

In The Matter Of:

*U.S. Department of the Interior Public Meeting
Authority to Acquire Land Into Trust in Alaska*

*Transcript of Proceedings
August 1, 2018*

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U.S. DEPARTMENT OF THE INTERIOR

PUBLIC MEETING

OPINION M-37043

AUTHORITY TO ACQUIRE LAND INTO TRUST IN ALASKA

August 1, 2018

1:40 p.m.

Elizabeth Peratrovich Hall

Juneau, Alaska

CONDUCTED BY:

John Tahsuda III

Principal Deputy Assistant Secretary - Indian Affairs

Kyle Scherer

Acting Deputy Solicitor - Indian Affairs

Matt Kelly

Assistant Deputy Solicitor - Indian Affairs

Transcript of Proceedings

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1 WEDNESDAY, AUGUST 1, 2018

2 1:40 P.M.

3

4 JOHN TAHSUDA: Good afternoon. If
5 you're ready to start, we are. We'll open up this
6 public meeting on the second topic that we're
7 seeking comment on from the tribes here in Alaska.
8 And, again, this is a public meeting. We'll also be
9 doing consultation in other locations, including
10 Ketchikan on Friday.

11 So a couple of opening points,
12 again. If we could have folks -- if you haven't
13 signed in and you'd like to speak, it's helpful for
14 us if you sign in. That way, if we don't quite get
15 your name right, we can see it on the list. So if
16 you haven't signed in yet and you would like to
17 speak, please sign in at the desk back there. And
18 if you were here for this morning, the two young
19 ladies in the back working for us are Elizabeth
20 Appel and Regina Gilbert.

21 And then you can also -- there's a
22 couple of documents, new documents different from
23 this morning, that you can pick up back there as
24 well that have been sent out. These are part of
25 the new Tribal Leader letters that went out

1 noticing these meetings. But if you want a new
2 copy, Regina has copies back there for you as well.

3 So I think that's all. Also, when
4 you come up to speak, if you could speak into the
5 microphone. I think we've gotten the issues taken
6 care of that started us off with the last one.
7 State your name clearly and the tribe you're
8 representing or the organization, or if you're
9 speaking for yourself individually. Again, this is
10 a public meeting, so you're welcome to speak. But
11 if you could just speak your name for us clearly so
12 we can have that down in our record of this
13 meeting, that would be helpful.

14 My name is John Tahsuda I'm the
15 Principal Deputy Assistant Secretary for Indian
16 Affairs with the Department of the Interior. And
17 under our supervision and the Office of the
18 Assistant Secretary for Indian Affairs is the
19 Bureau of Indian Affairs. And we have a number of
20 responsibilities for tribes that are part of our
21 statutory and trust responsibilities, including
22 taking Land Into Trust for tribes.

23 We have recently had the
24 solicitors take a look at -- we were under
25 direction from the President to take a look at

1 legal opinions, et cetera, issued recently just to
2 confirm the legal sufficiency of those, and so
3 we've been -- this is part of that process.
4 Specifically, this will be on Fee To Trust and the
5 M Opinion that was issued in January 2017 regarding
6 Fee To Trust in Alaska.

7 So this is similar to this
8 morning. We're seeking your comment. There are
9 significant legal issues here. Similar to the
10 discussion this morning, again, there are layers of
11 statutory -- there are laws that we have to comply
12 with that have been enacted over decades. There
13 are amendments to those laws. We have court cases
14 and any number of legal issues that create a
15 thicket for us to walk through in making these
16 discussions, so our hope is to provide a good
17 foundation for that.

18 Part of that, as well, for us is
19 the policy behind that. And we have the solicitors
20 here to assist us with the legal discussion, but
21 important for the Office of the Assistant Secretary
22 as well is the policy background on this issue.
23 How do these issues affect the tribes here, either
24 positively or negatively? What could be a way to
25 improve that? We'd appreciate hearing all sides of

1 that.

2 But it is very important, as we
3 prepare the record moving forward on the potential
4 for these actions, for the department that we have
5 not just a legal basis but a good policy basis as
6 well for proceeding. So your comments, both legal
7 and policy-based, are welcome.

8 And sitting with me up here with
9 the solicitors is Kyle Scherer. He's the Acting
10 Deputy Solicitor for Indian Affairs. And with him
11 is Matt Kelly, who is the Assistant Solicitor for
12 Indian Affairs in the department.

13 We also have Gene. And if you
14 weren't here this morning, Gene Peltola is here.
15 He's our new regional director for Alaska. If you
16 haven't had a chance to meet him, please meet him.
17 We're really happy and excited to have him on board
18 up here. And so if you, either before or after the
19 meeting, get a chance, please be sure to introduce
20 yourself to Gene. You probably already know him.
21 He's been up here a long time.

22 So thank you. I want to turn this
23 over briefly to the solicitors and let them offer a
24 couple of opening comments as well.

25 KYLE SCHERER: Sure. So I guess I

1 would begin with just sort of saying that, at this
2 point, nothing is predeterminative. We have a
3 minimum of six months of consultation, followed by a
4 six-month review internally, at which point, if we
5 choose to do anything at all, we will then propose a
6 rule in which we will invite additional consultation
7 on.

8 So there is not an immediacy in
9 determining what the next steps are. We welcome
10 written submissions, particularly from tribal
11 leaders, but also lawyers who have worked in the
12 space to answer some of the questions that we had
13 laid out.

14 And as somebody who has worked in
15 Indian law, this is a complicated issue that has
16 been looked at by almost every solicitor going back
17 to various administrations, whether it was
18 Fredericks, who was serving as the Associate
19 Solicitor at the time, Sansonetti, Leshy, Meyer,
20 and now most recently Hilary Tompkins.

21 So I think, similar to our
22 discussion earlier today, one of the things that
23 we're trying to do is to take this M opinion that
24 was written and then published on January 13, 2017,
25 and make sure that, going forward, if we accept

1 additional Land Into Trust, that we have sort of
2 the best legal arguments to defend that agency
3 action.

4 we should also say at this point
5 there has been no discussion of taking land out of
6 trust, absent a court directive either in Alaska or
7 the Lower 48. But going forward, it's just
8 important that we sort of take into account some of
9 the statutory framework and amendments to ANCSA
10 that were not sort of discussed with the
11 granularity that the solicitor's office would like
12 them to have been in the M Opinion.

13 Anything else to add, Matt?

14 MATT KELLY: No. That covers it.

15 JOHN TAHSUDA: Thank you, Kyle.

16 So we'll turn this over to
17 comment. And, again, as with this morning, I would
18 say as an opening thought from our office, on a
19 policy basis, it's critically important for us that
20 the decisions we make are the right decisions, and
21 the decisions that we can defend on your behalf.
22 And so that is the significant effort behind this,
23 is to solidify our views and our thoughts on how we
24 can defend the decisions that we make on your
25 behalf.

1 And so I will offer the mike up
2 and welcome, again, any person, tribal leader,
3 community leader, or individuals. You're welcome
4 to speak.

5 RICHARD PETERSON: I've never
6 witnessed shy or bashful Tlingits or Haidas before,
7 so I'm a little taken aback. (Laughter.)

8 There is so much -- is this going
9 to do it to me again? (Microphone interference.)
10 what is going on? Typical with the new guys -- two
11 steps backwards. (Laughter.) Sorry. I've got to
12 use humor.

13 Anyhow, I guess I disagree with
14 the comment that there is no sense of urgency. I
15 guess you don't represent tribal citizens, because
16 there is a sense of urgency. I stand on what was
17 once protected Indian land. This is the Indian
18 village, and when that became owned by Tlingit &
19 Haida, it lost its status, which should have never
20 been. The status should always flow from sale or
21 transfer from Native to Native, Native to tribe.

22 So I disagree. I think we have a
23 great sense of urgency. We want this land
24 protected. And I disagree even with our
25 congressman earlier who gave some warnings. Yes,

1 there's pros and cons to the trust, but it's our
2 right as sovereign nations. It's our decision to
3 make for ourselves. That's what we're exercising.
4 I've talked to friends, colleagues all over the
5 state of Alaska. Some of them don't even want to
6 put Land Into Trust, but they want the right to do
7 so.

8 So I question the motives, and I
9 feel a little disheartened. You know, we've had an
10 application in for ten years now, so when you say
11 there is no sense of urgency, all I see when you
12 gave that timeline -- six months for more comments,
13 six months for review -- that means a whole year of
14 doing nothing again. You know what? We finally
15 got a victory in Land Into Trust. Let me ask you.
16 Do you know how many acres of land have been put
17 into trust in Alaska? I'm asking.

18 KYLE SCHERER: One in Craig.

19 RICHARD PETERSON: 1.08 acres in
20 Craig, Alaska. I don't see the sky falling. What
21 has this done to upset so many people? You know,
22 and I've listened and debated over the last few
23 years with some very ignorant statements, saying
24 that we were -- this was a land grab, you know. And
25 these are supposedly educated people making these

1 comments.

2 And I feel like the Department of
3 the Interior's responsibility is to the tribes.
4 That's your duty. That's your responsibility. And
5 you're hearing loud and clear from tribes, "Land
6 Into Trust." That judge agreed. And now we're
7 sitting here reopening another year.

