

**In The Matter Of:**

*U.S. Department of the Interior Public Meeting  
Alaska Indian Reorganization Act of 1934 (IRA)*

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*Transcript of Proceedings  
August 1, 2018*

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**Transcript of Proceedings**

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U.S. DEPARTMENT OF THE INTERIOR  
PUBLIC MEETING

ALASKA INDIAN REORGANIZATION ACT OF 1934 (IRA)

August 1, 2018

10:30 a.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

2

1 WEDNESDAY, AUGUST 1, 2018

2 10:30 A.M.

3

4 JOHN TAHSUDA: Good morning. Thank  
5 you for coming, and thank you for your patience with  
6 us. Clearly we don't have the best of communication  
7 within our departmental efforts as well, so thank  
8 you for being patient with us.

9 This morning we're going to have a  
10 public listening session as part of a round of both  
11 public meetings and tribal consultations on the  
12 issue of the Alaska portion of the Indian  
13 Reorganization Act as it applies in the tribal  
14 recognition context.

15 So, again, I appreciate you being  
16 here. So we are a little bit behind on the  
17 schedule. My understanding is that there is an  
18 event here right at noon, so we'll have to go ahead  
19 and break then; but we have the second session in  
20 the afternoon starting at 1:00. And if there is a  
21 desire to have more discussion on this topic, we  
22 can always go and add on to the end of that session  
23 in the afternoon at 3:00, add on more time to  
24 continue this discussion if that's the desire of  
25 the meeting.

1                   So I want to introduce our team.  
2       My name is John Tahsuda. I'm the Principal Deputy  
3       Assistant Secretary for Indian Affairs at the  
4       Department of the Interior. And our office, the  
5       Office of the Assistant Secretary, as you probably  
6       know, oversees two bureaus, the Bureau of Indian  
7       Affairs and the Bureau of Indian Education. These  
8       matters fall within both our hallway and within the  
9       responsibilities of the Bureau of Indian Affairs.

10                  So I want to introduce -- if you  
11       haven't had a chance to meet Gene, Gene is our new  
12       regional director for Alaska, and we're really  
13       excited to have him on board, both as a member of  
14       your community and your family up here, but also  
15       his background in a wide range of the issues that  
16       are really important to you up here -- subsistence,  
17       and he worked for Fish and wildlife before coming  
18       to us. And so I think he's going to be a great  
19       addition to our team, and we are really happy to  
20       have him on board.

21                  From the D.C. offices we have two  
22       of our solicitors. Kyle Scherer is the Deputy  
23       Solicitor for Indian Affairs, and Matt is the  
24       Assistant Solicitor for Indian Affairs.

25                  Also in the back we have more of

1 our assistant secretary staff -- Liz Appel,  
2 Elizabeth Appel, who is our acting chief of staff  
3 and also runs our regulatory affairs and oversees  
4 the process of putting these kinds of meetings  
5 together to make sure we have good communication  
6 with you.

7 with her is Regina -- and I knew I  
8 was going to totally forget your last name.

9 REGINA GILBERT: Gilbert.

10 JOHN TAHSUDA: Gilbert. Right.  
11 How can I forget that? Regina Gilbert. I'm sorry,  
12 Regina.

13 So that's the staff we have here  
14 from Washington, D.C. And if you have any written  
15 statements or comments that you would like us to  
16 take with us, you can leave those with Regina and  
17 Liz, and we'll keep that with the documents of this  
18 meeting.

19 Now, this, again, is a public  
20 meeting. This is not a formal consultation. And  
21 so we're not doing a transcript of this meeting,  
22 but we do take notes. And we'll be sure to have  
23 the comments submitted here today as part of the  
24 collection of records that we will keep as we have  
25 this discussion going forward.

1                   So I think, to get us off on the  
2 right foot, we have a young lady here that will  
3 offer an invocation. I know, in my part of the  
4 country, we like to start our meetings with this so  
5 we start off with a good heart and in a good way.

