of the discussion today. Thank you.

18 MR. NEWLAND: (Another Language Spoken)
19 Thank you, Vice-Chairman Myers. I appreciate your
20 words of prayer and your blessing for all of us today
21 and your presence here.

22 As I said off the top, my name is Bryan

1 Newland. I am a Bay Mills Indian Community tribal
2 citizen, Ojibwa, and I'm serving as Assistant
3 Secretary for Indian Affairs. But our work is not the
4 work of any one person and we have just an exceptional
5 team full of talented folks here at the Department of
6 the Interior and within Indian Affairs. And I want to
7 take a moment to introduce them to you all so you know
8 who's working on our team and, most importantly, what
9 they look like and how to reach them.

10 So, first, we'll pop this on over to
11 our new Principal Deputy Assistant Secretary.

12 MAN 1: (Another Language Spoken) Good
13 afternoon. I greet each and every one of you with a
14 good heart. My name is (indiscernible), second day on
15 the job. Getting up to speed on everything and I
16 couldn't be more -- I'm also a member of the
17 (indiscernible) or the Citizen of the Rosebud Sioux
18 Tribe. And I couldn't be more honored and excited and
19 humbled to have homelands and be the very first tribal
20 consultation that I participate in. So excited to
21 join the team and to help carry out the mission and
22 objectives of Indian Affairs and to interact and learn

1 from all of our esteemed leaders of various native
2 nations that are -- call home.

3 MR. NEWLAND: Thank you, (Another
4 Language Spoken) and we're glad to have you here.
5 Next is our Deputy Assistant Secretary for Policy and
6 Economic Development.

7 MS. ISENCLAUS: Good morning. Good
8 afternoon. I'm Kathryn Isenclaus. I'm
9 (indiscernible). As the Assistant Secretary
10 mentioned, I'm the Deputy Assistant Secretary for
11 Policy and Economic Development here in Indian Affairs
12 and -- as part of that, I do some work on lands
13 issues. I've been incredibly impressed so far with
14 the comments we've heard throughout these
15 consultations. People have been very thoughtful, had
16 really great concrete ideas as well as wonderful
17 perspectives from their own nations so I'm looking
18 forward to hearing more today. Thank you.

19 MR. NEWLAND: Thank you, Kathryn. Next
20 we have our Senior Policy Advisor, Heidi Totacheeni.

21 MS. TOTACHEENI: Hello, everybody. I'm
22 Heidi Totacheeni, a member of Navajo Nation and Senior

1 Advisor to the Assistant Secretary. Thank you,
2 everybody, for being on today and welcome to the
3 consultation.

4 MR. NEWLAND: Thank you, Heidi. Our
5 special assistant, Joaquim Giagos is not in this
6 meeting but he is also on our team. Now I want to
7 introduce you to our team of counselors very briefly.
8 We'll start with Sam.

9 MR. COHEN: Good afternoon, everybody.
10 My name is Samuel Cohen. I'm a member of the Crow
11 Tribe of Montana. I serve as a counselor to the
12 Assistant Secretary. Good morning.

13 MR. NEWLAND: Thanks, Sam. And
14 Stephanie.

15 STEPHANIE: Afternoon, everyone. My
16 name is Stephanie (indiscernible). I'm a member of
17 the Navajo (indiscernible) Tribe and senior counselor
18 to the Secretary of the Interior.

19 MR. NEWLAND: And Rose.

20 ROSE: Good afternoon, everyone.

21 (indiscernible)

22 MR. NEWLAND: Thank you, Rose. So this

1 is most of our team here in the Office of the
2 Assistant Secretary for Indian Affairs. I see that
3 we're joined Deputy Solicitor Ann Marie Bledsoe Downs
4 on this consultation as well. And Ann Marie, I don't
5 know if you want to say hi to everybody.

6 MS. DOWNES: Sure. Real quickly,
7 Bryan. Ann Marie Bledsoe Downes member of the
8 Winnebago Tribe of Nebraska. I'm really thrilled to
9 be here with you all. I'm going to be here for a
10 portion of the consultation. As Kathryn said, it's
11 been really great to get all the feedback we've had
12 thus far. I do another solicitor, Laura, who is going
13 to participate for the whole session, and we're really
14 anxious to get feedback on this important matter. So
15 thank you all. Thrilled to be here.

16 MR. NEWLAND: Thank you, Ann Marie. We
17 also have staff from across the Bureau of Indian
18 Affairs here, including Pacific Regional Director Amy
19 Dutschke and I want to give a special shoutout to Liz
20 Appel who is our facilitator and organizer. And,
21 again, there are not enough kinds words in my
22 vocabulary to show appreciation for what Liz does in

1 making Indian Affairs work. All of these consultation
2 sessions, she keeps them organized. She gets the
3 invites out. She helps troubleshoot. She also drafts
4 our regulations and she really does it all for us. I
5 want to acknowledgment Liz and her work.

6 So everybody is here for our
7 government-to-government consultation on the
8 restoration and protection of tribal homelands. This
9 is a government-to-government consultation so we are
10 going to prioritize comments from elected
11 representatives of federal recognized tribes and
12 designated officials from federally recognized tribes
13 and inner-tribal organizations.

14 You all received a Dear Tribal Leader
15 letter from us setting out the framework for this
16 consultation process, and we have divided this
17 process, really, into three broader categories that
18 we're going to focus on as part of the president's and
19 Secretary Haaland's agenda to restore and protect
20 tribal homelands.

21 So that first category is -- relates to
22 the land-into-trust process and we've asked you four

1 questions to help guide our discussion and your
2 comments to us. The first question is whether the
3 Department's land-into-trust process adequately allows
4 tribes to consolidate land holdings in or near
5 existing reservations. The second question is, does
6 the Department's land-into-trust process allow tribes
7 to establish homelands for landless tribes. The third
8 question is, how can the Department improve its land-
9 into-trust process to facilitate a protection of
10 sacred sites, conservation, and the exercise of civil
11 and criminal jurisdiction. The fourth question under
12 the land-into-trust process category is, specific to
13 Alaska, we have asked how the Department can
14 adequately account for factors in (indiscernible)
15 trust process are unique to Alaska.

16 We've also asked two questions about
17 leasing and rights of way. The first is whether the
18 Department's existing regulations governing
19 agricultural leasing on Indian lands are adequate to
20 protect the interests of tribes and Indian land
21 owners. The second question we have asked is, are
22 there any changes needed to the Department's leasing

1 and rights of way procedures to clarify taxing
2 jurisdiction in Indian country and to promote economic
3 development in Indian country.

4 We've asked three questions regarding
5 sacred sites and treaty rights. The first is, what
6 steps can the Department take to ensure that tribes
7 have the ability to protect their sacred places and
8 access those sites to exercise religious rights. The
9 second question under this category is, what steps can
10 the Department take to protect the exercise of off-
11 reservation treaty rights, including habitat for
12 treaty resources. And the third question is, what
13 actions can the Department take in relation to other
14 agencies to ensure the protection of sacred sites and
15 treaty rights. And finally, we've asked a broader
16 question regarding, what is the most pressing need for
17 protection and restoration of tribal homelands that
18 our office can help address.

19 In addition to these consultation
20 sessions, we are keeping the line open for written
21 comments until next Friday, November the 5th. We also
22 intend to hold an additional session aimed at getting

1 feedback specific to Alaska from tribes in Alaska. We
2 had some difficulty connecting with many folks up
3 there. We want to make sure that we are getting
4 feedback, so please stay tuned for an additional date
5 in this consultation process.

6 And before I turn this back over to Liz
7 Appel to open the floor up, I just also want to note
8 that the federal government under President's Biden's
9 administration is conducting a lot of consultations
10 and listening sessions around tribal homelands right
11 now. Earlier this morning, I participated in a
12 consultation with Chair Brenda Mallory from the
13 Council on Environmental Quality relating to
14 President's Biden's America the Beautiful initiative
15 which is the president's initiative to conserve 30
16 percent of the lands and waters in this country by the
17 year 2030.

18 At the same time, the Department has
19 been engaged in tribal listening sessions on how to
20 make the Land and Water Conservation Fund programs
21 more accessible to Indian country and making sure that
22 we are facilitating tribally led conservation efforts.

1 These are all related and they really signal, not just
2 the Indian Affairs' commitment and not just the
3 Department's commitment, but the administration's
4 commitment to work on restoring and protecting tribal
5 homelands and facilitating tribally led conservation
6 efforts. And I wanted to raise that with you here
7 just to invite you all to comment and participate in
8 those consultation and listening sessions as well.

9 So with that, I'm very grateful for
10 your time. We know how busy you are running your
11 tribal governments and taking care of your people. So
12 we want to make this time valuable and we have our
13 whole team here to listen. Liz, do you want to get us
14 started?

15 MS. APPEL: Sure. And as a reminder,
16 this is a formal government-to-government tribal
17 consultation so we ask that you comment only if you
18 are a tribal leader or a designated representative of
19 the tribe. And if you would like to make a comment,
20 please press the raise hand icon at the bottom of the
21 screen or if you're joining us by phone, please press
22 star-9 to raise your hands. And our first comment

1 comes from Henry Cagey.

2 MR. CAGEY: Can you hear me? Oh, good.
3 Okay. Well, good morning, everyone. My name is Henry
4 Cagey with the Lummi Nation, and, you know, as far as
5 going down the line of these issues on land-into-
6 trust, you know, one of the things that I've noticed
7 in the years that we've been trying to get land-into-
8 trust, it's been pretty difficult to provide all the
9 documentation that goes into it an application.

10 You know, one of things I think that I
11 would like to recommend is that, you know, there's a
12 lot of unnecessary things that could be eliminated.
13 You know, and the surveys, the things that we need are
14 basic ones, but the other ones -- the economic
15 information or the environmental information -- all
16 could be put back on the tribe because a lot of the
17 environmental things that -- if there's something
18 wrong with the land there, it's going to be our job to
19 clean it up, not yours, you know.

20 So these restrictions that you put on
21 the environmental things in an application should be
22 loosened up and put it right back on us so that if

1 there's a oil spot on the land and -- we'll clean it
2 up, you know. But putting it in the trust. It took
3 us 15 years to get one parcel land at the Gooseberry
4 Point which had a gas station on it, but it took 15
5 years to get it into trust which took way too long.

6 You know, the other ones that we'd like
7 to see is for the homeowners. You know, the
8 homeowners that buy land on the reservation, it's
9 important but with a lot of it, there's not enough
10 money for surveys. There's not enough money for
11 appraisals, and the private homeowners that we have
12 for Lummi have a hard time, you know, mustering up the
13 money to pay for those things.