8 well, that might not be a sense of
9 urgency to you, but it's a sense of urgency to us.
10 And I want to trust, I want to believe, but I'm
11 suspicious by nature, I guess, because we're here
12 talking about three different topics in
13 consultation, and it makes me suspicious of what's
14 going on, you know. And I've heard "The government
15 has been here, and they're to help us" before. And
16 that's what I hear you say today.

17 But if your actions matched your
18 words, you guys would be moving applications along
19 at a swift pace. And by "swift," how many
20 applications from Alaska do you even have? Very
21 few. We're not talking hundreds of acres. We're
22 not talking thousands of acres, or the hundreds of
23 thousands that people against it have been saying
24 in the media for the last, you know, however many
25 years.

1 So I have a sense of urgency. And
2 when you say there is no sense of urgency, I
3 apologize, but I got very offended, because we feel
4 urgency.

5 KYLE SCHERER: If I could just
6 respond. I misspoke. The sense of urgency was
7 really that there is no decision being made next
8 month, the following month, six months from now, an
9 additional six months. So to the degree that you
10 would like to, you know, respond thoughtfully to the
11 questions you have, you have time to do that and
12 submit them to the department. So I appreciate
13 where you're coming from.

14 RICHARD PETERSON: So then I
15 respectfully disagree, because you just kind of
16 reiterated my point.

17 JOHN TAHSUDA: Thank you. Thank
18 you, Mr. President.

19 Let me say -- and I don't want to
20 completely repeat my comments from this morning,
21 but I think it is incredibly important and in some
22 ways different from the discussion this morning,
23 which was really a question of a look forward.

24 This is an issue that is in our
25 lap now; and it affects currently recognized

1 tribes, and it affects tribes whether you're IRA or
2 not. I mean, the question of the authority of the
3 department to take Land Into Trust has become more
4 of a -- I would say more of a challenge for us in
5 defending it over the last few years. And, you
6 know, some of these are unexpected. We had this
7 Carcieri decision in which people said, "well,
8 there is no way the Supreme Court will overturn 80
9 years of the department doing business in a certain
10 way." And, sure enough, they did.

11 So I appreciate the need for a
12 sense of urgency, but I think it is also incumbent
13 upon us to get the right answers in the right way
14 so that we can defend them. That, for us, is the
15 ultimate goal. And if it takes us another couple
16 of months to do that, I personally think it's time
17 well spent.

18 I understand we have tribes up
19 here, we have tribes in the Lower 48 who have
20 waited years for decisions from us. Usually those
21 involve some particular legal issue that gets us
22 caught up, oftentimes. And so making sure that we
23 have addressed those in a thoughtful way helps us
24 get to where you want us to go, where we want to
25 go, and, again, all with the goal of defending Land

1 Into Trust for tribes.

2 There are people who, I think, do
 3 not appreciate the status of the law, the
 4 department's authority to do this. And so as much
 5 or more as any other area of the law or any other
 6 area in which we exercise our authority on your
 7 behalf, it's something for us to be, I think,
 8 cautious about at this point in time to make sure,
 9 again, that we have grounded our decisions well.
 10 Any decision that we make that gets challenged on
 11 Fee To Trust has the potential to affect every
 12 other tribe in the country. And so that's --
 13 again, to me, that argues for us stepping carefully
 14 and making sure that we're on solid ground.

15 Thank you.

16 ROB SANDERSON JR.: Thank you. I'm
 17 Rob Sanderson, Tlingit & Haida Fourth
 18 Vice-President.

19 As our president stated earlier,
 20 one of our member tribes put Land Into Trust
 21 legally, in my eyes. And you mentioned that, you
 22 know, you want to make sure that it's done
 23 correctly. What did you guys miss at the start of
 24 this process years ago in putting Land Into Trust?
 25 What are you looking for now that you didn't see

1 back then? That really -- I would like to hear
2 that. Is there something missing? Is there
3 something that you guys didn't look into at the
4 time when the one tribe put Land Into Trust? Were
5 you guys being pressured? What?

6 JOHN TAHSUDA: Are you speaking
7 specifically here in Alaska, or are you talking
8 about --

9 ROB SANDERSON JR.: In Alaska.

10 JOHN TAHSUDA: -- across the
11 country?

12 ROB SANDERSON JR.: Alaska.

13 JOHN TAHSUDA: Well, I wasn't in
14 the department when that decision was made, so I
15 can't tell you specifically.

16 But I do know that, you know,
17 again, these are challenging, sometimes, the issues
18 that are raised by these for us. And we try to be
19 thoughtful and careful because of the potential
20 implications for other tribes. And so that's -- we
21 have -- again, similar to this morning's discussion
22 and maybe even more so in this context, we have
23 different overlays of statutes that have been
24 enacted. Some of those are broad statutes, like
25 the IRA. And then there are other statutes which

1 are more specific to Alaska. And in other states
2 we have the same issue. For instance, we have
3 statutes that are specific on tribal land in
4 Oklahoma.

5 So we have to look at all of those
6 and make sure that we're not tripping up on
7 ourselves. And part of the effort is to ask the
8 question: Did we miss something; right? Some
9 things you can't anticipate. Again, I don't know
10 that people can fully anticipate the rationale for
11 the decision coming out of the Supreme Court in
12 *Carcieri*, but we certainly have had challenges over
13 the years.

14 Again, the IRA is an old statute.
15 It was enacted with sort of very broad delegation
16 of authority from Congress, and that is not
17 something that is done now by Congress. They have
18 been largely directed by the Supreme Court to be
19 more specific in how they delegate to the
20 administrative branch or to the executive branch
21 authority to take action.

22 So there has been a great deal of
23 effort over the years to bolster the authority in
24 the IRA so that it wouldn't get struck down in
25 general, and so that's part of the process. And

1 all of the work that goes into taking Land Into
 2 Trust for tribes now is part of that process of
 3 trying to essentially backfill what Congress didn't
 4 do.

5 ROB SANDERSON JR.: Right. And so
 6 my last question -- and I just hope that you
 7 gentlemen take these questions back East
 8 seriously -- is that, you know, whatever is on the
 9 books now, whatever was able to get Craig into Land
 10 Into Trust, let's work on improving that, to get
 11 Land Into Trust, continuing to get Land Into Trust
 12 here in the state of Alaska instead of trying to
 13 reverse some of those things that have already
 14 happened.

15 Thank you.

16 JOHN TAHSUDA: Thank you.

17 CATHERINE EDWARDS: Catherine
 18 Edwards, Sixth Vice-President for Central Council
 19 Tlingit & Haida Indian Tribes of Alaska.

20 Mr. Tahsuda, I heard the solicitor
 21 tell us that previous solicitors have been working
 22 on this issue. Then we had a decision that Alaska
 23 could put Land Into Trust, and now I hear you
 24 saying in order to defend us in the decisions that
 25 get made, you need to hear more from us. And I'm

1 wondering what more do you need to hear from us,
2 because this has been an ongoing issue from us.

3 It sounds like you've gathered a
4 lot of information and I'm going to reiterate what
5 President Peterson said. It is urgent -- maybe not
6 for you, but for us. And I'm with him. I hear you
7 telling me that it's going to be at least another
8 year before you start being able to approve any of
9 these applications in putting Land Into Trust, so
10 I'm wondering what pieces we might be missing,
11 because we've already been talking about this issue
12 for a very long time.

13 KYLE SCHERER: Sure. So the Land
14 Into Trust in the Lower 48 is one of the things
15 that, in the solicitor's office, we most regularly
16 deal with -- I don't want to say a majority of
17 decisions, but it may be approaching that. Those
18 are decisions that get challenged.

19 And so the Sansonetti Indian lands
20 opinion is an example. That dealt with sort of the
21 various provisions of FLPMA and ANCSA, and it ended
22 up being a 130-something-page opinion, where it
23 really went through, in granular detail, sort of
24 the history, how each statute interacted, and ended
25 up getting to a place where that is still an

1 opinion that we look to and rely on as we deal with
2 Alaska-related issues.

3 So I would think that -- I don't
4 want to be predeterminative on what sort of an
5 expanded M Opinion that supports this position or
6 something else might look like one year from now --
7 or one year plus six months from now, whatever the
8 timeline ends up being -- but it will likely be
9 more expansive and look at those various statutes
10 and how they interplay in a manner more similar to
11 Sansonetti than more similar to the January 13th,
12 2017, M Opinion that was issued by Solicitor
13 Tompkins.

14 EVELYN MYERS: Thank you. My name
15 is Evelyn Myers, and I'm past president of the
16 Juneau Indian Village.

17 And just down to your left is
18 property owned by my family that is in trust
19 currently. We've been neighbors with some of the
20 folks in this room, but many have moved on to other
21 places. But I would like to thank you and
22 President Peterson for giving us the opportunity to
23 address this vital concern to individual tribal
24 citizens and the people of Juneau, as well as the
25 state.

1 This has been an ongoing issue,
2 and it is one that I feel -- I'm fearful that we're
3 going backwards or staying in one place. And it is
4 really time to move forward, and it is time to meet
5 more. And I understand time is limited, budgets
6 are tight, but we're talking about land where we
7 live. And it's prudent for us to meet, and I will
8 continue to have dialogue with Central Council
9 because I also think another big issue is probates.
10 And as long as there's lots of questions on that,
11 we're not weighing it right. It's out of balance.