6                   So if you could lead us in prayer,  
7 that would be great.

8                   BARBARA CADIENTE-NELSON: First of  
9 all, thank you for the opportunity to gather here  
10 together before our sovereign God, the one and only  
11 sovereign God. And it's right that we begin our  
12 meeting in prayer, particularly in this place where  
13 we memorialize those who have passed on, where we  
14 celebrate our children and their learning to know  
15 who they are and connecting them to this place.  
16 we're mindful of the land that we stand on, the land  
17 of the Auk and the Taku Kwaan. And so we're  
18 grateful to be able to come together in the  
19 knowledge of our role in our leadership to benefit  
20 our people.

21                   (Speaking in Tlingit.) We come  
22 together in your name, in our discussions and our  
23 deliberations, to grasp ahold of the vision that  
24 you placed within our spirit. We're mindful that  
25 you created us uniquely to resemble you, that the

1 very gift of faith is one that you ask us to ask  
2 for, for direction, for guidance, for wisdom. So  
3 we call upon those gifts that are there for the  
4 asking. We ask that you would permeate our very  
5 essence of being in this place, in this time, to be  
6 mindful of the most vulnerable, our elders and our  
7 children, and even our future.

8 We thank you for creating us to be  
9 sovereign people who have a direction to realize  
10 our place in this global society. I ask, Father,  
11 that you would lead us to resolve and to refine and  
12 define our path forward. We pray in your son  
13 Jesus' name. Amen.

14 JOHN TAHSUDA: Thank you very much.

15 So I should have said -- let me  
16 add one more point of order for the meeting as  
17 well. When you speak, if you could come up to the  
18 mike and speak just so we can hear you clearly.  
19 And even though this is not -- again, not  
20 recorded -- or not transcribed, we would like to be  
21 able to record which tribe, which leader is making  
22 comments so we can keep that as part of our records  
23 as well.

24 So if you come to the mike,  
25 clearly state your name and your tribe or village

1 that you are representing. That would be helpful  
2 to us as well.

3 So I think you should have  
4 received the Dear Tribal Leader letter that  
5 accompanied a withdrawal of an opinion from the  
6 solicitor's office. And part of that leads into  
7 these discussions about tribal recognition under  
8 the Indian Reorganization Act and what that means  
9 here in Alaska. Certainly there is some different  
10 history here than there is in the Lower 48, and we  
11 have to be cognizant of that.

12 So just as an introduction, I  
13 thought it would be helpful to you for me to give  
14 you, from our office, the perspective we have on  
15 this matter. And it's really the same that we have  
16 on every other matter, every other dealing that we  
17 have.

18 Our responsibility is to you, to  
19 the tribes, and to the Native people, Indian people  
20 that we represent. And that's both a trust  
21 responsibility, and we have statutory  
22 responsibilities. And through all of that, it is  
23 our goal to be the best advocate for you that we  
24 can.

25 So there's a lot of decisions that



1 we're involved with with you, on your behalf, that  
2 we take for you. And it is always our goal that  
3 that decision be the best decision possible and  
4 best means -- not only that it's a decision that's  
5 good for you, but it's a decision that we can  
6 defend.

7           It's a favorite saying of both the  
8 Secretary and the Deputy Secretary that everything  
9 that we do, we have to follow the law. We follow  
10 the science, if science is involved. And if there  
11 are legal implications, as there are here, we have  
12 to follow the law and then follow the facts and  
13 make sure that we have the best basis to move  
14 forward with a decision, one that we can defend.  
15 And at the end of the day, it's my view that if we  
16 have made a decision that we can't defend on your  
17 behalf, then we've really not met our trust  
18 responsibility to you. And so from our office  
19 perspective on this effort, that's what this is  
20 about.

21           Taking a look at these decisions,  
22 these have been unsettled for a long time. Some of  
23 the tribal groups here, I know, have been asking  
24 for decisions from the department. Some of these  
25 go back decades. And there is another thing you

1 should probably know about our boss, the Secretary.  
2 He's a man of action. He likes to make decisions.  
3 And so it's our hope that we can get to a good  
4 place on the law and the facts, and that decisions  
5 can be made so that people aren't -- villages,  
6 tribes aren't hanging out there for decades,  
7 waiting for a decision from the department.

8                   So that's really, from our  
9 perspective -- you can call it a policy perspective  
10 if you want, but that's the ultimate goal here for  
11 us, is to make sure we have firm ground to walk on,  
12 and then proceed from there on your behalf.