14 So there should be some different ways
15 to put land-into-trust for the tribal membership
16 because right now, it all goes to the government. The
17 members really need some better support in buying land
18 on the reservation.

19 The leasing right of ways, yes, we
20 support the taxation area of that code. We do have a
21 code ourselves, but the big challenge we're having is
22 still the states seem to feel that, you know, they

1 still have jurisdiction over our property, and these
2 leasing regulations are very clear. You know, what
3 we'd like to recommend is that some other parts of
4 this taxation could be added, you know, like the
5 Trader Status Act regulations should be updated.

6 You know, we're struggling right now
7 with the state on a fuel tax with Cougar Den Fuel.
8 We're selling Cougar Den Fuel right now and the state
9 seems to feel they have jurisdiction in regulating the
10 sales of a trade agreement with we made with Yakima to
11 sell fuel. And that's still pending. I think the
12 state is not going to give up even a Supreme Court
13 victory is very clear that they lost, but they still
14 feel that these transactions (indiscernible) fuel with
15 Yakima still needs to be regulated which we don't
16 understand.

17 The taxation should be cleared up a
18 little bit stronger and if we could push back the
19 states a little harder on these taxes -- you know,
20 we'd like to have more discussion around that. And we
21 do have some documentation to provide you with -- a
22 treasury report that we worked around dual taxation.

1 And that report was put together by the advisory
2 committee with Treasury, and we'd like you to take a
3 look at it if you haven't read it. It does cover a
4 lot of these things around taxation and dual taxation.

5 I think the sacred sites on the
6 reservation -- around the reservation -- it's really
7 hard to gauge all these things that happen around us
8 on sacred sites. I've watched it for years. You
9 know, it's really challenging for tribes to drop
10 everything when a big project comes to us. You know,
11 a lot of these things that we see are important we
12 know, but, you know, dropping all the staff time and
13 time that goes into these things, there should be some
14 way to get these things mitigated a lot better and
15 clearer so the staff is compensated for all its time
16 it does to review these projects that happen. And
17 sometimes they pay for it, sometimes they don't on
18 these projects.

19 So a lot of times if it's important to
20 the nation, we'll drop everything and, you know, put
21 all the hours behind that, but, you know, these
22 projects take up a lot of our time. And these

1 developments take up a lot of our time.

2 But the things for Lummi is our treaty
3 rights. You know, the treaty rights are really
4 important to that. As you know, we submitted a lot of
5 different things around treaty protection, and I'll
6 remind you that we did submit something around treaty
7 protection with the executive order I believe we
8 submitted a few months back. And we'd like to
9 continue that review of that executive order we want
10 around protecting treaty rights.

11 And it started around with Northwest
12 Indian Fish Commission. Mr. Billy Frank started that
13 work. And as you look at it and understand the treaty
14 protection, it's something that really is important to
15 everyone in our corner around salmon protection and
16 habitat. So that executive order is something that
17 we'd like to see.

18 The overall think I think we'd like to
19 see is the -- is untying our hands on creating some
20 sort of initiative to regulate our own tribal lands.
21 And what we submitted a few years back to Congress --
22 with Congressman Don Young's hearing, we submitted a

1 request to look at restrictive fee, meaning that the
2 tribe should have a lot of its own authority to decide
3 its own permitting process and things in place that
4 we'd like to basically allow ourselves to do our own
5 permitting, our own regulating without the other
6 agencies overlooking our shoulders.

7 I think the -- where we can compare it
8 to is what the Seneca Nation is doing. They have
9 restricted fee and all of the decisions rest with the
10 leadership, and that's something that we'd like to
11 have more of in our corner is these regulations of
12 things should be loosened up and let the tribes take
13 the responsibility and the ownership in developing its
14 own land because we have to get a permit for the feds
15 for just about everything. And at some point, we'd
16 like to exercise our sovereign authority to issue our
17 own permits.

18 But still, that's not the case so we'd
19 like to resubmit that restrictive fee testimony that
20 we provided. We'll provide that to you in writing.
21 And I think that's about it, Bryan.

22 MR. NEWLAND: Thank you so much for

1 your comments, Mr. Cagey. They're very helpful,
2 providing specific and clear recommendations for us
3 and it really makes our work easier.

4 MR. CAGEY: The last thing, Bryan, is
5 poverty. You know, one of the things that you guys
6 haven't figured out is that these land things that
7 hold us back is creating a lot of poverty. And people
8 have no idea what -- their lands is creating this
9 poverty problem. People have land but they can't do
10 anything with it. Undivided land, probate are causing
11 a lot of the things that we see -- the (indiscernible)
12 on the reservation is probate backed up 15 years for
13 some families. And it's creating a lot of poverty and
14 homelessness for a lot of our families.

15 MR. NEWLAND: Thank you. Thank you for
16 raising that.

17 MS. APPEL: Okay. Our next comment
18 comes from Council Member Napeahi and I'm sorry if I'm
19 mispronouncing that.

20 MS. NAPEAHI: Hi. I'm Misty Napeahi,
21 Tulialip Tribal Council member. I'm involved in this
22 consultation today because our chairwoman, Teri Gobin,

1 and our vice-chair, Glen Gobin, are on their way to
2 the Washington State Centennial Accord. But I wanted
3 to start off by congratulating Bryan Newland on his
4 confirmation. We're so happy that it's official and
5 thankful that you're in this position.

6 Just to give a little bit of
7 background. The Tulialip reservation today is 22,000
8 acres. In the 1940s, we only held 1700 acres because
9 of various federal termination policies that caused us
10 to lose a majority of our reservation. Since we
11 started gaining, we worked very hard to purchase our
12 reservation. Considering we have a small reservation
13 with a lot of wetlands, there's not a lot of
14 possibilities for housing, but we have worked very
15 hard and we currently own 15,000 acres.

16 But that's not doable if the BIA is not
17 up and running as it's supposed to be because it puts
18 everything -- everything stops when we can't put our
19 land into trust. And so as you know, Tulialip along
20 with five other tribes here in the Pacific Northwest
21 reached out to you several times regarding the
22 significant billings of the Bureau of Indian Affairs

1 Northwest Region and more specifically, the Puget
2 Sound agency to process trust realty transaction and
3 other matters.

4 These issues started in 2017. The
5 delays were related to fee to trust applications, but
6 included trust-to-trust acquisitions, leases,
7 mortgages, request for appraisals, gift deeds, and not
8 gaining fee to trust acquisitions. This -- these
9 issues have not only impacted the tribe, but they've
10 impacted, like Henry was speaking to, individual
11 tribal members who have forked over thousands and
12 thousands of dollars to get their land put into trust
13 and now their surveys are no longer any good. Their
14 appraisals are no longer any good, and they will be
15 asked to pay more money to bring all of those -- to
16 get all of those updated and they may not have the
17 money to do that. And so they basically threw their
18 money into a black hole with no return.

19 The delays -- you know, they've had a
20 significant impact on all of us. Our tribal staff has
21 had to expend substantial time and energy shepherding
22 transactions through the Puget Sound agency to prevent

1 items like these from falling through the cracks
2 before expiration, but I don't think we'll been
3 successful in all areas.

4 We're happy that there seems to be some
5 movement in our local offices. We've hired our -- you
6 guys have hired Janine Van Dusen. She seems -- and
7 six other workers to help her try to get the ball
8 rolling, but knowing that, she was left with so much
9 to process. We want to make a request that if there's
10 additional resources that need to be put forward to
11 help process these applications, we request that you
12 take those into consideration so that we can get this
13 all taken care of.

14 The Tulialip tribes were also concerned
15 about the continues help of the off-reservation
16 natural and cultural resources that our treaty and
17 cultural rights depend on. Within the Point Elliott
18 treaty seat of territories, many of the areas we rely
19 on for treaty hunting and gathering and for the
20 cultural and spiritual purposes lie within the federal
21 public lands. These areas are under increasing human
22 pressure as the population here in western Washington

1 has grown dramatically over the past decade along with
2 increasing human pressure and crowding on public
3 lands.

4 A mounting body of research includes
5 Tulialip's own research confirms what our tribal
6 members are seeing across the landscape. Recreational
7 activities, both motorized and non-motorized, have
8 significant ecological impacts. Also, the
9 recreational activities directly and indirectly impact
10 the range of health of fish and wildlife, degrading
11 upland, riparian, and coastal habitats. They damage
12 vegetation communities, compromise cultural and
13 spiritual sites, and result in human presence and
14 disturbance throughout even the most remote areas of
15 public lands in treaty areas.

16 Although we understand that benefit of
17 these outdoors recreational activities and that they
18 provide residents and visitors to Washington state,
19 you know, things to do in these areas, the -- it's
20 violating our treaties. These are sacred areas and
21 the fish and wildlife and plants and habitat and
22 places that these rights depend upon need further and

1 improved protection.

2 I also wanted to talk about what Henry
3 brought up about the land poverty. I don't know if
4 the BIA understands exactly what's happening to our
5 Indian people when their land is so highly
6 fractionated and we can't get a response from the BIA.
7 This is a serious concern. Also, the fact that non-
8 tribal members build their wealth -- generational
9 wealth -- through real estate, through the equity in
10 their homes where tribal people don't have any of
11 those resources. We don't have -- if we have equity
12 in our homes, there's no way for us to access that
13 equity to build capital and to build generational
14 wealth as individual tribal members.

15 I hope the BIA takes a serious look at
16 that and see how you're leaving the indigenous
17 communities of this country behind. And I want to
18 thank you for taking time to listen to Tulialip's
19 concerns. We remain committed to working with our
20 federal partners and we will be submitting more
21 detailed comments by November 5th on these issues but
22 also on treaty and sacred site issues. Thank you.

1 MR. NEWLAND: Thank you, Councilwoman -
2 - can you help me with your name one more time? I
3 don't want to forget it.

4 MS. NAPEAHI: Napeahi.

5 MR. NEWLAND: Napeahi. All right.
6 Thank you.

7 MS. NAPEAHI: Thank you.

8 MR. NEWLAND: Appreciate your time
9 today.

10 MS. APPEL: And our next comment comes
11 from Chairman Atteberry.

12 MR. ATTEBERRY: ????? Hello, everyone
13 and thank you for being here today in this
14 consultation process. I know everybody is very busy
15 and special thanks to our neighboring tribe and Vice-
16 Chairman Myers for the opening blessing.