12 So we need to take hard looks at
13 what we're doing. Is it in the best interests of
14 the people, of the clan people? And, again, I
15 thank you. I know the budgets are tight, but
16 whatever you can do to continue the dialogue and
17 conversations with tribal citizens would be
18 appreciated.

19 Thank you.

20 (Applause.)

21 JACQUELINE PATA: Thank you. Once
22 again, I'm Jackie Pata, Second Vice-President for
23 Tlingit & Haida.

24 On this particular issue of Land
25 Into Trust, I actually was lucky enough to

1 participate in the consultations that happened in
2 2014 across Indian country but particularly across
3 Alaska. And if you look at those records of those
4 consultations, you heard a story of tribal leaders
5 speaking to the cultural value of being able to
6 have sustained kind of ownership and protections of
7 lands, not any different than the story I hear
8 across the nation, not any different than I hear
9 from people who want to be able to make sure that
10 they're protecting their natural resources, their
11 abilities to hunt and fish, their connection to
12 land, and their connection to their communities.
13 And all of those are very, very valuable.

14 And so when we look at the reasons
15 why tribes restore or put Land Into Trust, it
16 really is about thinking of the perpetuity. What's
17 going to happen with the next generations? Will we
18 have access?

19 And I say that because, you know,
20 as my mom's good friend just spoke before me, my
21 great-grandmother had a parcel of land right out
22 here in the parking lot area, which we transferred
23 to the tribe, which is part of the parcels that are
24 sitting on your desk for consideration of Land Into
25 Trust. My family made a tough decision. We felt

1 it was important that our tribe was able to shore
2 up its land, and yet we then lost the protections
3 of that. So I wanted to be able to make that
4 clear.

5 And then also I wanted to say, you
6 know, in my former life I was the director of the
7 Housing Authority here for our tribe. And during
8 the time when many of our village corporations were
9 contemplating exploring -- and many of them did
10 actually do homesites. And it was -- for me, it
11 was -- and I'm also careful when I say this --
12 somewhat disturbing and somewhat tragic, because I
13 felt we didn't have an alternative, even though we
14 had a desire, to put land into -- a desire to give
15 homesites to our citizens who needed it so
16 desperately, who needed to build houses. And we
17 needed to build communities.

18 But we didn't have the ability to
19 transfer that land into protection so that we could
20 keep them from loss, and we tried. We tried hard
21 to figure out how to do that. But because of not a
22 statutory reason, but an administrative decision
23 that was politically based -- doesn't that have a
24 resounding ring to what we hear about all the time,
25 about Land Into Trust across the country?

1 Administrative decisions that are politically
 2 based. And that was politically based by our own
 3 Senator, Senator Stevens. But it was politically
 4 based, and we were unable to have those
 5 protections.

6 Today, when I drive by the most
 7 beautiful communities and homesites on the
 8 waterfronts of Craig or in Klawock or other
 9 communities, I realize how many parcels of those
 10 lands have been lost because we didn't have the
 11 protections of taxation, that we didn't have the
 12 protections put in place to be able to keep those
 13 Native lands in Native ownership. And it is a sad
 14 story. It's a sad story because we fought so hard
 15 for ANCSA so that we could have Alaska Native
 16 lands, and yet we were prohibited from protecting
 17 them.

18 So when I look at the ANCSA lands,
 19 even under the corporate structure itself, there
 20 was nothing there that actually said we couldn't
 21 take Land Into Trust. ANCSA was dealing with lands
 22 selected by the corporations. And actually, by the
 23 way, as many of you -- as you probably know, they
 24 have their own protections in place. Undeveloped
 25 lands aren't taxed. Undeveloped lands are

1 protected. Undeveloped lands that are not being
2 presently timbered are considered protected. So
3 why couldn't we have protected those lands that
4 went, and should have fallen into the hands of our
5 tribal citizens and our tribes themselves?

6 ANCSA required us to actually give
7 some of those lands to the village communities and
8 local communities, but because we couldn't give
9 them to a tribe, to the local government that could
10 have been a tribe and put them into trust, there
11 was no incentive or benefit to shore up the lands
12 that could have been there for the -- for our
13 tribal communities and our tribal governments.

14 And I don't need to remind you of
15 the history, but I want to remind you only because
16 it becomes the emotional context of what we speak
17 from. It becomes the passion about why this is so
18 important to us, land. Like any other tribe, land
19 is important for connection. It's important for
20 our governance and our operations, and it is
21 important for our people to have that feeling of
22 security for the future.

23 I also want to say that, you know,
24 one of the other things that -- some of the
25 questions that come up are: well, how do we deal

1 with the fact that there are subsurface rights?
2 And I know that you know better than I do how to do
3 that. In Oklahoma, John, where you come from, we
4 have split estates, and it's dealt with every day.
5 This is not a new thing because Alaska has split
6 estates. And so that should not be the barrier
7 from taking Land Into Trust, how do we address
8 those issues.

9 We also know that we want to make
10 it very clear -- and you heard here today, but you
11 hear over and over again -- let's stop creating
12 classes of tribes. Let's stop trying to create
13 separate recognition of how we treat certain groups
14 and other groups, because we're not. When the
15 constitution recognizes tribal governments, we are
16 recognized as tribal governments; and let's stop
17 creating barriers in the road.

18 I believe that Alaska should have
19 the right to take Land Into Trust. I believe that
20 there are other communities out there who want to
21 shore up, just like any other tribe wants to shore
22 up, their ability to be able to have their
23 communities intact for the perpetuity of the next
24 generations, and those homesites as well as those
25 other important areas of land.

1 I would like you to come out here
 2 and see the village. You know, I was raised,
 3 earlier in my life, in the other part of the
 4 village, which is now where the highway is and the
 5 state building in the 7th Street area. Before
 6 urban renewal, we all lived there on 7th Street.
 7 But then what happened was, Juneau decided that it
 8 wanted to expand and clean up the village, and they
 9 had urban renewal, and they scattered us all across
 10 Juneau. And it wasn't until, you know, decades and
 11 decades later that we were actually able to get
 12 Indian housing again, because we lost land. We
 13 lost land, and it's important to how we actually
 14 take care of our citizens.

15 So I want to thank you for being
 16 here, and I also want to let you know that I worry
 17 about a year before we make decisions. We had
 18 these consultations. They were very thorough, and
 19 I'm not sure what we'll accomplish by continuing to
 20 consult again. Gunałchéesh.

21 (Applause.)

22 ANDREA CADIENTE-LAITI: Hello
 23 again. I'm Andrea Cadiente-Laiti, and I'm the
 24 tribal administrator for Douglas Indian Association,
 25 an IRA tribe.

1 This is a bittersweet topic for
2 Douglas, or the Auk Kwaan and the Taku Kwaan,
3 because we have the beautiful capital city of
4 Juneau, which, for the most part, was once an
5 Indian village. We have beautiful Douglas, which,
6 for the most part, was once an Indian village. And
7 when I addressed you earlier I talked about how the
8 village itself was burned down. The boat harbor,
9 that the Taku chief bought, including the school,
10 are no longer in the ownership of the tribe. It
11 was a land grab. It was collusion, actually, by
12 the Douglas City Council.

13 And so when we look at the
14 customary and traditional use of this area and the
15 occupation and the common bond that made DIA a
16 federally recognized tribe, we are basically
17 landless. And unless you have deep pockets, like
18 other tribal entities, where you can buy real
19 estate and then maybe say Land Into Trust -- like
20 the area we sit on.

21 Jackie made a good point. Some
22 folks only go so far back, thinking that the Juneau
23 Indian village was only to where the oil tanks used
24 to be at the end here to where the teenage club
25 used to be, the little ANB Hall, when actually it

1 was all the way out to mean low water, or as low as
 2 the tide goes. And so the village was essentially
 3 this whole waterfront.

4 And so it was primarily an Auk
 5 Kwaan village, but we had Taku Kwaan relocate to
 6 the Juneau Indian Village, so there are a lot of
 7 Taku Kwaan households here. And they were on
 8 restricted-deed property, trust property. And if
 9 they desired water, fire protection, police
 10 protection, then they had to forego restricted-deed
 11 status. And some residents chose to do that, much
 12 to their losses, their future losses.

13 The reason I say it's bittersweet,
 14 other than the massive land loss, is when we look
 15 back to the tribal territory issue, if you look on
 16 the Taku River -- and, again, it's one of the
 17 world's most renowned salmon-producing waters. It
 18 is a major, major waterway for our fish and
 19 wildlife, natural resources. There were villages,
 20 Taku villages, all along the coast of the Taku
 21 River and the inlet, up into B.C. -- which, of
 22 course, we all know, you know, Canada and the
 23 United States, that's a manmade border -- before
 24 they divided the people of the Taku. And they were
 25 forced off the river. And that's how they ended

1 up, too, over on what we call Sandy Beach. Now we
 2 have an ice skating ring on there. We have a
 3 ballpark on there. We have a recreational beach on
 4 there.

5 And then add to that the
 6 challenges of the Forest Service. We have veterans
 7 that have been waiting patiently for the Native
 8 allotments. They'll never see that, because they
 9 have to show traditional and customary use, and
 10 there's nothing left from their childhood days or
 11 their aunts' and uncles' and grandparents' days,
 12 because it has been seized -- stolen, if you will.
 13 And so they can't even lay claim to that. And
 14 everything else is in Forest Service hands,
 15 including the two reserves that I talked about
 16 earlier.