13                   I'm going to -- this obviously has  
14 a lot of legal implications. That's why I'm  
15 outnumbered by solicitors up here today. So I  
16 thought it might be helpful as well if Kyle could  
17 give just a brief intro into the legal issues on  
18 this as well.

19                   KYLE SCHERER: Sure. Great.

20                   So as John mentioned, my name is  
21 Kyle Scherer. I'm actually Acting Deputy Solicitor  
22 for Indian Affairs and the Acting Deputy Solicitor  
23 for Parks and wildlife.

24                   Just to, I guess, frame the  
25 discussion, this is sort of a look at the

1 recognition process under the IRA, the Alaska IRA  
2 from 1936. And as John mentioned, we're trying to  
3 sort of put the department in the position where we  
4 can defend agency action. As you're well aware, I  
5 believe we have three applications under the Alaska  
6 IRA presently before the Office of the Solicitor,  
7 two of which have been there, as John said, each  
8 for more than a decade, approaching two decades.

9 And the challenge is always,  
10 without sort of formal guidance or regulation, it  
11 becomes very difficult for the department to  
12 defend, you know, not only a no but defend a yes.  
13 Right? If we get to yes for recognition, it sort  
14 of appears one could make the argument that the  
15 decision is sort of arbitrary and capricious, you  
16 know, absent guidance or regulations similar to  
17 what we have for Part 83.

18 And so I think what we're trying  
19 to do is to say: How do we actually move forward?  
20 How do we create potentially guidance, potentially  
21 rule-making? And that could be varied. It could  
22 be sort of, you know, a formalization of the 37  
23 memo. It could be something different. But the  
24 reality is, we've only had three tribes that are  
25 before us right now that have used the Alaska IRA

1 or are attempting to use the Alaska IRA for  
2 recognition and, to my knowledge, no tribes that  
3 have come under Part 83. So we're trying to --  
4 that's the purpose of what we're trying to do.

5 And we are here to listen and to,  
6 you know, frankly, hear your suggestions on how to  
7 move forward with this. And we hope that whatever  
8 the result of these listening sessions and  
9 consultations are, come December we'll be in a  
10 place to quickly move forward with whatever the  
11 next steps are and then come back to you with what  
12 those next steps look like. And then we'll have  
13 another round of discussion before we finally  
14 implement something.

15 Anything else, Matt?

16 MATT KELLY: The only thing I would  
17 add is that, as was indicated in the letter -- just  
18 to clarify what was stated in the Dear Tribal Leader  
19 letter, another purpose is to provide clarity and  
20 transparency to groups who are not yet recognized  
21 who are seeking recognition in Alaska; so we're not  
22 talking about tribes that are already recognized in  
23 Alaska.

24 KYLE SCHERER: That's helpful.  
25 Thank you.

1                   JOHN TAHSUDA: So thank you. I  
2 think I would like to open it up to the floor now.  
3 And I'm going to take 30 more seconds, ma'am, and  
4 then I will turn it over to you.

5                   So I think it would be helpful as  
6 well -- I know there is, as we've said, a lot of  
7 legal issues that are entangled in this. But as we  
8 build -- you can think of it as the record, or you  
9 can think of it as a platform for moving forward.  
10 But for our office in particular, a look at policy  
11 should undergird what we're doing here as well. So  
12 I would encourage you, you know, over these  
13 meetings that we have, and encourage you to talk to  
14 your fellow leaders, to express for us in this  
15 record -- I know it may have been expressed many  
16 times before in different contexts, but to express  
17 to us as a matter of -- what you perceive, as a  
18 matter of policy, what is important in recognition  
19 as a tribal group, different than villages,  
20 different than the regional and village  
21 corporations here.

22                   So if you can also give us an  
23 insight to that, I think that is guidance for us as  
24 well as we move forward on the policy side as well  
25 as the legal side of this. And that would be very

1 important for to us have in our record as well.