17 So real quick, the land-into-trust -- I
18 did have an opportunity pre-COVID to talk about the
19 land-into-trust and at the time, the issue was, there
20 was a big backlog, that there was a lot of land-into-
21 trust applications in there. And so we offered a
22 possible resolution to that, was land-into-trust for

1 ceremonial sites, sacred sites, housing, and medical
2 clinics should be expedited. They should be put to
3 the top of the list.

4 We understand that there are complex
5 issues involving some land-into-trust issues, but
6 land-into-trust issues for ceremonial sacred sites,
7 housing or medical clinics should be put at the top of
8 the list and expedited. They're what I refer to as a
9 no-brainer.

10 The barriers that we face and -- let's
11 see, I think it was the last question -- most pressing
12 need for protection and restoration of tribal
13 homelands -- we receive a lot of support and great
14 support from our federal and state partners. We need
15 to find a way to remove the barriers that are set
16 forward by local governments. We need to have
17 consultation -- meaningful consultation.

18 I don't know about other tribes. We
19 sometimes get a refusal to meet our requests --
20 meaningful consultation meaning we enter into it with
21 consent on how to move forward with the project.
22 We've experienced before that we did have some

1 consultation but when we walked away from the table,
2 they did what they wanted anyway.

3 Get rid of the meaningless litigation.
4 Oftentimes, the barriers are put up to enter into
5 litigation to try and block land-into-trust for the
6 Karuk tribe. We've experienced an issue where we
7 wanted to put .9 acres into trust for our -- expansion
8 of our medical clinic. It was blocked for two to
9 three years and all it did was cost the local
10 taxpayers a lot of money.

11 So enter into these consultations with
12 tribes so we can help manage our own Aboriginal
13 territories. For a lot of tribes -- and I will speak
14 for the Karuk tribe out here in northern California
15 (indiscernible) in forested areas -- we went from one
16 end of the spectrum to the other. We went from going
17 after the economy first. When there was logging going
18 on here, it was going after the big trees -- the
19 "money trees" -- and as you know, I don't get into it.
20 The forests were left in a mess. When they built road
21 in there they covered up the streams and the creeks
22 that are rivers. There was a myth that the tribe was

1 opposed to logging. We weren't. We were opposed to
2 the way that it was being done.

3 The tribe's stance was ecology first
4 instead of economy first. There's a sustainable
5 economy out there if the tribes have a seat at the
6 table and are able to bring out that economy that is
7 there, thinking ecology first and economy second. The
8 economy will follow so.

9 Yeah, and in a nutshell, being able to
10 allow the tribes to comanage their Aboriginal
11 territories and remove the local government's
12 barriers. (Another Language Spoken) Thank you.

13 MR. NEWLAND: Thank you, Chairman
14 Atteberry. It's great to see you again and hear your
15 comments today. Appreciate your time.

16 MS. APPEL: Our next comment comes from
17 Chairman Wooten.

18 MR. WOOTEN: All right. ?????? Good
19 morning. I'm happy to be here. It's almost like the
20 northwest here is dominating this conversation at this
21 time, but you heard from my counterparts already.
22 Those -- all their issues are our issues with treaty

1 rights.

2 I just want to talk about the process.
3 I don't know if you know but we've got several
4 applications in the hopper and have been for many
5 years, and so to me, the process does not work -- my
6 apologies. But I really think that improvements need
7 to be made. You heard a little bit about the costs of
8 maintaining these applications from the tribe side.
9 That is a burden for us. You know, most of these have
10 EAs or EISs that are extremely expensive and it's just
11 difficult to maintain the files while we wait
12 indefinitely, not knowing when these applications are
13 going to be processed. So if there's any way to
14 streamline the recently streamlined process, I guess,
15 it would be helpful for us and our counterparts up
16 here in the Pacific Northwest.

17 Again, I just think that process is
18 broken. We need to fix it. As far as sacred sites
19 go, for my tribe, all of our sacred sites are not on
20 tribal lands now so that's a real issue. We're
21 continually trying to acquire lands, but until we can
22 get the fee to trust process working again, you know,

1 we're just buying land to hold on to and pay taxes.
2 And, you know, that taxation issue is whole other
3 issue.

4 But I do want to say that there is
5 definitely room for improvement here and we want to be
6 a part of it. So if there's any way we can help
7 streamline this process, we'd be glad to help. So,
8 again, thank you for your time. And all the tribal
9 leaders, you heard already that the Centennial
10 Accord's going on right now with the governor of
11 Washington state. So I felt like this for my nation
12 is a much more important call to be on than the
13 Centennial Accord at this time. ?????

14 Thank you. I look forward to other
15 comments from my counterparts. Thanks.

16 MR. NEWLAND: Thank you, Chairman.
17 Appreciate your time today.

18 MS. APPEL: Our next comment comes from
19 Chill Water Bay Indian Tribe.

20 MR. BLAKE: Good morning. My name is
21 Joel Blake. I'm the vice-chairman of the Chill Water
22 Bay Indian Tribe. I offer comments today of the

1 urgent need of my tribe to relocate our reservation in
2 the face of unprecedented climate change and related
3 impacts. To accomplish this task of moving our
4 community uphill, it will not only require a large
5 investment of fiscal resources but will require the
6 Department of Interior to approve our tribe's trust
7 applications.

8 A little bit of background. The Chill
9 Water Bay Indian Tribe currently faces an imminent
10 crisis where our reservation land base exists entirely
11 within a tsunami zone and coastal erosion that is
12 rapidly disappearing into our Pacific Ocean. The
13 federal government has an obligation to allow the
14 tribe to continue to exist. Failure to act will leave
15 the tribe without a land base.

16 With no reservation or trust land, the
17 tribe will disappear off the map. History is a harsh
18 teacher, that when a tribe is taken out of its land
19 base, the tribe does not exist for long. Similar to
20 most coastal tribes, we are stewards of the great
21 ocean. Our lands are us and we are our lands and
22 waters.

1 If things continue to change due to
2 climate instability, flooding, habitat loss,
3 diminished drinking water, incapacity to engage in
4 subsequent activities, we (indiscernible) nowhere to
5 go. The Chill Water Bay tribe -- the threats are
6 real. We face every day, but we see the opportunity
7 to now build our community with long-term resilience.

8 Impending erosion, climate change, and
9 flooding will likely leave a bulk of our reservation,
10 including all current buildings, under water within a
11 generation or perhaps seven sooner. A single tsunami
12 event would take out every home, our government, our
13 economic development opportunities, and what defines
14 us as Chill Water people. The window of opportunity
15 to get this land placed into trust is now.

16 Recognizing this, we have used our limited resources
17 to begin to acquire private lands adjacent to the
18 reservation that are on higher grounds that will allow
19 us to create a new permanent land base.

20 But this is a raw undeveloped land.
21 There are only dirt roads. We need to place this land
22 into trust quickly so that we can start the project of

1 relocating the community to a safer, more sustainable
2 location. We request -- the tribe is requesting
3 administration support for the trust transfer of
4 existing tribal fee lands it has purchased.

5 The tribe and acquired and the U.S. has
6 placed into trust two additional upland tracks. The
7 tribe also owns title to the six additional tracks of
8 land that is purchased with our own money, consisting
9 of 2400 acres. This should be treated as a mandatory
10 acquisition and processed without delay. All this
11 land, with the exception of one tiny track that
12 includes tribal offices, is prior timber or open ranch
13 land with no roads, system utilities, water,
14 sanitation, infrastructure or other characteristics
15 that make it simple to build out of the reservation.

16 Every passing day brings closer the day
17 that the current reservation will be underwater. We
18 are currently working on securing adequate financial
19 resources to relocate our tribal community to the land
20 (indiscernible). Should funding be secured, it is
21 adequately as essential for DOI to essentially help us
22 place that land into trust that the relocation can be

1 accomplished before it is too late.

2 Some of our recommendations. Dozens of
3 tribal nations in the Pacific Northwest, Alaska,
4 throughout the country, also face imminent threats
5 from the current impacts of climate change. The Biden
6 administration has firmly committed to address climate
7 change as key components of national security;
8 therefore, we recommend that the DOI/BIA develop and
9 expedite land-into-trust process for tribal nations
10 impacted by climate change to relocate to sustainable
11 locations.

12 This process should be created in close
13 collaboration with tribal nations. Specifically, our
14 recommendations are as follows: Expand the
15 reservation boundaries to include these borders, trust
16 land base, balance national resource and environmental
17 (indiscernible) consists with each tribe's needs,
18 propose robust funding for tribal relocations efforts.
19 Again, I want to thank you guys for allowing me to
20 speak and we will put our comments in writing by
21 November 5th. Thank you.

22 MR. NEWLAND: Thank you, Vice-Chairman,

1 for sharing that and highlighting your tribe's
2 experience with climate change and rising sea levels.
3 I know we -- I had an opportunity to speak with
4 representatives from your tribe earlier this year
5 about this very issue and it's something that -- not
6 only with your tribe but others in a similar position
7 -- something that's getting a lot of attention here.
8 But I appreciate you taking the time to raise it.
9 Thanks.

10 MS. APPEL: Our next comment comes from
11 Mary Pavel.

12 MS. PAVEL: Good afternoon, everybody.
13 I'm here on behalf of the Puyallup Tribe of Indians.
14 As most of you know, the Puyallup Tribe of Indians is
15 located in the northwest in the state of Washington.
16 They are -- due to their settlement in 1989, they have
17 approximately 1,000 acres of land -- a little more now
18 since then -- within -- including lands in the Port of
19 Tacoma. The reservation consists approximately of 28
20 square miles within Pierce County and it includes a
21 number of parts of cities including parts of the city
22 of Tacoma by Puyallup and a number of other municipal

1 areas. So it's a municipal -- it's an urban area.

2 And one of the issues that the Puyallup
3 tribe would like to emphasize and it is something that
4 Councilman Cagey emphasized is that issue regarding
5 environmental compliance. The Puyallup tribe, because
6 it's an urbanized area and a lot of their lands has
7 been restored or within their territory, within their
8 reservation, was contaminated by industrial
9 activities, whether it is copper smelting or logging,
10 mill activities -- a lot of their homelands were
11 contaminated by activities that were encouraged and
12 promoted by the federal government, and now that the
13 tribe is in a position to acquire these lands, the
14 federal government is not willing to restore these
15 homelands back to them and that is an issue that they
16 really want to work with the United States with.