17 My question is, with regard to the
 18 Forest Service occupation and ownership of much of
 19 tribal lands, how does this all fit in? What is it
 20 -- and I know you can't speak for the Forest
 21 Service, so I'm just posing this as something that
 22 needs to be thought about for us here in Alaska.
 23 With the Forest Service ownership over much of the
 24 tribal lands, where do they stand as a party in all
 25 of this? I do know that they have the ability to

1 return lands. And, in fact, I believe Sealaska
2 actually donated some of the land that they claimed
3 on behalf of the shareholders, ANCSA, and that was
4 the Auke Bay recreational area. And they put that
5 back into the U.S. Forest Service.

6 So we, through Douglas Indian
7 Association, need to understand or at least have
8 hope in some sort of reclamation of the tribal
9 territory that once was, because this is a city
10 that thrived, but it thrived on the back of tribal
11 members, of Kwaans, the people of Taku, the people
12 of Auke Bay.

13 And so we would like nothing
14 better than to have that -- those parcels of land,
15 to say we want to put this back into trust. And
16 now it's CBJ. It's Forest Service. It's even, to
17 some extent, Tlingit & Haida, albeit a small piece,
18 because this was the Juneau Indian Village too.

19 And so small tribes fall to the
20 devastation of simply being small, and so our
21 voices aren't heard on the congressional level or
22 on the D.C. level. So if anything is going to come
23 of this, you know, my recommendation is that if you
24 have some sort of consultations in the future, and
25 you're going to do it -- you know, since you can't

1 come to Juneau as often as we'd like to see you,
 2 that if you put something together, a group of
 3 tribal leaders -- that you think very seriously
 4 about the IRA leadership, because that's where it
 5 was.

6 And it was the IRAs that actually,
 7 as a consortium, and because of ANCSA and the
 8 tribal judgment, gave birth or grew into Tlingit &
 9 Haida Central Council. And a lot of our young
 10 folks have forgotten that, and it's a very
 11 important part of history. Clearly, that's why we
 12 still maintain that IRA tribal government status.

13 And then last but not least, if I
 14 heard you correctly with your questions regarding
 15 IRA and the new applicants seeking IRA status, was
 16 that it wasn't intended for IRAs to believe that
 17 their status was in any kind of risk, that it is
 18 recognized.

19 KYLE SCHERER: Correct.

20 ANDREA CADIENTE-LAITI: And so the
 21 harm that they perceived, or the mistrust that they
 22 perceived was hopefully all for naught because --
 23 again, if you could give me some feedback and say,
 24 "Yes, you're correct," I'd be happy with that.

25 JOHN TAHSUDA: Yes, you are

1 correct.

2 ANDREA CADIENTE-LAITI: Thank you.

3 JOHN TAHSUDA: If I can just add to
4 that -- so it's a different question, and so there's
5 different processes. But the question of
6 transferring land from -- and you know, of course,
7 the U.S. Forest Service is not part of the Interior.
8 And even though, ostensibly, the United States holds
9 the title, it is actually the different departments
10 that hold the responsibility, the management
11 responsibility, for those.

12 And so there's a process. It
13 usually requires some Congressional action to do
14 the transfers between departments. So -- but there
15 is -- and we'd be happy to talk, if that's your
16 desire, you know, looking forward. Again, that's
17 kind of a different issue, but, you know, there is
18 a process for that.

19 WILL MICKLIN: Hi. will Micklin,
20 Third Vice-President, Central Council Tlingit &
21 Haida Tribes of Alaska.

22 So I just want to state clearly --
23 one is, I'm hoping that this process is not
24 positioned to question either the existence or the
25 potential for a determination of Indian country in

1 Alaska or the application of Fee To Trust in Alaska
2 equivalent to any other tribes in this country, or
3 that those interpretations would be supported by a
4 rebalancing of the Chevron deference in contest
5 with the Indian canons of construction.

6 I would look back to the Indian
7 Intercourse Act of 1934. That was the first
8 statutory definition for Indian country. And it
9 provided for laws, and particularly criminal law,
10 in the Indian Territory. It firmly applied to
11 Alaska. I can read to you quotes from Secretary
12 Seward the in 1860s that clearly defined Alaska as
13 within the Indian Intercourse Act and, therefore,
14 by definition, Indian country.

15 That didn't change until 1872. A
16 gentlemen named Seveloff was arrested in Sitka for
17 trading in liquor with the Tlingits of Sitka. He
18 was arrested. He was taken to the district court
19 in Oregon, in the Oregon Territory, who adjudicated
20 issues for the Alaska Territory and came before
21 Judge Deady. In 1872, Judge Deady came to his
22 decision, and you can see clearly in his writings
23 in his journal and in contemporary discussion of
24 the decision, his intent was to limit the
25 application of Indian country within Indian

1 Territory, because he was particularly upset by the
2 imposition of that within the Oregon Territory. So
3 his mission intention was to keep that out of the
4 Alaska territory.

5 So he rendered his decision that
6 the Indian Intercourse Act did not apply in Alaska.
7 And in his journal he said, "I'm probably wrong in
8 my decision; but, if so, then Congress will
9 overturn me."

10 well, sure enough, in 1873
11 Congress came up with the Seveloff fix that said,
12 "Yes, there is Indian country in Alaska." In the
13 language of the bill, they made it apply to liquor
14 and the liquor ordinance. So that is still on the
15 books, and the Seveloff fix is firmly in statute
16 with regard to liquor control ordinances within
17 Alaska.

18 But the point being is that Indian
19 country was not made of whole cloth in contemporary
20 discussions since ANCSA; it formed its basis in the
21 Indian Intercourse Act of 1834. It was really --
22 that decision was really a child of racial
23 prejudice. Judge Deady only sentenced two
24 individuals to death in his term as judge. They
25 were both Natives from Alaska. He ordered them

1 both executed and their bodies dissected at the
2 local medical college in Oregon territory.

3 There was an individual, after his
4 decision, that shot an individual five times. This
5 was a white person. He shot another individual
6 five times, killed them, and was brought before his
7 court. And because of his decision in 1872, he
8 found them guilty; but because there was an absence
9 of criminal law within the Alaska territory, he let
10 them go. The two other individuals, Alaska
11 Natives, that were brought before him, he had them
12 executed and their bodies dissected.

13 So this is rife with racial
14 prejudice, and he had an agenda, of what we today
15 call an activist court, that had an intended
16 outcome, which was to deprive the Alaska territory
17 of Indian country status because of his feeling of
18 harm to the Oregon territory by a similar
19 interpretation.

20 So I'm particularly concerned
21 that, in this discussion, we not be diverted from
22 the benefit that designation of Indian country and,
23 by extension, the Fee To Trust authority for
24 tribes, similar to any other tribes in the country,
25 brings to our communities. We enjoy inherent

1 tribal sovereignty, the right of self-governance
2 and self-determination. And within trust lands,
3 and, therefore, Indian country, our tribal
4 governments have the power to enact and impose
5 taxes, to adopt and enforce our own internal tribal
6 laws, to adjudicate civil disputes in this state
7 under PL 280. And we are able to issue marriage
8 licenses, buy and sell property, regulate land use,
9 and provide essential and nonessential governmental
10 services. We enjoy the same sovereign immunity
11 possessed by federal and state governments. We can
12 be sued only if we consent or if we engage in acts
13 beyond the scope of our authority.

14 These are the fundamental and
15 essential tools and attributes of governments.
16 Without these tools, we are unable to operate as
17 governments and would suffer mortal harm in
18 having -- if we lose immunities, having to defend
19 third-party suits, being unable to regulate affairs
20 within our communities, internal governance for
21 personal jurisdiction, and in Fee To Trust,
22 extending that to territorial jurisdiction.

23 Earlier today I talked about the
24 balancing test between the canons of construction,
25 Indian laws Canon of Construction, and the Chevron

1 deference. I want to touch on that, but I will
2 quote -- as to the question of what impact ANCSA
3 had on this baseline question of Indian country
4 extended to Fee To Trust authority for tribes, that
5 the '93 -- that the ANCSA opinion -- and I'll
6 quote -- law did not touch upon this, and I'll
7 quote Senator Ted Stevens, one of the principal
8 architects of ANCSA. And he stated in 1986, and
9 I'll quote, "ANCSA was and is a land settlement.
10 It did not terminate the special relationship
11 between Alaska Natives from their federal
12 government or resolve any questions concerning the
13 governmental status, if any, of various Native
14 groups. There is not one reference to sovereignty
15 in ANCSA or in the 1971 conference report."

16 I would say that's an
17 authoritative voice when it comes to ANCSA.

18 When Congress enacted ANCSA, it
19 was aware of the doctrine of inherent tribal
20 sovereignty and the definition of Indian country.
21 Yet Congress did not say that ANCSA extinguished
22 Indian country or inherent tribal sovereignty. If
23 Congress had intended ANCSA to extinguish Indian
24 country in Alaska, it would have expressly done so.