2 Thank you, ma'am, I'm sorry. I'm  
3 sorry to interrupt you.

4 UNIDENTIFIED SPEAKER: I'm sorry.  
5 I couldn't hear what Mr. Kelly was saying.

6 MATT KELLY: Can you hear me now?  
7 How is this?

8 I just wanted to also point out --  
9 because I understand that there were some concerns  
10 expressed on this issue by groups that are  
11 recognized in Alaska -- that, as was indicated in  
12 the Dear Tribal Leader letter, one of the goals of  
13 the department is to provide clarity and guidance  
14 for groups that are seeking to organize under the  
15 IRA, not groups that are already organized under  
16 the IRA. I just wanted to emphasize that point.

17 JOHN TAHSUDA: Thank you.

18 So we'll turn the floor over.  
19 And, again, if you can state your name and your  
20 village, tribe, for us for the record, that would  
21 be great.

22 RICHARD PETERSON: Good morning. I  
23 didn't want to go first. I was hoping to hear from  
24 some of our villages. My name is Richard Peterson,  
25 and I'm the president of Tlingit & Haida. And I

1 think the silence (audio interference). Can you  
2 hear me? Hopefully that's better.

3 So I think the silence that you  
4 hear right now is a direct reflection of the lack  
5 of understanding and why we're even having these  
6 consultations.

7 We're concerned from Central  
8 Council's standpoint. We're kind of considered a  
9 regional tribe. We don't fit under the IRA or are  
10 recognized by Congress, but we want to uphold the  
11 IRA tribes that exist now. We want to make sure  
12 any of these changes don't threaten their  
13 authorities or existence. And as a region, we want  
14 to stand strong and support our tribes. However,  
15 we're concerned that reopening or reexamining might  
16 cause them some threat or harm. And so we want to  
17 make sure that that's not the case.

18 I appreciated the solicitor on the  
19 end's comments. You guys keep saying "Dear Tribal  
20 Leader letter." I feel like that's a Dear John  
21 letter. So, you know, we're a little bit on edge  
22 because of some of the rumors that we hear.

23 And not to sound so critical, but  
24 I don't feel like communication has been very good  
25 for the last couple years. And we want to see

1 better communication from your department to the  
2 tribes. And these Dear Tribal Leader letters that  
3 are vague and kind of oblique don't help us and  
4 don't give us any comfort.

5 So I know we have several sessions  
6 over the coming days, and we have an opportunity in  
7 Ketchikan that is an actual consultation -- am I  
8 correct? So we'll be prepared for official  
9 comments to a lot of this.

10 But, you know, I want to stick to  
11 what's germane, but this one is about the Indian  
12 Reorganization Act. You have one on BIA  
13 reorganization, and then another on Fee To Trust.  
14 That seems a little -- what is the word I'm looking  
15 for? -- frenetic. It just seems like there's a lot  
16 going on, and we're worried that there's stability  
17 in the Department of the Interior.

18 So we have far more comments, but  
19 I really, in the silence, just wanted to hopefully  
20 see some of the IRAs who -- these are very capable  
21 and amazing people before you. But, again, because  
22 there hasn't been clear communication, I think many  
23 of us are sitting here -- "what is this?" We're  
24 having a consultation because there may be three  
25 tribes -- or three groups that want to be



1 considered IRA? Is that what we understand?

2 And if that's the case, we have no  
3 problem with recognizing more tribes. We support  
4 that. We just want to make sure that reopening or  
5 reexamining this isn't a code for, you know,  
6 limiting or taking away from the already existing  
7 IRA tribes.

8 And, you know, I've developed a  
9 mantra -- "Healthy tribes make healthy  
10 communities." And I come from the village of  
11 Kasaan. I don't want to speak for them; they're  
12 here. But I can tell you, the Indian  
13 Reorganization Act and the power of the tribe and  
14 that recognition has been the economic and social  
15 engine in my home village, and I'm sure that's  
16 quite the case here and throughout all villages.

17 So I hope folks will get up and  
18 share those experiences. I know we have very  
19 active tribes here in Southeast Alaska. And I'm  
20 glad to see Andrea coming, so I'll yield to Andrea.