17 Another issue that is of deep concern
18 and it's actually been a long-term concern of the
19 Puyallup tribe and definitely want to work with the
20 agency is staffing. There's just a lack of human
21 capital within the Bureau of Indian Affairs and Puget
22 Sound agency. Certainly, in the Portland region,

1 we've had a number of retirements of really important,
2 competent, capable people.

3 And it's a long-term fix, but we want
4 to emphasize your leadership, Assistant Secretary, is
5 recruiting people back into federal service because
6 the work that gets done is so important on your
7 shoulders, and any way that the Puyallup tribe can
8 help you in recruiting really good people to federal
9 service to do this hard job, we want to do.

10 One of the other issues that we wanted
11 to talk about is -- and will submitting written
12 comments -- is restricted covenants, and that's
13 related to -- we'll have folks who want to contribute
14 land for conservation efforts or land that are
15 important for culture resources, and they're willing
16 to do it as long as the tribe agrees to have a
17 restricted covenant that the land will remain
18 undeveloped or that the land will be, you know, held
19 for that purpose of cultural uses. And the tribe is
20 encountering barriers to putting those kind of
21 important lands into trust because of those
22 restrictive covenants on the title that is going with

1 the individual who is gifting the land to the tribe.
2 So as we think about how tribes are seeking to return
3 these homelands and these important lands that are
4 important for cultural or conservation uses, we need
5 to think about whether, you know, the fact that these
6 restricted covenants are not (indiscernible) with the
7 intended use for the tribe.

8 Final -- related to that is just making
9 sure that, you know, going through 25 CFR 151 is --
10 the uses and, you know, there's -- having land just be
11 there for it to be sacred and for sacred uses isn't
12 really a stated purpose and that is -- that's a
13 barrier, you know. What are you going to use the land
14 for? We're not going to use the land. We're going to
15 let her be. We're going to let her be. And so that -
16 - that has to be a valuable use because as we all
17 know, that's a valuable use for us, just to be.

18 So thinking about those issues as
19 you're moving forward in this. And again, I think
20 Henry provided a lot of the kind of procedural and
21 certainly, Chairman Wooten, the kind of -- you know,
22 process steps that you guys, you know, can emphasize

1 and work on in improving this. The mechanics of
2 taking the land-into-trust.

3 Finally, I know you guys heard this
4 last week is, one issue that can be taken care of
5 pretty quickly is this requirement that got put on
6 about a year and a half ago, maybe two years ago, that
7 every tribe had to prove their 53:08 status. And
8 that's just -- you know, it used to be if you were on
9 the list, you were okay, and you know, they just
10 checked that box and you moved on. Now, you know, I
11 know the (indiscernible) are on. We can remove that
12 one barrier, that one obstacle. That will be
13 important in hopefully moving along the process a
14 little bit faster.

15 So thank you guys. Thank you for
16 indulging a lawyer today and my tribal leaders are,
17 again, as you guys heard, in the Centennial Accord.
18 So appreciate you all. Thank you. Bye-bye.

19 MR. NEWLAND: Thank you, Mary. I
20 appreciate your comments. I just want to highlight
21 two things that you said that I'm really grateful that
22 you raised in your comments.

1 Discussed these restrictive covenants
2 as an issue. We are encountering realty legal issues
3 related to restrictive covenants more frequently now
4 in a number of different contexts, including where
5 there are efforts by organizations and lawyers trying
6 to burden lands with covenants that would -- are
7 intended to prevent them from going trust status and
8 then also, as you noted here in the context of
9 conservation.

10 And that's something that we're giving
11 a lot of thought to. So if the Puyallup tribe and
12 others have written comments to provide us some
13 guidance on that and recommendations, we would really
14 welcome submission of those comments.

15 You also noted the frustration with the
16 fee to trust process on stating your intended use and
17 how challenging that can be for conservation purposes.
18 That is something that we are already giving a lot of
19 thought to. You hear me off to top reference the
20 president's conservation agenda. We want to make sure
21 that the fee to trust process works to facilitate
22 tribal led conservation efforts. And to do exactly

1 what you've just highlighted is to -- the way our
2 regulations and our process are set up right now, it
3 presupposes that lands will be placed into trust for
4 some sort of development, and it makes it challenging
5 to review applications to place land-into-trust for
6 conservation purposes. And we are already giving a
7 lot of thought to how we can address that, and again,
8 if you have written comments to give us some
9 direction, we would invite you submit them.

10 But, thanks, Mary.

11 MS. APPEL: And our next comment comes
12 from CEO Will Micklin from Ewiiaapaayp Band.

13 MR. MICKLIN: Thank you. Will Micklin,
14 CEO Ewiiaapaayp Band, (indiscernible) Indians in East
15 (indiscernible) County representing Robert Pinto, Sr.
16 We are an (indiscernible) reservation. Making
17 testimony from the chair is sometimes difficult so I'm
18 representing him in this instance. Thank you for the
19 opportunity to comment.

20 Just wanted to go over a few
21 overarching issues. I'll be as brief as possible
22 here. One -- and this is a preamble to some of the

1 specific comments I'll make but -- it's difficult
2 enough as you've heard from tribes in trying to comply
3 with the existing processes and procedures, the
4 administrative duties, of the tribe in making an
5 application for discretionary acquisition of fee land
6 into trust status. The rules are arcane. They are
7 difficult to -- for a tribe to comply with and with
8 the lack of resources makes the duration and cost of
9 the effort extensive.

10 However, in the last administration,
11 that was made ever more difficult because the
12 administration retreated from the accepted
13 interpretation of the regulations and precedent that
14 supported those regulations and decisions up to that
15 point. Because of these significant, I believe, error
16 and arbitrary and capricious decisions that were made
17 in 2019 and 2020, I heartily -- we heartily recommend
18 the Office of the Assistant Secretary review those
19 decisions from 2019 and 2020 to determine if indeed
20 what appears to us to be significant error in those
21 holdings and perhaps reconsideration where appropriate
22 -- the -- and the substantial areas that I think were

1 misapplied in the prior administration and could --
2 need some attention in the current administration if
3 we are to add to the trust to state and make it
4 productive as is the burden on our trustee in our
5 government-to-government relationship.

6 One is the attention on the need for
7 land. It is always -- it's been the precedent that a
8 tribe need not be suffering financial difficulties to
9 need more land. And so the interpretations that
10 courts have supported in this are many and courts have
11 uniformly rejected the need for some kind of
12 particularized acre-by-acre justification for trust
13 acquisition.

14 The generalize information that a tribe
15 portrays under 151.10(b) to express a tribe's needs
16 include generally that the acquisition serves the
17 tribe's interest have been the basis for approvals in
18 the past -- were strayed from in the prior
19 administration, but I think need be better supported
20 in the current administration. The purposes for which
21 the land will be used in the BIA analysis of this
22 factor should discuss present issues of the property,

1 any record of the tribes proposed plan for use of the
2 property, and any other facts relevant to how the
3 proposed land acquisition will be used. Nothing in
4 the (indiscernible) -- nothing in underlying
5 regulations authorized the Department to impose
6 restrictions on the tribe's use of land which is taken
7 into trust.

8 I would also like to turn your attention to
9 the NEPA review where the BIA has a duty to analyze
10 the reasonably foreseeable environmental impacts of
11 the proposed decision. The BIA is not required to
12 make speculative inquiry concerning every possible use
13 that might arise sometime in the future. The
14 environmental document should not be found deficient
15 simply because the agency failed to include every
16 alternative device and thought conceivable by the mind
17 of man. I like that quote that's from Neighbors for a
18 Rational Development, a IBIA precedent. And it
19 fitting because the definition for a reasonably
20 foreseeable under statute and regulation was in the
21 prior administration truncated to excise from their
22 rulings the need for evidence -- hard evidence -- to

1 dispute a tribe's rationale for that -- for defending
2 reasonably foreseeing meritless reasoning.

3 And the -- I think I've gone on long
4 enough as these are examples of key considerations.
5 We'll provide a definitive -- more definitive
6 information in writing, but I do wish to turn your
7 attention to the Interior Board of Indian Appeals, the
8 three-member judges. The last (indiscernible) I saw
9 from 2016 was that decisions ordinarily take 18 months
10 from receipt to resolution. That's an average. It
11 can take over 3 years. In reviewing those decisions,
12 48 in 2020, I believe. Forty-four decided in 2019. A
13 few less in 2018. Those are substantially estate
14 probate decisions with a few fee to trust decisions in
15 them.

16 Many of those that are -- involved trust to
17 state are remands or releases to the assistant
18 secretary by request. It is very difficult to
19 comprehend that tribes need rely on appeal to IBIA
20 which could take up to over three years before you get
21 a decision which is at the -- on top of the
22 administrative timeline for reaching the IBIA. So

1 generally, two to three years for the administrative
2 process. If you add two to three years on to the IBIA
3 process, you can understand why tribes are complaining
4 about the cost in time and effort. Just briefing the
5 IBIA on an appeal is a substantially expensive
6 proposition for a tribe.

7 All of these are really inappropriate
8 obstacles that unnecessarily waylay the interests of a
9 tribe in rebuilding its trust estate and making it
10 productive, especially when we consider that the IBIA
11 is in the -- in practice, allowing really any party to
12 join an appeal and not exercise in substantial
13 discretion in determining whether standing should be
14 granted. And that is, I think, substantially
15 important. There are provisions within the IBIA
16 regulations in 25 CFR(2) and 43 CFR(4), I believe,
17 that provide a standard for standing.

18 And in practice, I think it seems to be
19 that none of those are exercised to the extent
20 provided in regulation. And it would be, I think, a -
21 - if there are no resources to be given to IBIA -- and
22 I know we pleaded for resources to IBIA in the past

1 and the last administration said they were going to
2 revitalize IBIA and really nothing's happened. In the
3 absence of additional resources, we should at least
4 follow the regulations and apply them accordingly
5 which would provide substantial benefit to tribes in
6 reducing time needed and the number of appeals to be
7 considered by the IBIA and maybe they can get these
8 sooner and in greater number than they have to this
9 extent.

10 So thank again for the time, and we'll
11 provide written comment. Thank you.

12 MR. NEWLAND: Thank you, Mr. Micklin.
13 I appreciate your specific guidance on this. I know
14 we have a lengthy speaker's queue here. I just -- we
15 are an hour in and we've already heard from a number
16 of folks and I just want to pause and reflect on some
17 key themes that we're hearing in this consultation
18 today and note that we've heard consistent comments
19 about the need for the BIA and for the Department to
20 invest more resources into our capacity to review fee
21 to trust applications.