25 In fact, the following statement

1 of the House Committee on Interior and Insular
2 Affairs in the 1987 ANCSA amendments emphasizes
3 that Congress intended to limit ANCSA to settling
4 the issue at hand, land claims, and that ANCSA did
5 not extinguish Indian country or divest Alaska
6 Native tribes of their inherent tribal sovereignty.
7 I won't read the quote. It's a fairly long quote,
8 but it is exactly on point.

9 As to the Sansonetti opinion
10 rendered in the last days of the administration --
11 it seems like all these important M Opinions are
12 rendered in the last days of the administration --
13 the Tompkins opinion, the Sansonetti opinion.
14 Ironically, any opinion that you issue may indeed
15 be in the last days of your administration.

16 So as to that, I'll just say that
17 that question, the Sansonetti opinion on Indian
18 country's existence in Alaska, is, by itself,
19 unauthorized, unpublished, and an unenforceable
20 agency interpretation. It therefore lacks the
21 weight of law, is not binding on the courts, and
22 has no claim to Chevron deference. It's a zombie
23 opinion. It should be buried and not dug up to
24 threaten us once again.

25 I'll just add that after the

1 Sansonetti opinion was issued, Congress took action
2 in response to that opinion. That was the 1993
3 recognition of tribes by the Bureau of Indian
4 Affairs and the 1994 Tribal List Act.

5 So in response to that opinion,
6 there was an action, and that was Congress
7 affirming the sovereign rights of tribes and
8 missing the opportunity to extinguish Indian
9 country, to extinguish sovereignty, to extinguish
10 the rights. They did not do so. They did, in
11 fact, the opposite, and made it a statutory burden
12 upon the administration, the executive branch, to
13 treat tribes in Alaska exactly the same, with the
14 same rights, privileges, and immunities as tribes
15 in the contiguous 48 states.

16 So I'll just conclude by saying
17 that -- just with really a plea, that Alaska tribes
18 and its corporations and its individual citizens
19 wrestled with the issue of Fee To Trust authority
20 and removing the moratorium on the Fee To Trust,
21 which was imposed administratively. We've spent
22 years and years, and there was real division, there
23 was real heartache, there was real
24 relation-to-relation injury in resolving these
25 differences. We moved ahead. In the Akiachak

1 decision -- Heather, thank you -- we prevailed,
2 mooted only because of the removal of the
3 moratorium in regulation. And we should not and we
4 do not deserve to be plunged back into that
5 division to renew discussion, which we went
6 through, which cost us real harm amongst ourselves.

7 we don't deserve additional
8 division. We ought to respect the process that was
9 followed and preserve and protect the determination
10 that was made, which provides us with the tools, as
11 has been stated by others before, to protect our
12 ancestral lands and culture, to assure our
13 self-determination, to protect our subsistence way
14 of life, our heritage and culture, and to prevail
15 in the treatment of tribes in Alaska the same as
16 any other tribe as a matter of respect.

17 And that would be destroyed if, in
18 fact, we took a step back to indecision, where we
19 don't know what is moving forward, and delay in the
20 applications. The application that was referred to
21 was submitted in 2009 for essentially the footprint
22 of this building that has been on the Assistant
23 Secretary's desk, or the Acting Assistant
24 Secretary's desk -- I don't know if that's you,
25 now, John -- since October of last year, according

1 to our latest status report, without decision. We
2 deserve to move forward.

3 If you're going to assess the
4 Fee To Trust issues in Alaska, I adamantly and
5 plaintively request that you do that within an
6 ongoing process where decisions are made,
7 applications are received and approved, and they
8 are defended.

9 And I will point to the success in
10 defending Fee To Trust decisions in the rest of
11 the -- for the other tribes. You have a tremendous
12 success rate. There was a report issued by an
13 anti-Indian group in California that called the
14 Fee To Trust process a rubber-stamping exercise
15 because of the incredibly high rate of success for
16 applications. That doesn't sound to me like
17 there's real imminent jeopardy that a decision for
18 tribes in Alaska could somehow risk Fee To Trust
19 applications in the rest of the country. It just
20 doesn't. I see no evidence of it.

21 So I would implore you to take a
22 pen, sign our application, move forward. You can
23 continue to review the issues. We are happy to
24 provide a fuller response in writing to all of the
25 questions that you have proposed, but we really

1 believe that this should not be done within a
2 suspension of Fee To Trust in Alaska, that that
3 should be reactivated, decisions made, and the
4 review of the fuller process can continue within
5 that context.

6 Thank you.

7 (Applause.)

8 JOHN TAHSUDA: Thank you.

9 TANYA EPCHOOK: Hi. My name is
10 Tanya Epchook, and I'm from the Organized Village of
11 Kwethluk. I'm the president of the Organized
12 Village of Kwethluk and the Kwethluk Indian
13 Reorganization Act Council.

14 My community has sent me here on
15 behalf of them because we've had meetings with
16 them, and we've kind of introduced this and talked
17 about it. If you want to talk about Land Into
18 Trust, you're going to have to talk about it and
19 explain it to them so they understand it right. So
20 we've had various meetings with our communities and
21 outlying communities. And the Akiachak Native
22 Community is actually our neighbor.

23 well, the first question you have
24 on these questions for consideration -- well, your
25 first question says: How do you view the impact,

1 if any?

2 That "if any" I find extremely
 3 offensive because, once ANCSA and ANILCA was signed
 4 and adopted and taken, or just put in place, it
 5 drew a line and a boundary where there never was a
 6 line or boundary, and on the other side of that
 7 boundary line was my tribe's caribou herd. We lost
 8 our caribou herd because of these documents. So
 9 that's why -- that's my own personal opinion as to
 10 why you get confrontational tribal citizens when
 11 you have these types of meetings.

12 From what my community understands
 13 and what we've all agreed to, we want that ability
 14 to apply for Land Into Trust. It's not that we're
 15 trying to make our whole allotment held by our
 16 Native corporation Land Into Trust. No. That's
 17 not something we want to do. We don't trust the
 18 government that much.

19 So what we want to do is, we want
 20 to take tiny, little parcels of land right outside
 21 specific buildings, like our public safety
 22 building. We've heard Congressman Young say the
 23 community has to take care of that, take on these
 24 issues. They can't depend on the state troopers to
 25 come and help them when they need them.

1 So if we take just our public
2 safety building's property and right outside it,
3 based on community standards, I would have a full
4 force in my public safety department. Currently,
5 we're running at half. On community standards, my
6 community is required to have 18 police officers,
7 but we're only working with six to eight.

8 So if we put Land Into Trust, our
9 KPD building, our public safety department
10 building, into trust, we're able to provide that
11 public safety to our people. If we put our
12 childcare property and building into trust, we're
13 able to fully fund our children. So why is it so
14 hard to acknowledge that these people are trying to
15 work for themselves, instead of asking you to fix
16 it for us?

17 (Applause.)

18 JOHN TAHSUDA: Thank you.

19 RICHARD PETERSON: I don't know
20 about you guys, but she just really struck a nerve
21 for me. That's really what it's about, is -- you
22 know, I spoke during the lunchtime session. And I
23 was a moderator, so I try not to. But what
24 Congressman Young said struck a nerve with me. And
25 when he said we need to take care of ourselves,

1 well, then, you need to give us the tools to do so.

2 That's what we're talking about in
 3 our villages, where our communities don't feel
 4 safe. We oversee the VPSO program, and I can tell
 5 you, our communities don't feel safe. And they
 6 blame Tlingit & Haida. And we accept that. We
 7 accept our role in that. But I can tell our
 8 coordinator works his tail off to make sure that
 9 our communities are safe, but we have limited tools
 10 to do that. And we are told, "If you want to be
 11 sovereign, you do it yourself." That's not what
 12 sovereignty means.

13 So, you know, we have an
 14 application in. And, Mr. Tahsuda, I'd like you to
 15 make a decision on it. You know, we've been
 16 waiting for ten years, and we want to be able to
 17 apply for public safety funds. That's what we're
 18 talking about.

19 Our sister from Kwethluk -- I'm so
 20 proud of you and so glad you are here. Thank you
 21 for traveling and being that voice, because this is
 22 what it's about. You talk about sovereignty and
 23 self-determination. We have to be able to provide
 24 and offer our own services. Our communities are
 25 becoming lawless. Public safety is probably the

1 number-one issue in the state of Alaska right now.
 2 And we talk about our communities, where our young
 3 ladies are being murdered. We want to be able to
 4 do something about it.

5 We, as indigenous people, have
 6 respect and pride in each other, and that's being
 7 lost because we can't truly govern ourselves.
 8 That's what this means. I agree with her. You
 9 know, we don't want to put all this Land Into
 10 Trust. I also agree with her. I don't trust you
 11 guys that much, but I want the opportunity to. I
 12 want to be able to be self-determined. I want for
 13 our people to decide for themselves what it means
 14 to be self-determined and to be sovereign.

15 This is ridiculous that we're
 16 reopening this. We have a decision that's legal.
 17 You have an obligation to move on these. To reopen
 18 this is ignoring your obligation, and I'm saying
 19 that directly to you. And I mean no disrespect,
 20 but I'm elected to be a leader for our people. I
 21 have to say this.

22 And I say it with a heavy heart
 23 when I go to our communities, and I hear a
 24 principal of a school saying, "You know what? I
 25 was trying to identify who the sharp-shooters in

1 our town are, because there was a guy shooting up
2 our village." That's reality in our state right
3 now. Young ladies are being murdered, and it takes
4 the state troopers anywhere from one to three days
5 to respond. How do I look at my people in my
6 community when a moose is killed and it takes three
7 hours for three Fish and Game law officers to show
8 up? This is what we live with. This is why we're
9 heartfelt and so passionate about this.