21 ANDREA CADIEN TE-LAITI: Good  
22 morning. This is working, and I don't think we're  
23 getting any feedback.

24 I'm Andrea Cadien te-Laiti. I'm  
25 the tribal administrator for the Douglas Indian

1 Association, which is an IRA, federally recognized  
 2 tribe. There's always a misnomer with being called  
 3 "Douglas Indian Association," because clearly there  
 4 is an English name Douglas, but we represent people  
 5 of the Auk Kwaan and the Taku Kwaan, which  
 6 comprises our base membership.

7 One of the issues that we have,  
 8 first and foremost, is how we're defined, and  
 9 through the Department of the Interior and the  
 10 Bureau of Indian Affairs, one of the issues is, you  
 11 know, that we're defined by our membership in terms  
 12 of how the Department of the Interior sees us. And  
 13 so our funding is hinged to our membership, and our  
 14 voting is hinged to our membership. Our  
 15 constitution, of course.

16 Pardon me. Sorry. That's one of  
 17 my staff members. I come up with a train of  
 18 thought, and it takes very little to distract me  
 19 when I'm on a mission.

20 But the other thing is, in  
 21 accordance with our constitution -- constitutions  
 22 were written in 1934. And in 1934, things were  
 23 very different than they are now. Douglas had a  
 24 capital city grow up around it. And when you get  
 25 swallowed up in those type of events and historical

1 trauma, with the seizing of land, the burning of  
2 the Indian Village. Mayflower School, which was  
3 funded by the Department of the Interior, should  
4 have come back to Douglas when they vacated it.  
5 And instead, it ended up in the city's hands.

6 So a lot of trauma has happened to  
7 our tribe, including some of those events were put  
8 forth by two former BIA officials, who were seated  
9 on the Douglas City Council at the time. And they  
10 vacated office as soon as they were successful in  
11 burning the Douglas Indian Village.

12 My point is this: In the long  
13 haul, because there is so much to share with you,  
14 and it is that, while we're defined so much by our  
15 membership and service area, that the Department of  
16 the Interior, I believe, and maybe other fellow  
17 tribes, have forgotten that we're also defined by  
18 our tribal territory.

19 And so our constitutions are  
20 limited from the time, because they're so dated --  
21 1934. So how it was written then, in response to  
22 the Indian Reorganization Act, inadvertently  
23 limited what ANCSA recognizes. And ANCSA  
24 recognizes our tribal territories. That's how  
25 we -- that's how we're divided up and identified

1 with regard to the regional corporations, plus the  
 2 13th region, and then urban corporations and  
 3 village corporations like Shee Atika and  
 4 Goldbelt Inc. versus the regional corporation, the  
 5 Sealaska Corporation.

6 But my point is this. While ANCSA  
 7 recognized tribal territory, in essence, by those  
 8 boundary lines, we're still struggling with the  
 9 Department of the Interior understanding, you know,  
 10 that federal law, actually, and that we should not  
 11 be confined to tribal territory, which is just --  
 12 you know, just a grievous error completely without  
 13 taking into consideration the tribal territory of  
 14 each and every tribe. And the expanse of those  
 15 tribal territories is great.

16 And we're land- and water-based  
 17 tribes. "Tlingit" for us means the tribal people,  
 18 so our transportation routes are the waterways as  
 19 well. We have two Indian reserves on the Taku  
 20 River that ended up in Forest Service hands. And  
 21 who would have laid claim to it are past folks that  
 22 came here during the mining era, and they were  
 23 basically squatters on tribal territory. That's  
 24 how we lost a lot of our land.

25 So we need to have more dialogue

1 with the Bureau of Indian Affairs to understand  
2 these issues of historical trauma and  
3 multigenerational grief.

4           Recently we had a tribal cruise.  
5 And it was an IRA cruise, and it was hoping to  
6 bring together the IRA governments so that we could  
7 form a common bond to deal with these issues and to  
8 better interact with the tribe, and because our  
9 fish are in jeopardy. National resources are in  
10 jeopardy. We have -- the strong sockeye runs, king  
11 salmon runs, et cetera, in the Taku River, which is  
12 Douglas Indian Association's tribal territory, have  
13 been harmed by the Tulsequah Chief mines. So we --  
14 our issues aren't only locally, you know, but  
15 they're international with the river, with the mine  
16 being Canadian-based.