22 In addition, to any policy work, folks

1 have stressed how important it is that we have the
2 ability to move these things along and not create
3 bottlenecks, and we've heard that in other
4 consultation sessions in the past couple weeks on this
5 topic.

6 Have heard about the impact of the
7 process on homeownership and the cost to tribes and
8 individuals and have, Will, as you just mentioned
9 about the importance of the IBIA and the appellate
10 process here and how that impacts land-into-trust. So
11 these are some of the themes that are already coming
12 out as well as making sure, you know, Chairman
13 Atteberry and Mary Pavel have noted that we need to
14 have a process that actually facilitates tribes
15 putting land-into-trust to protect and conserve for
16 cultural resources and other purposes.

17 So at that, Liz, we go on to our next
18 speaker, please.

19 MS. APPEL: Sure. Our next comment
20 comes from Governor Toledo.

21 MR. TOLEDO: Can you hear me?

22 MS. APPEL: We can. Thank you.

1 MR. TOLEDO: Good afternoon, Honorable
2 Assistant Secretary Bryan Newland and Interior
3 leadership, honorable governors, presidents, chairman,
4 congress representative or -- and also tribal leaders.

5 I'm Governor Michael Toledo, Jr., of
6 the Pueblo Jemez. I was born and raised in Jemez
7 Pueblo speaking Towa and everyone else around me being
8 taught -- speaking the only Towa language in the
9 Pueblo of Jemez. Also singing about these mountain
10 ranges that we have out there, (indiscernible), as the
11 crow flies, about 45 miles north of us
12 (indiscernible). And Mount Taylor, about 145, 150
13 miles southwest of Albuquerque or (indiscernible) and
14 also the mountain ranges of Mandalana, Manzanos and
15 then you have Sandia Peak and then also the Sangre de
16 Cristo Mountains, Mount (indiscernible) and then you
17 come to a mountain range whose name is Pueblo which is
18 why it's called (indiscernible) Redondo Peak.

19 And everything we do in Jemez, we
20 honor, we cherish our places -- our sacred places, and
21 we have been the stewards of our mountain ranges,
22 Jemez Pueblo. We defended our mountain ranges from

1 the Spaniards and also the federal government. So I
2 would like to comment today on sacred sites and treaty
3 rights section of the framing paper. We would like to
4 be submitting written comments; however, I also want
5 to take a short time today to discuss your question of
6 what steps the Department can take to ensure that
7 tribes have the ability to protect their sacred places
8 and access to all sites to exercise religious rights.

9 The short answer to that, the
10 Department can return more power to the tribes. The
11 tribes are also in the best position to ensure that
12 our sacred places and religious rights are protected.
13 One of our biggest concerns in the National Park
14 Service -- although lands in the National Park Service
15 are largely seen as under protection, there is a dark
16 history of (indiscernible) pristine land without
17 native people. The native people were stewards of the
18 lands long before this agency, and as we all know, the
19 National Park Service intentionally removed and
20 excluded native people from lands with the intent of
21 breaking the sacred lands bonds that we all have for
22 our lands.

1 For many of us our lands are sacred.
2 Places fall within land managed by the National Park
3 Service and we do not see the National Park Service
4 honoring this fact. A threat to our sacred places
5 that we see (indiscernible) the National Park Service
6 bringing in more and more development on trails and
7 thousands of people into national park lands for their
8 outdoor enjoyment and still following the old ideas
9 that parklands do not include native people.

10 Sometimes we have seen the park service
11 integrate tribal of pueblo values or the Department's
12 current tribal directives into park service plans like
13 at the Pecos National Historic Park. But sometimes we
14 have not -- like at the (indiscernible) when you
15 exclude us, you are threatening our relationship with
16 our sacred places, our culture, our exercise of
17 religious rights.

18 We encourage you (indiscernible) to use
19 the tools that you have -- already have at the
20 Department, the plain language of laws, existing
21 executory orders, and other laws to allow tribes and
22 pueblos to manage these National Park Service lands

1 through tribes and pueblo directly through
2 (indiscernible) stewardship and through self-
3 determination contracting.

4 We have seen the federal government put
5 out laws. So we get to the doorstep, the door closes
6 on us. That is unfair. I've seen this too many
7 times. I've been governor three times. I've also
8 served as a traditional leadership so I served on two
9 counsels, one on the secular side and one that's
10 traditional side. And I am also one of the main
11 people in Jemez that carry out traditional, cultural
12 activities.

13 So these are the places that we hold so
14 dearly and also our society leaders -- I believe
15 yesterday Governor Chavarria from Santa Clara also
16 mentioned, these are places that we have to go from
17 medicinal purposes and also he mentioned grocery
18 stores. I belong to a society which is a
19 hunter/gatherer society. All those mountain ranges
20 that I named, we still go. They don't belong to us.
21 They belong to other tribes. We share.

22 So having said that, Honorable

1 Assistant Secretary Bryan Newland, I'm speaking
2 government to government. So I do not want to fall
3 into this rut to where I am pleading to you or
4 pleading to the federal government. I want to be
5 treated fair. So having said, thank you for this
6 opportunity for this consultation and we look forward
7 to working with you on these goals. I'm Governor
8 Michael Toledo, Jr., of Jemez Pueblo. Thank you.

9 MR. NEWLAND: Thank you, Governor
10 Toledo and I appreciate you focusing your comments on
11 protecting sacred places outside of existing
12 reservations as well. That's important feedback for
13 us to get. Thank you.

14 MS. APPEL: Next comment comes from
15 Chairman Norris.

16 MR. NORRIS: Can you hear me?

17 MS. APPEL: Yes, we can. Thanks.

18 MR. NORRIS: Oh, okay. Thank you.

19 Thank you very much. My name is Ned Norris, Jr. I'm
20 tribal chairman for the Tonoho O'oodham Nation here in
21 the southwestern part of the state of Arizona. The
22 nation -- Tonoho O'oodham Nation -- greatly

1 appreciates the leadership of Secretary Haaland and
2 Assistant Secretary Newland and their focus on
3 protecting and restoring tribal homelands and sacred
4 sites. Also, I just wanted to extend congratulatory
5 note and acknowledgment of Assistant Secretary
6 Newlands' confirmation to this position. Thank you
7 and congratulations.

8 Our traditional homelands, cultural
9 resources, and sacred sites were desecrated and in
10 some cases destroyed prior to -- by the prior
11 administration's construction of a border wall. The
12 Interior Department did not appear to play any role in
13 protecting those resources. Our comments today will
14 focus on what the Department can do to mitigate the
15 damage that was done to sacred and culturally
16 important sites and tribal homelands and to prevent
17 this type of destruction in the future. We also will
18 comment on the protection and restoration of federal
19 reserved water rights which are integral to tribal
20 homelands.

21 A little bit about the Tonoho O'oodham
22 Nation. The Tonoho O'oodham Nation has lived in what

1 is now southern Arizona since time immemorial, long
2 before the international border was drawn through our
3 homelands. Our reservation shares a 62-mile border
4 with Mexico and we have members living on both sides
5 of the border. Our ancestral territory includes
6 sacred sites and natural and cultural resources
7 located along the border, including a number of areas
8 under Interior's jurisdiction, namely, Organ Pipe
9 Cactus National Monument, Cabeza Prieta National
10 Wildlife Refuge, and San Bernadino National Wildlife
11 Refuge.

12 In June in response to a letter from
13 Regional Director (indiscernible), we provided the
14 Department with extensive documentation showing how
15 the Trump administration's construction of the border
16 wall resulted in damage and destruction of the
17 Nation's sacred sites and natural and cultural
18 resources. Much of this damage occurred in Organ Pipe
19 Cactus National Monument, including damage to
20 Quitobacquito Springs and Monument Hill, a native
21 burial ground, both of which are sacred to the
22 O'oodham.

1 The prior administration relied on the
2 waiver authority in the Immigration Reform and
3 Immigrant Responsibility Act to waive a wide variety
4 of laws that would otherwise have protected our lands,
5 resources, and sacred site. The Trump administration
6 also repeatedly ignored its obligations to consult
7 with the Tonoho Nation as required by law and policy
8 before taking the actions that damaged our ancestral
9 lands and cultural and natural resources.

10 We appreciate this administration has -
11 - that administration has halted the border wall
12 construction and is committed to government-to-
13 government consultation, but we continue to await the
14 promised consultation on mitigation and restoration of
15 our sacred sites and cultural and natural resources.
16 This consultation and mitigation is all the more
17 important because the federal courts have limited the
18 ability of tribes to protect sacred sites through
19 litigation.

20 With respect to sacred sites, you have
21 asked for our view on what the Department of Interior
22 can do to ensure that tribes can protect their sacred

1 places and resources. We urge the Department to take
2 the following actions: One, provide us with
3 information on the Department's efforts, working with
4 Customs and Border Protection, to evaluate and address
5 environmental cultural resources impacts from border
6 wall construction as stated in the (indiscernible)
7 letter.

8 We understand that Interior and Customs
9 and Border Protection have entered an interagency
10 agreement for tribal cultural monitors for tribes near
11 border wall projects, but we have never been contacted
12 or consulted about this. At a minimum, we request to
13 see the agreement. This agreement should not have
14 been entered without tribal consultation. Interior
15 must coordinate with the Department of Homeland
16 Security to ensure that DHS engages in meaningful
17 consultation with the Nation regarding the use of
18 redirected border wall funds and mitigation to damage
19 done to tribal resources by border wall construction
20 as provided in the Department of Homeland Security's
21 June 2021 border wall plan under the president's
22 border wall proclamation.

1 Interior must take a more assertive
2 role to ensure that DHS conducts many full government-
3 to-government consultation as required by 1:22:43 and
4 DHS tribal consultation policy and President's Biden's
5 memorandum on tribal consultation. For example,
6 Interior should educate DHS officials on the need to
7 conduct government-to-government consultation before
8 decisions are made that will impact tribal lands and
9 resources -- the need to meaningfully consider
10 information and recommendations provided by tribes and
11 the need to recognize the unique history and
12 relationship that tribes located on the border have
13 with the land and natural and cultural resources.

14 Additionally, Interior should work with
15 DHS and border tribes to fund and conduct additional
16 surveys on federal and tribal lands along the border
17 to identify and ensure that cultural resources, human
18 remains, and sacred sites are protected in the future.
19 Also, Interior should create an interagency task force
20 together with DHS and the Nation to investigate and
21 determine mitigation options to address the damage
22 done to the Nation's sacred sites and cultural

1 resources by wall construction.