10 I'm from a small village here in
11 Southeast Alaska, and at one time every bit of our
12 community was restricted Trust land. Now we have a
13 checkerboard, and every day we lose more and more.
14 Our village tribe has bought up that land, that
15 IRA. They should have that Land Into Trust. They
16 shouldn't have to wait ten years and now you tell
17 them, "Hey, no problem. We're going to wait
18 another year because we wanted to hear more."

19 You've heard it. You have legal
20 action telling you to act. I am compelled to tell
21 you to act. I never want to look anybody in the
22 face again and have to tell them why we can't
23 provide adequate public safety, why we, as
24 federally recognized tribes, can't apply for
25 Department of Justice funding because we don't have

1 Indian land. This is egregious, it's wrong, and
2 you need to do your job. No more listening, no
3 more talking. Do your job.

4 (Applause.)

5 JOHN TAHSUDA: Thank you,
6 Mr. President. I appreciate what you're saying, but
7 I also firmly believe it's my responsibility that
8 the decisions that we make be the right ones. And,
9 again, I'm hoping that we can get that information
10 and have a solid ground to make the decisions on.

11 I have to tell you honestly, if I
12 was pressed to make a decision I wasn't sure about
13 today, I'd be telling you no, because that's the
14 safest course of action for me to protect against a
15 negative decision. Once I know what the status of
16 the law is, and we're on a good legal and policy
17 basis, then I think that then it's easier to make
18 the decision; and we can make a decision that we
19 can all stand behind.

20 I appreciate the sense of urgency.
21 I certainly do, but I also want to make sure we get
22 it right. And that's my personal feeling. It's
23 also the direction we have from the Secretary, is
24 to do our best for Indian country; and I think
25 that's part of it.

1 HEATHER KENDALL-MILLER: Good
2 afternoon. My name is Heather Kendall-Miller, and
3 I'm an attorney with the Native American Rights
4 Fund.

5 I was an active participant in
6 representing Akiachak and Tuluksak and Chilkoot in
7 the litigation that successfully established that
8 there is no bar against lands being taken into
9 trust.

10 Maybe I'll wait till you're ready
11 to listen to me.

12 KYLE SCHERER: Thank you, Heather.

13 HEATHER KENDALL-MILLER: Ready?
14 Okay.

15 Just for clarification --
16 obviously I've got a lot invested in this. I've
17 spent years litigating, representing these tribes.
18 And you're hearing the frustration by many here
19 today, you know, which speaks to the fact that, in
20 Alaska, we've had to fight against this invalid bar
21 to taking lands into trust.

22 My first question for you is: By
23 withdrawing the solicitor's opinion -- and by that
24 I specifically mean the one drafted by Hilary
25 Tompkins, are you informally reinstating the prior

1 solicitor's opinion? Is that the position of the
2 department now?

3 KYLE SCHERER: You mean -- by "the
4 prior solicitor's opinion," do you mean the
5 Fredericks opinion, or do you mean --

6 HEATHER KENDALL-MILLER: Yes.

7 KYLE SCHERER: We are not, no. We
8 are not.

9 HEATHER KENDALL-MILLER: So there
10 is nothing now prohibiting your department from
11 acting upon petitions to take lands into trust? And
12 I think there are at least seven that have been
13 submitted to your office thus far; is that correct?

14 KYLE SCHERER: Is it seven, Matt?

15 MATT KELLY: I don't know the exact
16 number. It's approximate.

17 HEATHER KENDALL-MILLER: All right.
18 Can I -- just as a follow-up question, does the
19 department have any intention of writing letters to
20 these tribes that have active petitions in front of
21 you to explain a timeline by which the department
22 intends on acting upon their petitions? Or is it
23 the intent of the department to wait and go through
24 this next level of administrative process before you
25 come to a decision that will impact whether or not

1 these petitions can be acted upon or not?

2 KYLE SCHERER: It's my
3 understanding -- and, Matt, correct me if I'm
4 wrong -- that the petitions that are in front of the
5 department are continuing to move forward to the
6 extent that there is work that can be done.

7 So, as you know, with Lower 48
8 tribes, it is not uncommon at all for a Land Into
9 Trust petition to take a decade. There are tribes
10 that have been waiting even longer than a decade
11 for Land Into Trust decisions. So there is work
12 that can be done, absent an affirmative decision on
13 the part of the Assistant Secretary. And it's my
14 understanding that that work is still being done at
15 the Department of the Interior.

16 HEATHER KENDALL-MILLER: Okay.
17 Thank you. I'm sure that the tribes that have
18 petitions in front of you would like to know that,
19 that this is not going to just stop any
20 consideration of their petitions while you undertake
21 this additional process of determining the extent of
22 your authority.

23 JOHN TAHSUDA: And, Ms. Kendall,
24 also -- so I want to address -- and I can appreciate
25 you asking for a time schedule. Unfortunately, at

1 this point in time, I think it's been the
2 department's policy and practice for a long time now
3 that Fee To Trust issues have a lot of unique
4 aspects to them, even down to particular parcels.
5 And so while there are some time frames involved in
6 the NEPA analysis -- there are some statutory and
7 regulatory time frames involved in various parts of
8 it -- the department has never had a specific time
9 frame for -- you know, from the initial filing of
10 application to filing the deed. We've not --
11 there's just too many variables that go into that.
12 So that is -- that's been the longstanding history
13 of the department.

14 I think that there is certainly an
15 opportunity for discussion -- and we've had some of
16 that, particularly in the off-reservation
17 Fee To Trust context -- to talk about whether we
18 could improve the process. Can we get more
19 certainty in the steps? As you know, there are 16
20 steps that are taken procedurally to move an
21 application for a parcel into trust, including the
22 final filing of the deed.

23 And so I think certainly we can
24 provide more certainty if we improved our
25 processes, but I think it's very difficult, you

1 know, to give a time frame for any particular
2 piece. And I would say that, in addition, for our
3 part, I can appreciate the legal position that you
4 have that, with the pull-back of the Tompkins
5 opinion, then, there is no hurdle from moving
6 forward. And so there is no legal hurdle, but
7 there certainly is our desire to get the right
8 answer for any one of these parcels that we proceed
9 on. So getting this -- you know, getting a firm
10 foundation on this is important for us. And for us
11 it's part of the process, ultimately, to do for
12 every parcel, to make sure we have a good legal
13 decision there on each parcel.

14 HEATHER KENDALL-MILLER: Thank you
15 for that. I appreciate that.

16 I want to go back and ask Kyle.
17 You referenced the Sansonetti opinion as being an
18 opinion that was 195 pages, something to that
19 extent.

20 KYLE SCHERER: 141, or whatever it
21 was.

22 HEATHER KENDALL-MILLER: Yeah. It
23 covered a lot of ground. That opinion was written
24 20 years ago. 20 years ago. And a lot has happened
25 since that opinion was drafted -- 25? 25 years ago.

1 25 years ago. And so the law has progressed in many
2 respects. And I'm only reading between the lines
3 here, but if that's going to be, for instance, the
4 agency's guidelines on the status of lands into
5 trust in Alaska, that is woefully inadequate.

6 KYLE SCHERER: Sure.

7 HEATHER KENDALL-MILLER: Because,
8 obviously, there has been a lot that has happened
9 since then.

10 Now, I understand, based upon the
11 notice that was sent out by the Assistant
12 Secretary, that the department feels it needs to
13 take a second look at these questions and is not
14 going to rely or feel bound by the district court's
15 decision in Akiachak. And that decision was
16 vacated on the basis that Interior had moved
17 forward in adopting rules that now pertain to
18 taking lands into trust.

19 What was not vacated, however, was
20 the appellate court decision, the appellate court
21 decision in that case. And I want to just read to
22 you very briefly, I think, a significant paragraph
23 in that case that sheds light on your actions.

24 It says: "The Court of Appeals
25 noted that there was no evidence supporting any

1 reason to believe the agency will reinstate the
2 challenged regulation," which now that appears to
3 be untrue, because apparently the agency is now
4 considering reinstating the challenged regulation.

5 "And the Court of Appeals also
6 noted that the Secretary's action was based upon a
7 legal analysis that was independent of the district
8 court's earlier decision in Akiachak."

9 I'm going to quote from the
10 appellate court, which is still good law. It has
11 not been revoked. "Interior did far more than
12 merely acquiesce in the district court's judgment.
13 Instead, it engaged in new rule-making in which it
14 considered the history of trust ownership in
15 Alaska, its prior legal interpretations of
16 governing statutes, policy issues such as public
17 safety in Alaska Native communities, comments from
18 Native communities and corporations, the
19 recommendations of Blue Ribbon commissions formed
20 to investigate criminal justice systems in Indian
21 country, and evaluate the existing management and
22 administration of the trust administration system.

23 "Interior then exercised its
24 discretion to promulgate a new rule that removed
25 the Alaska exception, explaining that the new rule

1 could foster economic development, enhance the
2 ability of Alaska Native tribes to provide services
3 to their members, and give additional tools to
4 Alaska Native communities to address serious issues
5 such as child welfare, public health, and safety,
6 poverty, and shortages of adequate housing on a
7 local level.