17           So I can go on and on; but I'm  
18 taking advantage of having the mike now, and  
19 hopefully it will spin off the discussions.

20           Back to the cruise. The IRAs that  
21 were represented were Petersburg Indian  
22 Association, Chilkoot Indian Association, Klukwan,  
23 and then also -- let's see. I'm missing one.  
24 Sitka Tribes of Alaska. I'm sorry. And another  
25 one as well.

1                   But this is on the cruise, and we  
2 all -- it was a very healthy experience, and now  
3 we've bonded with regard to the common denominators  
4 that connect us. And we see the need for a tribal  
5 summit. And hopefully, in conjunction with Sitka,  
6 Georgiana Hotch will be able to move forward and  
7 will be able to do those things because,  
8 collectively, I wish all the IRAs were represented  
9 here. This is so important. This is an all-time  
10 first in the 40-plus years that I've worked for  
11 tribal governments to see you up there.

12                   And so, welcome. We don't want to  
13 be unwelcoming; but as you can see just from my  
14 spiel, we have a lot of issues to deal with.

15                   Thank you.

16                   (Applause.)

17                   KYLE SCHERER: Ma'am, could I ask  
18 you a clarifying question? You had said that "we  
19 shouldn't be defined by our tribal territory." Are  
20 you referring to the ANCSA-defined territory?

21                   ANDREA CADIENITE-LAITI: No. No.  
22 we should be defined by our tribal territory.

23                   KYLE SCHERER: Should be.

24                   ANDREA CADIENITE-LAITI: Should be,  
25 yes.

1 KYLE SCHERER: Thank you. I'm glad  
2 I asked the clarifying question.

3 WILL MICKLIN: Hi. I'm Will  
4 Micklin, Third Vice-President, Central Council  
5 Tlingit-Haida Tribes of Alaska. I'm an adátx'i  
6 child of the white man, grandchild of the Gaanax.ádi  
7 Raven. I'm a T'aaú Kwáan, a man who married the  
8 Bear House, from Ketchikan.

9 So just for the purposes of my  
10 remarks, I just want to bring you back to the  
11 General Allotment Act of 1887. The law authorized  
12 the President to allot tribal lands to individual  
13 Indians in amounts of 160 acres. And any land left  
14 over was sold or opened up for white settlement.

15 As the Supreme Court described it,  
16 the objectives of the allotment were simple and  
17 clear-cut. It was to the extinguish tribal  
18 sovereignty, erase reservation boundaries, and  
19 force the assimilation of Indians into society at  
20 large. Section 5 of the Allotment Act provided  
21 that title to parcels allotted to Indians would be  
22 held in trust by the United States for 25 years.  
23 Any conveyance or encumbrance made during that  
24 period was void.

25 Section 6 provided that members of

1 allotted tribes shall have the benefit of and be  
2 subject to the laws, both civil and criminal, of  
3 the state or territory in which they may reside. I  
4 believe it was 1905, in Heff, the Supreme Court  
5 held that Section 6 of the General Allotment Act  
6 subjected individual Indians to plenary state  
7 jurisdiction immediately upon receipt of an  
8 allotment.

9 In response, in 1906 Congress  
10 amended the Act to provide state jurisdiction. It  
11 did not attach until the expiration of the trust  
12 period, and the lands had been conveyed to Indians  
13 by patent and fee. The 1906 amendments also  
14 authorized the President to extend the trust period  
15 on any allotment indefinitely, so the General  
16 Allotment Act came to be viewed as a failure.

17 And it was ended with the Indian  
18 Reorganization Act of 1934, and the subject this  
19 morning is Section 16 of the IRA. The first three  
20 sections of the Act prohibited further allotment,  
21 extended existing trust periods indefinitely, and  
22 restored surplus lands within a reservation that  
23 were still in federal hands to tribal ownership.

24 Section 16 of the IRA authorized  
25 tribal governments to adopt constitutions for



1 self-rule. The Supreme Court acted on the IRA in  
2 Williams v. Lee -- I think that was 1959 -- and  
3 affirmed tribal sovereignty. That decision in the  
4 case reaffirmed not only the right to reservation  
5 Indians to make their own laws and be ruled by  
6 them, but also that states have no power to  
7 regulate the affairs of Indians on the reservation.