2 The interagency efforts should do the
3 following: Study more sections of border wall
4 constructed within Organ Pipe Cactus National Monument
5 and Cabeza Prieta and San Bernadino National Wildlife
6 Refuge during the Trump administration to evaluate the
7 damage tribal lands and resources; produce and report
8 that describe the damages that recommends actions to
9 mitigate those damages; and, finally, designate the
10 agency responsible and specify the actions required to
11 implement the recommended mitigation measures,
12 including required consultation with the Tonoho
13 O'oodham Nation.

14 With respect to water rights, I would
15 also like to provide comments regarding the protection
16 and restoration of tribal water rights which are
17 integral to protecting tribal homelands. It is well
18 established that reservation land set aside for
19 Indians include reserved rights to water sufficient to
20 fulfill the purposes of the reservation as a homeland
21 for our members. This principle is particularly
22 important for tribes in the desert southwest where

1 change and drought have exacerbated the damage to
2 tribal homelands caused by centuries of federal
3 mismanagement of tribal water rights and the failure
4 by the federal government to protect against non-
5 Indian encroachment on these rights.

6 Our reservation is among the largest in
7 the United States and as simple reserved land based --
8 reserved land bases of more than 2.17 million acres.
9 The O'oodhams have cultivated these lands for
10 centuries, growing all manner of crops to support our
11 way of life. However, non-Indian settlement and water
12 use spurred by federal irrigation loans and low-cost
13 preference rate federal power has dramatically
14 undermined the Nation's use of its water rights.

15 Off-reservation pumping by non-Indians
16 depleted the water table within the (indiscernible)
17 District so much that many of the existing wells went
18 dry and irrigation had to be abandoned. While the
19 damage was occurring, the federal government failed to
20 protect the Nation's water rights and by doing so,
21 failed to protect the Nation's homelands.

22 The Southern Arizona Water Right

1 Settlement Act of 1982, amended in 2004, settled the
2 Nation's water rights' claims to over 100,000 acres,
3 less than 1/20th of our reservation lands. Water
4 rights' claims associated with most of our remaining
5 2.6 million acres of reservation land, including land
6 within the (indiscernible) District, are the subject
7 of ongoing settlement negotiations with the Department
8 of Interior.

9 At the same time, Interior is
10 responsible for apportioning through the Bureau of
11 Reclamation water and power to certain non-Indians in
12 the west and southwest as part of the Border Canyon
13 Project, including the same non-Indian irrigators who
14 previously damaged the Nation's federal reserved water
15 rights. The Nation asks that the Interior, in
16 carrying out its many duties, remember that it is --
17 its paramount responsibility is the protection of
18 tribal homelands which inherently includes the
19 protection of our federal reserved water rights.

20 The Nation -- the Tonoho Nation --
21 urges that any federal action to assist non-Indian
22 irrigation must be guided by the protection of tribal

1 homelands and the accompanying water rights and only
2 after government-to-government consultation with
3 Indians tribes like the O'oodham Nation who will be
4 directly affected by the actions.

5 In conclusion, Assistant Secretary
6 Newland, the Nation thanks you and thanks Secretary
7 Haaland for addressing these critical issues. We look
8 forward to working with you to mitigate the harm done
9 to our sacred site and resources to the extent
10 possible and to improve Department of Homeland
11 Security consultation practices so that other tribes
12 will not have to endure what we have. We look forward
13 to consultation and water rights to ensure that those
14 rights are protected as they are critical to the
15 protection of our tribal homelands. And I will be
16 submitting written comments by the November 5th
17 deadline date. Thank you very much, Assistant
18 Secretary. I appreciate your time.

19 MR. NEWLAND: Thank you, Chairman
20 Norris. I appreciate your time as well and thank you
21 for your comments.

22 I just want to take a moment -- I know

1 we've got seven speakers in the queue right now. This
2 consultation session was scheduled to go from 1:00
3 p.m. to 3:00 p.m. eastern time. My schedule allows me
4 to stay on for an additional 15 minutes so we extend
5 this for the speakers who are still in the queue until
6 3:15 eastern time.

7 I know that a number of folks from our
8 office have to drop off. So I think seven speakers
9 will probably get them -- or get us all the way to
10 3:15. I just wanted to flag that here. I will be
11 quiet now to make sure that we have time to hear from
12 everyone.

13 MS. APPEL: Our next comment comes from
14 Vice-Chairman Gobin.

15 MR. GOBIN: Hello. Can you hear me?

16 MS. APPEL: Yes, we can. Thank you.

17 MR. GOBIN: Oh, thank you. Well, first
18 off, let me also reiterate what others have already
19 said and congratulate Assistant Secretary Newland on
20 his confirmation. And I know his background and I
21 know that the issues that we are raising are extremely
22 familiar to him. I want to also (indiscernible)

1 REPORTER: This is the court reporter
2 to Mr. Gobin --

3 MR. GOBIN: -- thank you, previous
4 council member. One thing (indiscernible) --

5 REPORTER: Excuse me. This is the
6 court reporter. I was not able to catch the last two
7 minutes of what you said. Could you please repeat it?
8 Your microphone went out.

9 MR. NEWLAND: Vice-Chairman?

10 MR. GOBIN: Yes. Are you there?

11 MR. NEWLAND: Yes. You cut on us for a
12 few moments there. I think our court reporter was
13 having a difficult time keeping up, but we've got you
14 back now.

15 MR. GOBIN: Okay. Thank you. What I
16 wanted to bring up was an issue that came up this
17 morning in our council chambers, was the issue of back
18 when the state -- I mean the BIA acting as our trustee
19 granted right of ways to the county through our
20 reservation. And this would have done years ago.
21 (indiscernible) that was the --

22 REPORTER: I can't -- this is the court

1 reporter. I have to interrupt.

2 MR. GOBIN: -- (indiscernible) so today
3 what we are (indiscernible) for them -- can you hear
4 me?

5 MR. NEWLAND: Vice-Chairman, I think
6 we're having a problem with your connection. You're
7 cutting out. We will make sure that you get in here
8 on the record. If you want to dial in by phone and
9 let Ms. Appel know that it's you, we'll make sure that
10 you get in here for comments before we end.

11 MR. GOBIN: Okay. Either that or I'll
12 make the comment in our written comments.

13 MR. NEWLAND: There should be a phone
14 number in your calendar or the Dear Tribal Leader
15 letter if you want to call in.

16 MR. GOBIN: Okay. Thank you. Thank
17 you.

18 MS. APPEL: Okay. Thank you. Our next
19 comment comes from Vice-Chair Sistreem.

20 MS. SISTREEM: Good morning to
21 everyone. What I'm going to do is I'm going to
22 introduce our chair for the Confederated Tribes of the

1 Coos, Lower Umpqua/Suslaw, Debbie Bosley.

2 MS. BOSLEY: Thank you. Thanks,
3 everybody for allowing this to happen. We're a small
4 tribe off of the central Oregon coast and I just want
5 to bring one particular attention is that, as part of
6 our efforts to restore our tribal lands, especially
7 lands that are culturally significant to our tribe, we
8 work with the Department of Interior and the Navy to
9 have the Coos Head Air National Guard station which is
10 located at the Coos Bay entrance of the bay to the
11 tribe in.

12 And in 2005, we received a deed from
13 the Interior but it had restrictive provisions
14 regarding environmental cleanup, rights of way, and so
15 it took many years to get this all cleaned up and we
16 cannot take this land into trust because of the
17 provisions and potentially right of way provisions.

18 It has been 16 years since we received
19 this land. We can't use it for anything and it's --
20 basically it's just a piece of land that overlooks the
21 ocean which is a nice piece of property, I might say.
22 But we would want you to work with the BIA to fully

1 address the issues regarding the deed with the Navy
2 and to find a path forward so that the land can be
3 taken into trust and restored to our people.

4 We appreciate the Department's interest
5 and commitment in the restoring lands to the tribe,
6 but we recommend that as the Department makes these
7 efforts that they have a long-term and commitment to
8 addressing complicated issues with these lands. And
9 thank you.

10 MR. NEWLAND: Thank you, Ms. Bosley. I
11 will make sure to get your contact information and
12 have someone follow up with you on that issue.

13 MS. BOSLEY: Thank you.

14 MS. APPEL: Our next comment comes from
15 the Shoshone-Bannock tribe business council.

16 MR. EDMO: Hello? Can you hear us?

17 MS. APPEL: Yes, we can hear you.

18 MR. EDMO: Okay. Our chairman is on
19 travel. Our vice-chair stepped out. My name is Ladd
20 Edmo. I'm the secretary for the Shoshone-Bannock
21 tribes and I'm here to give comment. And thank you
22 for having us and inviting us to the consultation.

1 Number one, the land-into-trust process
2 -- our answer to number one is no. The land-into-
3 trust process does not adequately help the tribes to
4 consolidate lands. The length of time and expenses
5 that the tribe must commit to the process application
6 is unreasonable. BIA does not process or respond to
7 applications in a timely manner. Once an application
8 is received the information in the application must
9 remain current, including environmental site
10 assessments or parcels. Until a decision is made, the
11 tribe cannot develop the parcel until that
12 determination is made or risk resetting their
13 application.

14 We have had situations where a ESA must
15 be repeated several times at the tribe's expense
16 because BIA fails to respond sometimes for decades.
17 When considering restoration and historical tribal
18 lands, often which take unfair -- often which were
19 taken unfairly, there are numerous situations where it
20 is essential that land be brought into trust in order
21 for tribes to comply with federal requirements for use
22 of trust lands. When a tribe spends their own money

1 to acquire a land parcel from a private land owner to
2 meet their tribal land needs, they forego any
3 consideration or repayment by the federal government
4 for that acquisition. Essentially, the tribe is
5 giving the federal government land for free that it
6 paid a retail value for.

7 How can the Department improve?

8 Perhaps the single most significant change in the
9 process would be to facilitate a new model for trust
10 lands and tribal sovereignty. Also, we have -- in the
11 process of fee to trust parcels, we have over 30
12 parcels dating back since 2012, a few of them. So
13 those are the battles we continuously fight but yet
14 when parcels are changed to fee, the process is a lot
15 easier so unfortunately, this seems unfair to us as a
16 tribe.