8 "Significantly," the court writes,
9 "Interior made clear that the district court's
10 judgment is not the basis for the department's
11 decision to eliminate the Alaska exception, and
12 that it had independently concluded that there is
13 no legal impediment to taking Land Into Trust in
14 Alaska, and there are sound policy reasons for
15 giving Alaska tribes the opportunity to petition to
16 take Land Into Trust."

17 That's pretty strong language from
18 an appellate court decision that is still solidly
19 in place that seems to bear upon this very issue.

20 KYLE SCHERER: Sure.

21 HEATHER KENDALL-MILLER: And
22 concludes that not only does the Secretary have the
23 authority, but that it's illegal for the Secretary
24 to withhold that authority from tribes in Alaska
25 seeking to place their lands into trust.

1 The position that the Interior is
2 taking now seems to be a step back at least 20
3 years from all developments that have taken place
4 in Alaska over time leading up to this.

5 KYLE SCHERER: Sure. So can I
6 respond?

7 So Part 151 -- firstly, the rule
8 has not been amended. There is no Alaska exception
9 in Part 151. This is an exercise largely because
10 the solicitor's office felt that the January 13,
11 2017, M Opinion was inadequate. Part 151 is a
12 discretionary acquisition, so the Secretary retains
13 the discretion to accept or reject an application
14 for Land into Trust, irrespective of an Alaska
15 exception. That said, the Alaska exception does
16 not exist in Part 151 as it currently reads.

17 My comments regarding the
18 Sansonetti memo were not to say that things have
19 not changed since the Sansonetti memo was written,
20 but rather to say that the type of analysis done in
21 Sansonetti where, you know, over 140-ish pages,
22 truly there was an investigation of the development
23 of the particularities of Alaska law. That would
24 be something that we would like to see more fully
25 borne out than Solicitor Tompkins' 16-page

1 M Opinion that was issued in January of 2017.

2 That's not to say that we don't
 3 end up in the same place as Solicitor Tompkins'
 4 memorandum; it's just to say that Alaska is an
 5 extraordinarily complicated place, and the focus
 6 that Solicitor Tompkins put on only ANCSA and only
 7 FLPMA did not take into account ANILCA. It did not
 8 take into account the 88 amendments to ANCSA. It
 9 did not take into account, you know, sort of the
 10 history of case law that was post-Sansonetti,
 11 frankly.

12 So that was my only reference to
 13 Sansonetti -- not to say that the legal landscape
 14 hasn't changed; just to say that I, at least,
 15 appreciated the analysis that was done in looking
 16 at Alaska, I guess, now three administrations ago.

17 HEATHER KENDALL-MILLER: Well, as a
 18 participant in the litigation, the Akiachak
 19 litigation, that went on for some amount of time,
 20 you know, the case was, in part, overtaken by the
 21 Department of Interior's rule-making and such. And
 22 I think it was primarily on that basis that the
 23 court eventually decided that the case was moot.

24 But if the department has
 25 completely switched gears and believes now that

1 there are other reasons why it should not use its
2 discretionary authority to consider petitions for
3 lands into trust in Alaska, then that raises other
4 legal questions, from my point of view, as to
5 whether or not the Secretary feels bound at all by
6 the prior Akiachak decision. And in particular,
7 you know, that would -- if that's the case, I think
8 that's really important for tribes in Alaska to
9 know.

10 MATT KELLY: If I could interject,
11 I think that we would agree with the way you
12 characterize some of the laws. The age of
13 Sansonetti, 25 years old now -- its analysis should
14 be reconsidered in light of intervening events,
15 legal events. I don't think we disagree with that.
16 In fact, I think the M Opinion, withdrawing from
17 reconsideration the Alaska Fee To Trust memo, says
18 exactly that. And I think it's precisely for the
19 reasons you identify, including the decision in
20 Akiachak, including the vacated decision in
21 Akiachak. Those points were not addressed
22 adequately, as was explained in the M Opinion. And
23 that is exactly what we would like to try and do
24 now. And I think that that's what's reflected in
25 the questions that were distributed as well.

1 I think, going to a point that
2 Mr. Tahsuda was making earlier, we have not
3 withdrawn the revised so-called Alaska exception.
4 151 remains on the books as it was amended.
5 However, we want to ensure that every decision that
6 we make to take Land Into Trust has as solid a
7 record and addresses all of the potential issues
8 legally that have not yet been authoritatively
9 addressed by the department.

10 And I think, in part, the call for
11 input from tribes in Alaska is to help us
12 understand what that changed terrain is and why it
13 should or should not have an effect on processing
14 Fee To Trust applications in the way that the
15 department has said it would do in the M Opinion
16 from 2017.

17 HEATHER KENDALL-MILLER: All right.
18 Thank you.

19 JOHN TAHSUDA: So I'll just note,
20 we're at 3:00, which is supposed to be the end of
21 our period. We have -- I understand we don't have
22 to leave the room right away, though; right? Okay.

23 So I'm happy to keep this going.
24 I know we got started out almost 40 minutes late
25 into this session, so I'll leave it open. And then

1 when we wrap this up, if there is a desire to have
 2 any more discussion about this morning's topic, I'm
 3 happy to throw the mike open for a few minutes on
 4 that topic.

5 So proceed, ma'am.

6 BARBARA CADIEN TE-NELSON: Thank
 7 you. My name is Barbara Cadiente-Nelson. I'm of
 8 the Teikweidí clan from Angoon Kwaan. I'm a council
 9 member of Taku Kwaan government, otherwise known as
 10 Douglas Indian Association.

11 I knew that this was probably the
 12 last moment to be able to speak, and I wanted to
 13 bring us back to a place of -- we take for granted
 14 that you understand our structure of clan systems
 15 and tribe systems, of land and boundaries. And I
 16 wanted to give you a different insight, hoping that
 17 it matters. But, if not, then to remind ourselves
 18 here that the conversation I just heard this
 19 morning, and just of recent, was very beneficial
 20 and necessary.

21 I wanted to acknowledge that we
 22 are in a government-to-government relationship here
 23 and conversation, and that is to be valued, and to
 24 extend my appreciation for you being here and all
 25 of us coming here at the expense of our

1 livelihoods. Our president of Taku Kwaan is
 2 fishing -- and he's the lone fisherman of his
 3 clan -- up the Taku River. And it's important that
 4 he continue that, and so we're here representing
 5 his voice.

6 When I stated that I wanted to
 7 bring us back as a people, and what it means --
 8 what Land Into Trust means to us, what it means to
 9 us as tribal people as owners of this land, I
 10 wanted to bring it back to ground zero here, that
 11 the name of Juneau is really Dzántik'i Héeni. The
 12 name of the mountain that is right behind us is
 13 Yaáda Akáakla, the beautifully adoring face. The
 14 name of Douglas is Kahtáak. And we have listed
 15 over 200 names of places.

16 That's our claim to land. And as
 17 tribal people, we have to remind ourselves of where
 18 we're at, hence our acknowledging the clans of
 19 Taku, the Yanyeidí and the Gaanaxteidee; and of Auk
 20 Kwaan, the L'eeneidí and the wooshkeetaan. They
 21 own title to this land. We haven't let that go in
 22 our hearts and our minds, and sometimes this
 23 legalese conversation brings us back to, again,
 24 looking to the government for answers or
 25 affirmation or validation, and we push and push.

1 And I don't want to do that
 2 anymore. We ourselves have, within our powers, to
 3 be sovereign. Be sovereign, then. I heard today
 4 about that one-acre parcel that's on your desk for
 5 approval. And indeed, as Native people, that's why
 6 we need an IRA summit, so that we can come here and
 7 make these conversations, these dialogues
 8 beneficial for all, including yourselves, to go
 9 away with a consensus, because I know that's how
 10 the government operates, on consensus. And it
 11 restores us as a people.

12 So, again, this goes to my point
 13 that your coming here is part of the equation of
 14 bringing solidity that should have come with the
 15 Alaska Native Claims Settlement Act, but it didn't.
 16 It was a social experiment, and we've been
 17 experimented on long enough.

18 So we have to take that back, and
 19 I heard that loud and clear. My mother that was
 20 here was seven years old when the constitution was
 21 ratified for Douglas Indian Association. Though
 22 she wasn't born here -- she's of a different
 23 Kwaan -- but had raised all her children here, and
 24 I was born here.

25 So what does that mean? What does

1 it matter? It means that even though I was born
2 and raised here, I respectfully acknowledge the
3 true owners of this place. And I carry myself in a
4 way that I will not cause harm to myself or my clan
5 or my people. And we have to return to that in
6 everything we do. Let's not run to this agency or
7 that entity or this form of government without
8 talking to one another and building and restoring
9 ourself with that endowed power of sovereignty.

10 I'm going to give you an example
11 of what that looks like. I mentioned my
12 brother-in-law, Clarence Laiti, who isn't here
13 because he's fishing. Years ago, when the opener,
14 gillnet opener on the Taku was about to occur at
15 noon, he, as a gentleman was standing down for the
16 other fishermen to set their nets in this area they
17 were all in.