8 The Section 16 powers of a tribe  
9 established under that section are broad, but they  
10 are -- and this is the basis of my question, having  
11 gone through that short excerpt of federal Indian  
12 policy and jurisprudence. They provide for  
13 self-rule and self-governance, stated in a broad  
14 sense.

15 Now, that is a -- the IRA was  
16 enacted for the benefit of Indians and, through a  
17 number of Supreme Court rulings and lower court  
18 rulings, should be available to the Indian canon of  
19 construction, where statutes enacted for the  
20 benefit of Indians, where there are ambiguities,  
21 should be construed for the favor of the Indian.

22 There appears to be a growing  
23 belief -- not growing -- there is somewhere a  
24 belief that the Chevron deference, where an  
25 administration's interpretation of a statute should

1 balance other questions, applies. And my concern  
2 is where it is weightier than the decision that it  
3 is balancing against is in conflict with the Indian  
4 canon of construction.

5 I think the modern federal Indian  
6 policy is that that is not a contest, that where  
7 there is a statute enacted for the benefit of  
8 Indians, and where there is ambiguity, there is no  
9 contest that the Indian canon of construction  
10 applies, and that the Chevron deference should not  
11 be applied to any interpretation that would be  
12 contrary to that interpretation.

13 I'm concerned by your question  
14 No. 5 in the Dear Tribal Leader letter that says  
15 "what should be the limits of those powers?"  
16 referring to the Section 16 organization of a tribe  
17 and the powers stated within that Act. They are  
18 broad. They're not dispositive in many instances,  
19 but they should be interpreted under the Indian  
20 canon of construction for the rule-based decision  
21 that I just mentioned.

22 I am concerned that there would be  
23 any consideration that the powers of a tribe  
24 established under Section 16 of the IRA would be  
25 any different, any less, any less sweeping or

1 effective than the powers of any other tribe,  
2 whether in the contiguous Lower 48 or anywhere  
3 else.

4 So I would express my concern that  
5 that not be a consideration of the department, that  
6 it is -- should be ineligible for reconsideration  
7 or revisitation because of the clear  
8 jurisprudential rule established on the Indian  
9 canon of construction, and specifically that it is  
10 more weighty than the Chevron deference that the  
11 department could wield, if not for the Indian  
12 Canon.

13 I think those types of  
14 considerations lend themselves to deferred  
15 decision-making. And if we have learned anything  
16 in Indian country, is that once there's an  
17 opportunity not to make a decision, a decision is  
18 not made, so that there would be -- any decision  
19 resting upon your consideration of Section 16 of  
20 the IRA I think would be misplaced; that there are  
21 other activities and decisions that are, to coin a  
22 phrase, on your desk that need attention. This, in  
23 my view, does not rise to that level, particularly  
24 in light of the clear policy requirements and  
25 jurisprudential requirements that would really

1 argue against reconsideration or revisitation of  
2 what is well established and I would consider  
3 dictum in this area.

4 So thank you.

5 (Applause.)

6 JACQUELINE PATA: I, too, would  
7 defer to any of our village representatives first.  
8 But seeing that none has gotten up at this moment,  
9 I'm Jacqueline Pata. I'm the Second Vice-President  
10 for the Central Council Tlingit & Haida Tribes of  
11 Alaska. I'd like to welcome you to my homeland.  
12 It's always nice to be able to see my D.C.  
13 counterparts here at home. So thank you so much for  
14 taking the time and making sure that you also came  
15 to Southeast Alaska, and I really appreciate that.

16 I'd like to speak to a couple of  
17 provisions that you mentioned in your notice. And  
18 I want to reiterate -- first of all, I want to  
19 thank my fellow council members and president for  
20 their earlier comments and recognize that, even as  
21 we sit here in this room today, even though Central  
22 Council is a regional tribe, we have a close  
23 working relationship with our IRA tribes as a  
24 region, even with our regional corporation,  
25 Sealaska, who is also represented here, and our

1 village corporations and our tribal governments  
2 that, as a collective, we recognize that we are  
3 Alaska Natives. And these kinds of policies affect  
4 all of us, particularly because of the uniquenesses  
5 of the setup of ANCSA and how it addressed the  
6 tribal recognition of tribes in the different way  
7 and mannerism.