17 Going to leasing of right of ways, the
18 Ford Hall reservation is primarily agricultural. We
19 own 98 percent of our reservation. Very little
20 checkerboarding and our reservation originally started
21 out at 1.8 million. Today, currently, we're about 500
22 and some-odd acres of 500,000 acres of reservation

1 land currently. The other land is ceded and we have
2 also two superfund sites within those boundaries.

3 So going back to leasing, contemporary
4 leasing practices are always needing improvement to
5 deliver enforceable lease for value of tribal lands to
6 an end user of agricultural production. We are seeing
7 that intensive agriculture has significant impacts on
8 soil, water, and residents surrounded by agricultural
9 fields. The current leasing programs needs to be
10 overhauled to provide direct mitigation measures for
11 local residents that are included in the market
12 valuation for the specific lease based on the type of
13 agriculture performed on the specific parcel.

14 Grazing -- regulations are also
15 inadequate because grazing is not a highly profitable
16 land use so people tend to overlook the management
17 details and simply sign off on pre-completed forms
18 from the BIA.

19 So are changes needed to the
20 Department? Taxes are a big issue. Leasing and right
21 of ways procedures are needed. Tribe is -- our tribe
22 is owed possessory interest taxes. We have currently

1 railroad right of way dating back since 2003.
2 Eighteen years ago, we've been fighting this battle
3 for the tribe which has revisionary interest for
4 abandoned railroad right of way land.

5 So next, the sacred sites -- we
6 understand that the DOI is using their revised EO,
7 13007, needs to review the current list of sacred
8 sites directly with tribes to permanently remove those
9 lands from development. Part of that development
10 encroaches on migration pass for the wildlife, areas
11 where the migration is interrupted causing further
12 confusion for these animals to migrate, whether it's
13 elk, deer, or antelope and any other migratory animal.

14 Also, we have all these things going on
15 and we expect that our trustees to stay on task but we
16 continuously have to teach annually someone new from
17 whatever federal trust agency it is that we have a
18 treaty. We have -- yeah, we have the off-reservation
19 rights with this so it's -- it makes it challenging
20 when even the DOI changes leadership. Even our own
21 tribes change leadership. With that, those battles
22 continue and it never seems to end. So if we can come

1 to some commonality here, I think it would be
2 streamlined like I mentioned earlier, and all of these
3 processes that have been talked about earlier, we
4 totally are on board.

5 So we hope you take that into
6 consideration, Elizabeth and Bryan, that you guys are
7 going to get us to where we need to be as all tribes
8 across the nation and tribes similar to us or tribes
9 that are not, we are all of the same ethnic heritage
10 and that we are -- we're all human beings and we come
11 from the Mother Earth and we give those kind of
12 prayers each and every day. So we ask that you do
13 your part as we always fight for our part. So I'd
14 like to end it right there. Thank you.

15 MR. NEWLAND: Thank you so much, Mr.
16 Secretary. I appreciate your advocacy and understand
17 your frustration with needing to constantly reeducate.
18 Liz.

19 MS. APPEL: Our next comment comes from
20 Meredith Harris.

21 MS. HARRIS: Hello and thank you. Can
22 you hear me? All right. My name is Meredith Harris

1 and I'm an attorney with the Port Gamble S'Klallam
2 tribe. Our council chairman is unavailable as he is
3 attending the Centennial Accords. I'm going to jump
4 right into it.

5 Regarding the land-into-trust process,
6 one step that can stymy a transfer for months or even
7 years relates to survey discrepancies. The current
8 process of obtaining preliminary title opinions
9 through the solicitor's office is inefficient. A
10 particular frustration is that there is a backlog in
11 the availability of surveyors who understand how to
12 work with the Interior's processes.

13 Our tribe tries to navigate the system
14 by hiring surveyors familiar with the federal land-
15 into-trust requirements; however, the availability of
16 those professionals is extremely limited in our area.
17 This leads to months of delays on contracts. We
18 recommend Interior provide trainings for private
19 surveyors on a national and regional basis to help
20 fill this knowledge gap.

21 Additionally, attempts to consolidate
22 land holdings are also directly affected by ancillary

1 factors like reluctant or even hostile landholders and
2 land purchase costs. These factors should be
3 addressed by Interior to advance the interests of the
4 tribes. For example, Interior could engage with
5 landholders in or near existing reservations to answer
6 questions, clarify misunderstandings, and facilitate a
7 smoother transfer process.

8 Respecting taxation, the problem of
9 dual taxation must be addressed. Dual taxation
10 permits states and local governments to siphon
11 essential tribal resources by imposing their taxes on
12 non-Indian activities within Indian country. It
13 hinders economic development on reservations. Due to
14 the numerous legal and economic barriers caused by
15 dual taxation, the (indiscernible) successful tribal
16 economies are often directed away from the tribal
17 government and into state and local government
18 coffers, even though those governments do not provides
19 services or invest resources in tribal communities.
20 This must be stopped.

21 Our tribe fully supports the recommends
22 of the Treasury Tribal Advisory Committee Dual

1 Taxation Subcommittee, which include proposed agency
2 actions by Interior and Treasury to clarify and
3 improve regulations and administrative guidance and
4 also for the agencies to work with Congress to
5 establish legislation clarification clarifying tribal
6 tax jurisdiction over economic activities taking place
7 on our lands.

8 Finally, I'd like to speak on
9 protection of sacred site and treaty rights. As
10 others have recommended, we encourage Interior to take
11 tribal sacred sites into trust on an expedited basis
12 to the greatest extent possible. We further suggest
13 that Interior establish special protective zones
14 around tribally identified sacred site, including
15 water (indiscernible). Protective zones have been
16 successfully used in protecting natural resources
17 through, for example, wilderness are designations and
18 should be incorporated into the land-into-trust
19 framework to protect tribal sacred sites.

20 Cultural and spiritual practices do not
21 adhere to the neat boundaries preferred by American
22 law. Our traditional practices in and around a sacred

1 site are mutually important to the full expression of
2 our beliefs and values. Designation of special
3 protective zones would be consistent with this
4 understanding. We recommend Interior engage in
5 listening sessions with tribal leaders to identify
6 effective ways of implementing this idea through
7 existing Interior authorities and leveraging those of
8 other agencies.

9 We appreciate your time and we'll be
10 submitting written comments by the 5th and thank you.

11 MR. NEWLAND: Thank you, Meredith, for
12 your comments and I look forwards to reading your
13 written recommendations, particularly on this
14 protective zones concept and a special process within
15 the fee to trust process for sacred places. Thank
16 you.

17 MS. APPEL: Our next comment comes from
18 Shelly Thompson.

19 MS. ATENCIO: Good afternoon. My name
20 is Cassandra Atencio. Ms. Thompson is our director.
21 I am the deputy tribal historic preservation officer
22 with our cultural preservation department with the

1 southern Ute Indian tribe. I was asked to sit in on
2 the listening session and provide some comment. We
3 will provide written comments (indiscernible) deadline
4 from our leadership and our legal department.

5 First of all, I would like to
6 (indiscernible). Thank you, you know, Secretary
7 Newland, for providing this session for us to make
8 comments. I have been listening and I think three
9 things that come to my mind that I see. First of all,
10 I agree with the Shoshone-Bannock tribes as far as the
11 changing of guard, so to speak, on a continuous basis.
12 The lack of information when there is a new federal
13 agency, a new archeologist, or someone new who comes
14 into the office -- their lack of knowledge of the NEPA
15 process, of the NHPA process under 106 when it comes
16 to tribal consultations on land of traditional and
17 religious and cultural significance sometime is
18 absent. I see the NHPA process being utilized first
19 and then the 106 process after the project design has
20 been developed.

21 We believe that under the NEPA process,
22 you must analyze and disclose the impact that may have

1 an impact on the quality of the human environment.

2 Under 1508.14, the human environment shall be

3 interpreted as comprehensively to include the natural

4 and physical environment and the relationship with the

5 environment. Under the definition effects under the

6 NHPA process of 1508 is -- hold on -- 1508 effects:

7 a, direct effects which are caused by the action occur

8 at the same date -- same time and place, such as a

9 safety for effects adverse effects under the NEPA and

10 106 process.

11 Indirect effects which are caused by

12 the action are later in time and are still

13 foreseeable. Indirect effects may include growth

14 inducing effects and other effects related to induced

15 changes in the pattern of land use, population density

16 or growth rate, and related to -- and the related

17 effect on air and water and other natural systems.

18 For the Ute people that would include the natural

19 environment which is -- would be our water sources,

20 Baker and Hot Springs, trail system, and sacred

21 (indiscernible), including ecosystem.

22 Under 1508, effects and impacts

1 (indiscernible) using these regulations are synonymous
2 and effects include ecological, aesthetic, historic,
3 cultural, economic, social or health, whether they be
4 direct, indirect or cumulative. I think this speaks
5 very well to when you talk about the aesthetic value
6 to a sacred site.

7 When we talk about when an -- when a
8 site is eligible, normally, an archaeologist will look
9 at what the eligibility under the four (indiscernible)
10 integrity plus the four criteria. What they sometimes
11 fail to recognize is whether that site may be of
12 religious and cultural significance. If you do not do
13 tribal consultation early and you do not provide that
14 information to a tribe, then that site may be impacted
15 and whether that site is just a regular
16 (indiscernible) site or a sacred site can be
17 determined with tribal consultation based on where
18 that -- what that area looks like on the cultural
19 landscape -- where it sits, where it faces, how it may
20 be utilized based on the plant material that is
21 nearby, mineral composition that is nearby, the river
22 sources, the water sources. All of those things are

1 taken into account. Now we understand that tribes
2 have special expertise. That special expertise is
3 those things that I mentioned just before.

4 So I think that the access and the
5 treatment about whether a site is sacred or not is
6 predetermined by archaeologists and in that site form
7 and if you're predetermining that adverse effect to
8 that sacred site without tribal consultation and
9 without bringing tribal people onto those sites, you
10 can't make that determination. So I think the lack of
11 tribal consultation, the lack of communication between
12 those -- between the federal agency and a tribe is
13 paramount and that needs to change. I think that the
14 lack of understanding whether or not something meets
15 that criteria is a fact of, should we contact the
16 tribe. I think tribes are contacted later than sooner
17 and I think that's the missing point.

18 In NHPA, it says to coordinate NEPA with
19 NHPA early on and that includes tribal consultation.
20 We understand that confidentiality and sensitive
21 issues on -- in the NEPA process do not -- are not
22 provided to tribes. But in the NHPA process, they

1 are. I think the lack of training or cultural
2 sensitivity training to federal agencies, even within
3 the DOI, as those people -- people move on or retire
4 and the new people -- the incoming personnel do not
5 have that understanding or that training to say, hey,
6 under 1508, it says this. Aesthetic value to an
7 Indian tribe relates to that special expertise. You
8 maybe want to consult tribes. These are the list of
9 tribes. Do their (indiscernible) that they could get
10 that affiliate themselves to this area.