18 And they didn't set their nets,
19 and he didn't set his net. And, well, the clock
20 was ticking. You only have so many hours. He
21 waited, and finally he let his net go. And then
22 later the other boats subsequently followed and set
23 their nets. And he found out why they waited.
24 They acknowledged him and his ancestral waters as
25 the right owner of the place, and they deferred to

1 him out of respect for that knowledge.

2 And that's what we, as a people --
 3 that's what makes us unique. This conversation,
 4 again, is significant. It has to occur. But let's
 5 not forget who we are. And so with that, I want to
 6 ask those of you who have not been here before,
 7 those of you who are just visiting, and those of
 8 you who are like me, a visitor on this land of
 9 Dzántik'i Héeni, that you go and visit the Yanyeidí
 10 pole that was raised over in Douglas, across the
 11 bridge. It stands there, again, as an iconic,
 12 tangible title of land to the Yanyeidí. That's
 13 also represented in Taku Kwaan government.

14 It tells the story of the place.
 15 If you were to -- or anyone else was to say, "This
 16 is my land," tell me how you acquired that land?
 17 what blood was shed? How far back does it go to
 18 the first and the second bloods of ancient times?
 19 That's what that story tells.

20 And so let's remember, as a
 21 people, and particularly those three tribes that
 22 I'm assuming have connection to the place through
 23 ancient history, that they deserve to be heard.
 24 And let's remember and always uphold that, because
 25 that's sovereignty. It's not that we, as sovereign

1 people, shall or shall not decide if we want to be
 2 sued; it's that we uphold that responsibility of
 3 sovereignty to the highest degree of integrity and
 4 dignity and honor for those who went before us.

5 So, again, in closing, please take
 6 time. Go take time to look at that pole that was
 7 raised, and at a place that was very significant,
 8 where the people were -- where they lost their
 9 homes and their gear and so much more not too long
 10 ago, in a fire that was not a fire in 1963.

11 So it's my cry or my plea or my
 12 prayer that we all restore ourselves to this
 13 beautiful place. There is an ownership that goes
 14 beyond the flags that we fly. Gunałchéesh.

15 (Applause.)

16 WILL MICKLIN: Will Micklin,
 17 Central Council Tlingit & Haida Tribes of Alaska,
 18 Third Vice-President. So I'm going to tax you with
 19 one more take of the mike.

20 But first I want to thank my
 21 Teikweidí sister, Barbara, for her words. It
 22 reminds me of William Paul, who was one of the
 23 legendary attorneys defending Alaska Native
 24 interests from the early part of the last century,
 25 and his son Fred Paul, both involved in defense of

1 our interests leading up to ANCSA and after.

2 But he has a long -- a fairly long
 3 treatise that he wrote, and essentially the message
 4 is, "This is our land. This is our land." So if
 5 you need any further explanation of why Native
 6 peoples would want to defend and protect and
 7 recover their land, then you haven't been in Indian
 8 country long enough. It is both utility -- as
 9 Jackie Pata mentioned, we're not eligible for
 10 certain funding like the energy policy, the Act of
 11 2005 Farm Bill funding. I can list many things.
 12 If we don't have trust land, we're not eligible for
 13 that funding stream.

14 Our communities are at risk.
 15 They're suffering. We have, in our villages, as
 16 President Peterson mentioned, people are armed to
 17 the teeth, not because they're defending the Second
 18 Amendment or the National Rifle Association; it's
 19 because they're trying to live in a village where
 20 we don't have the resources for public safety and
 21 law enforcement, and they are suffering from the
 22 symptoms of economic deprivation and -- which
 23 causes substance abuse and bad acts in the
 24 community. And we can't provide those resources.

25 We are in desperate need, and

1 there's an answer at hand -- one acre, a half acre,
 2 two acres, where a community can accept land in
 3 trust and open up a significant funding stream to
 4 their communities to support their citizens and
 5 their needs. That doesn't seem like a big task.

6 I didn't stand up to say that.
 7 what I did stand up to say is that you mentioned
 8 the rescinding of the M Opinion that Interior
 9 solicitor Tompkins issued. My question is: why
 10 was it rescinded?

11 So a friend of mine asked Hilary
 12 Tompkins, who was then past Interior solicitor, at
 13 a symposium, why, when she had the opportunity, she
 14 didn't rescind, withdraw the Sansonetti decision.
 15 she said, "well, that's not what the solicitor
 16 does. We have an institutional practice where you
 17 don't go back and withdraw the opinions of prior
 18 solicitors because you don't want future solicitors
 19 to withdraw yours, not without a reasoned analysis
 20 in process."

21 So my question is: what was the
 22 analysis and process that went into the decision to
 23 withdraw the Tompkins M Opinion? We're now going
 24 through a long and rigorous process on
 25 Fee To Trust, whether the Secretary should exercise

1 his discretion to accept and approve applications.
2 where was the process that went to the analysis to
3 determine that that M Opinion should be withdrawn?
4 And when that practice of withdrawal flies in the
5 face of an institutional, longstanding practice
6 that you don't withdraw prior opinions -- if you
7 have a change to a prior opinion, you build on it
8 with a new opinion.

9 So there was an APA process that
10 went into changing 151.1, removing the moratorium
11 on Fee To Trust, the "except in Alaska" provision
12 in the non-gaming Fee To Trust regulations. Where
13 was the process that went into withdrawing the
14 Tompkins M Opinion? And if that was absent, how do
15 you justify this process in the absence of a
16 process that caused this to be front and center in
17 front of us today? I would really like you to
18 address that question.

19 Thank you.

20 KYLE SCHERER: Sure. The
21 President's chief of staff, on January 20, 2017,
22 directed the departments to review agency statements
23 of general applicability. And this was determined
24 to be the M Opinion that came out on January 13th,
25 2017. Oh, you can't hear me? Okay.

1 The President's chief of staff, on
2 January 20th, 2017, announced that for agency
3 actions of general applicability, that those be --
4 that those undergo a review process. And this was
5 determined to be a statement of general
6 applicability, the M Opinion. The rule, again, has
7 not been modified, the Part 151 regulations, but
8 the M Opinion was deemed to fall under that sort
9 of -- that bucket of reviewable agency action. And
10 as part of the review, it was determined that there
11 were additional sort of Alaska-specific statutes
12 and sort of subsequent case law that needed to be
13 addressed.

14 WILL MICKLIN: So should we not
15 have been consulted?

16 KYLE SCHERER: It's not a
17 requirement of the department to consult on legal
18 opinions.

19 JOHN TAHSUDA: However, going
20 forward now, we are consulting with you.

21 Very well. So thank you, guys,
22 for your participation and for all your comments,
23 and we value them greatly. And we hope that -- I
24 think there was an earlier comment -- I can't
25 remember if you made it, Heather, but that, you

1 know, I think that part of what will be helpful is
2 for us to -- as this goes along, for this to be an
3 iterative process for us. And as we get
4 information from you, that could certainly
5 enlighten the consultations we have moving forward
6 as well.

7 So thank you. And if there's no
8 other final comment, I'll close this.

9 Do you want to make a comment?

10 KYLE SCHERER: I'll just say, just
11 sort of finally, I know that Matt and I really
12 appreciated both the morning segment and the
13 afternoon segment. It was incredibly helpful. Some
14 of the comments that we heard today were also
15 comments that we heard in Fairbanks, you know. And
16 just sort of for me personally -- you know, we're
17 tribal members. We're Indian lawyers. We take,
18 here in the solicitor's office, the trust
19 responsibility incredibly seriously, so I hope that
20 this is, again, as John said, an iterative process.
21 And I know, in addition to speaking with additional
22 tribal leaders, we will be having longer and more
23 granular conversations with NCAI and NARF on these
24 questions that are hard. And we welcome those
25 discussions moving forward.

1 JOHN TAHSUDA: So thank you. And
2 we will close out this public meeting on
3 Fee To Trust under the Alaska IRA provisions.

4 Now, open mike. Is there any
5 additional comments that folks would like to make
6 on the topic of this morning's discussion on tribal
7 recognition under the Alaska IRA provisions? Going
8 once. Going twice. Very well. We will not reopen
9 that session.

10 Again, thank you, guys, very much.
11 Thank you for your hospitality and your patience
12 with us, and we look forward to seeing some of you
13 and your fellow tribal leaders at the future
14 consultations.

15 Thank you.

16
17 (Public Meeting concluded at 3:19 p.m.)
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C E R T I F I C A T E

S T A T E O F A L A S K A)
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F I R S T J U D I C I A L D I S T R I C T)

I, LYNDA BARKER, Registered Diplomate Reporter and Notary Public duly commissioned and qualified in and for the State of Alaska, do hereby certify that the foregoing proceedings were taken stenographically before me and thereafter reduced to typewriting by me or at my direction.

That the foregoing transcript is a full, true and correct transcript of the proceedings, including questions, answers, objections, statements, motions and exceptions made and taken at the time of the foregoing proceedings.

That all documents and/or things requested to be included with the transcript of the proceedings have been annexed to and included with said proceedings.

That I am not a relative or employee or attorney or counsel of any of the parties in these proceedings, nor a relative or employee of such attorney or counsel, and that I am not financially interested in said proceedings or the outcome thereof.

IN WITNESS WHEREOF, I have set my hand and affixed my Notarial Seal this 21st day of August, 2018.



LYNDA BARKER, RDR,
Notary Public for Alaska
My commission expires:
5/6/2020