11 I think the lack of utilizing the
12 tribes that are within those (indiscernible). We
13 claim our presence in five states -- Colorado,
14 southern Wyoming, parts of Kansas -- eastern Kansas --
15 the Oklahoma/Texas panhandle, northern New Mexico, and
16 part of -- and Utah. And so if a new personnel come
17 into a state agency -- even governors -- and those
18 people change hand, if they don't -- aren't imparted
19 with cultural sensitivity training or a list of tribes
20 that they need to contact when projects are being
21 developed, are being talked about, then that's where
22 we're being left out of the loop. That's when that

1 lack of hearing and that lack of communication from
2 that tribal perspective, which is most important, is
3 being passed over. And that's where we have that lack
4 of due diligence and consultation to discuss and to be
5 a part of that agreement process or to be a part of
6 that (indiscernible) agreement process because you are
7 -- that determination is being made without tribal
8 input. Mitigation is being made without tribal input.

9 Access to sacred sites is just not the
10 site boundary itself but what is there
11 (indiscernible). What is there -- what is a plant
12 (indiscernible) and what are those ceremonies consist
13 of. It's just not the prayer and the site. It's also
14 the biological and the minerals. And we are a hunter
15 and gatherer tribe also so what do those animals that
16 we are utilizing -- are they being impacted.

17 All of that needs to be considered when
18 making that determination, but that only comes with
19 tribal consultation. And the lack of it, like the
20 other tribes speak of, is late in the game for some
21 areas, and I think federal agencies and on up the
22 chain need to understand that, that that's where our

1 input, that's where the perspective and that's where
2 we work in collaborate hand-in-hand to come up with an
3 agreement process and come up with a documentation
4 about how are we going to approach this.

5 And these are case-by-case basis. You
6 cannot ascribe the same thing to where we pick
7 willows. So willows are important in our tribe,
8 whether it be utilitarian or cradle boards or the
9 prayers that go along with that, whether it be for our
10 ceremonies that are utilized. Those are a different
11 type of willow. So all of that is a case-by-case
12 basis.

13 These processes and these regulations
14 have been streamlined a lot and a lot of this stuff,
15 we were just inserted -- tribes are only inserted into
16 the NHPA process in the early 90s; therefore,
17 longstanding ways of doing things and processes that
18 are -- a federal agency has done for, say, 20 years,
19 then they're not going to utilize, hey, where does
20 tribal consultation come in. This is not stuff that
21 you learn in school. This is stuff that you learn on
22 the job.

1 MR. NEWLAND: Ms. Thompson, thank you
2 so much for your comments.

3 MS. ALENCIO: So I think
4 (indiscernible) sites and those places outside of
5 those lands need to be had with discussion. So thank
6 you once again.

7 MR. NEWLAND: Thank you, Ms. Thompson.
8 I appreciate your comments today. I know we've got --
9 you know, we're at our time limit. I've got 15 more
10 minutes here and I see we've got folks from Inupiate
11 community and -- as well as Mr. Hockaday and we'll
12 make those our last speakers for today. And reminder
13 that written comments can be submitted through
14 November the 5th.

15 MS. APPEL: Our next comment comes from
16 the Inupiate Community of Arctic Slope.

17 MR. LEEMAN: Good morning. My name's
18 Morey Leeman. I'm the executor director for the
19 Inupiate Community of the Arctic Slope, a federally
20 recognized tribe. I have with me Lars Nelson with
21 tribe. We'll make it -- just couple of points so
22 others can speak here and then we'll submit it in

1 writing.

2 But we wanted to talk about, you know,
3 the Viet Nam era allotments and make a couple of
4 points that, you know, this has been dragging on for
5 years and years and they still haven't gotten their
6 allotments. It's -- some of them have passed away and
7 haven't had the opportunity to live on their -- the
8 lands that were to be given to them. And we'll submit
9 our more comments to that. That's just another point
10 we wanted to make.

11 But ancestral lands like with the NPRA
12 and them are -- we have communities that exist --
13 tribal communities that exist within them and they
14 have to be permitted to cross the lands to get to
15 their traditional lands for hunting and gathering of
16 berries and things like that which is kind of a sore
17 spot with them. And we'll submit that -- our further
18 comments to that, but we just wanted to bring that up
19 so it's on your guy's radar.

20 And I'll let Lars speak a little bit to
21 a couple of issues about federal lands being turned
22 over right away to the tribe and (indiscernible).

1 MR. LARSON: Thank you, Morey. Lars
2 Nelson, tribal member here, chief consultant for
3 (indiscernible) and Morey.

4 You know, we live in a region with a
5 long history of land that's been taken away from our
6 native homelands -- (indiscernible) line sites,
7 weather bureau, NOAA lands, Navy and Air Force, VIA,
8 Indian Health Service. We (indiscernible) receive
9 some of these services but a lot of these lands have
10 been abandoned in some cases and we feel that it's
11 time to come to the table and return and restore these
12 native homelands to the rightful people.

13 We'd like that to be made available for
14 our Alaskan tribes in trust. We want to talk with the
15 Department of Interior, why isn't Alaska at this time
16 a consideration for land-into-trust. With some 95,000
17 square miles of jurisdiction that (indiscernible)
18 holds as the regional tribe, we are a landless tribe.
19 We would like to build homes and get our economy going
20 with lands designated for economic development and
21 ensure access to our traditional land.

22 As Morey was stating earlier, one of

1 our tribes is having trouble even navigating on our
2 own traditional lands. So right now, this lack of
3 land to develop is contributing to our housing crisis,
4 our stagnant economy and we just want to put that out
5 there and have the DOI know our special situation here
6 in Alaska and we look forward to working with the
7 Department of Interior on this issue of landless
8 tribes in Alaska. And we'll make sure and put this
9 into our comments -- written comments -- for November
10 5th. Well, thank you.

11 MR. NEWLAND: Thank you so much for
12 taking the time to share that with us and I look
13 forward to your written comments. Mr. Hockaday,
14 you're our final speaker today in this session.
15 Thanks for your patience.

16 MR. HOCKADAY: Thank you. Thank you,
17 Mr. Bryan Newland.

18 I just want to -- just remember from
19 this morning's issues that in our (indiscernible)
20 territory, we have sacred sites and stuff that need to
21 be protected now not later in our situation. And me
22 thinking about, the BIA has the right to help us

1 protect those lands in emergency situation in which
2 we're in right now. Am I wrong or am I right? I
3 mean, that's a question that we're -- you know, I'm
4 looking for.

5 And also, living on the climates where
6 we're one of the biggest tribes here along with the
7 (indiscernible) tribe and right now because of these
8 (indiscernible) fires that we had in the last year and
9 today -- I mean, this year -- two of our major streams
10 that protect our Coho salmon, our spring salmon, and
11 our Chinook salmon and also along with the summer
12 (indiscernible), are polluted right now with toxic
13 waste because of the fires and the retardant that's
14 going down the (indiscernible) River right now as we
15 speak.

16 This is some of things that we have to
17 take care of in our original territory within the next
18 year or so because right now it's not going to affect
19 the (indiscernible) tribe or the Karuk tribe -- only
20 in four years when the salmon -- whatever salmon can
21 return that were being spawned today as we speak
22 sitting here, as our salmon are spawning in these

1 creeks right now.

2 That's where a lot of these stuff in
3 these tribal -- what we need is, you know, to make
4 sure these tribal lands get into trust sooner than
5 later for some of us. And with the holdup that we
6 have, we can't wait 5, 10, 15 years for this to
7 happen. If we do, our salmon will be gone.
8 We'll be extinct for the (indiscernible) River. I
9 just wanted to let you guys know that this is what I'm
10 thinking about and I know our tribal council's been
11 thinking about.

12 I'm going to say it to you, Mr. Bryan
13 Newland, sooner than later we need some of these
14 issues resolved. We can't wait right now. Mother
15 Earth is tired. She cannot rebuild on her own and as
16 stewards of the land on Karuk tribe, we have to help
17 her fix herself right now. And I appreciate you guys
18 taking this time today and to listen to our concerns.
19 I wish you guys a great day and (speaks another
20 language) for letting me speak. Thank you.

21 MR. NEWLAND: (Speaks another language)
22 Thank you, Mr. Hockaday. I want to appreciate

1 everybody for taking time with us this morning and now
2 this afternoon for sharing your thoughts and ideas
3 with us. I've got -- this is not normal so I want to
4 make note of it. From this consultation session, I've
5 got four pages of personal notes that I took which is
6 reflective of the substantive comments that everybody
7 made here. And we've got lots of notetakers here as
8 well as a transcriber.

9 So you have all given us a lot of very
10 valuable insight and direction. I'm very grateful for
11 you taking the time to share with us. A reminder to
12 submit your written comments by November the 5th as
13 well as to consider comments in the Department's Land
14 and Water Conservation Fund listening session process
15 and CEQ's America the Beautiful consultation process
16 as well.

17 So with that, I wish you all health and
18 wellness for you and your families and your
19 communities. I look forward to seeing you in person.
20 If the time allows, maybe even in our homelands. And
21 we'll wrap up our consultation session. Thank you.

22 MR. HOCKADAY: You as well.

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(Whereupon, at 3:09 p.m., the
proceeding was concluded.)

1 CERTIFICATE OF NOTARY PUBLIC

2 I, SHONDRA DAWSON, the officer before whom
3 the foregoing proceedings were taken, do hereby
4 certify that any witness(es) in the foregoing
5 proceedings, prior to testifying, were duly sworn;
6 that the proceedings were recorded by me and
7 thereafter reduced to typewriting by a qualified
8 transcriptionist; that said digital audio recording of
9 said proceedings are a true and accurate record to the
10 best of my knowledge, skills, and ability; that I am
11 neither counsel for, related to, nor employed by any
12 of the parties to the action in which this was taken;
13 and, further, that I am not a relative or employee of
14 any counsel or attorney employed by the parties
15 hereto, nor financially or otherwise interested in the
16 outcome of this action.

17



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SHONDRA DAWSON

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Notary Public in and for the

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DISTRICT OF COLUMBIA

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CERTIFICATE OF TRANSCRIBER

I, SONYA LEDANSKI HYDE, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



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