8                   And what we're finding is that  
9 tribes -- like in the Lower 48, tribes are the  
10 foundation for their tribal citizens and the  
11 programs and services that get delivered for their  
12 tribal citizens. And it's important that tribes in  
13 Alaska have the same abilities as tribes in the  
14 Lower 48 to be able to deliver those services and  
15 have the jurisdiction to be able to apply those.

16                   And so I also wanted to make sure  
17 that we recognize that the acknowledgment for any  
18 new tribes -- American Indian, Alaska Native  
19 tribes -- whether they're in the Lower 48 or in  
20 Alaska, we want to be able to make sure that it  
21 doesn't disrupt, as was said earlier, the existing  
22 tribes. And we also don't see any reason why the  
23 existing federal acknowledgment process of Part 83  
24 cannot be applied to any new groups petitioning for  
25 tribal recognition in Alaska, just as it's applied

1 to tribes in the Lower 48.

2 And that's what I wanted to bring  
3 up, because sometimes I think that we continue to  
4 recognize the uniquenesses of Alaska because of the  
5 ANCSA provisions, but it seems to create barriers  
6 rather than opening doors. And a good example of  
7 that is the challenge of one of the consultations  
8 we'll be having later this week, which is the Land  
9 Into Trust.

10 It wasn't that there was a  
11 statutory requirement that kept us from being able  
12 to participate in Land Into Trust in Alaska; it was  
13 an administrative provision. And so Alaskan  
14 tribes -- and we can go through story after story  
15 about how we have been harmed by not being able to  
16 participate in the benefits of those programs,  
17 those opportunities that were guided for and on  
18 behalf of tribes.

19 And so when I look at this  
20 particular issue here today before us, I question,  
21 once again, like others have questioned: what is  
22 the purpose of this conversation? why are we  
23 revisiting this? And I think part of the challenge  
24 is that when these pop up, these questions pop up  
25 out of the blue on things that have been well

1 settled, very difficult conversations in Alaska  
 2 about how do we address these issues, everybody is  
 3 concerned. What is the real -- what is the  
 4 administration really thinking? Why are they  
 5 bringing up these questions? And without having  
 6 the context of how these pop up, it immediately  
 7 creates tension amongst ourselves to try to figure  
 8 that out. And so I wanted to be able to recognize  
 9 that there is this concern that why is this being  
 10 re-raised, this question being reraised.

11 And then the other thing I wanted  
 12 to be able to bring up is just in the way we  
 13 address these questions. So if you look at your  
 14 Question No. 4, and as No. 4 you say, "In your  
 15 view, should a group of Alaska Natives, sharing a  
 16 common bond of occupation, have the ability to  
 17 exercise sovereign governmental powers?" It's kind  
 18 of like the way the question is framed almost  
 19 states that there is a question of the sovereign  
 20 rights of tribes, and particularly as Alaskans. So  
 21 it isn't to recognize whether or not we have the  
 22 ability, but actually to recognize that we have the  
 23 authority to exercise those sovereign powers.

24 And so that's a question that  
 25 continues to plague us in Alaska because of the

1 interpretations -- Land Into Trust and other  
2 interpretations about who tribes are, public safety  
3 policy, education policy. The list goes on. And  
4 so wanting to be able to make sure that it's clear  
5 that tribes in Alaska serve their citizens like  
6 tribes in the Lower 48, with the ability to provide  
7 those programs and services as prescribed under the  
8 intent of Congress, and certainly as a recognition  
9 of our sovereign powers. So I wanted to reiterate  
10 that.

11 Thank you. Gunałchéesh.

12 (Applause.)

13 JOHN TAHSUDA: Well, maybe I'll  
14 respond real quick while it's fresh on my mind. Can  
15 you hear me okay? Is that better? Okay. Because I  
16 get easily distracted as well, and I have to say  
17 things that are on my mind right away or they're  
18 gone forever.

19 I think you raised a couple good  
20 points that I want to make sure that everybody is  
21 clear on. So this is not an exercise in trying to  
22 create issues. In our view, these are issues. And  
23 I know sometimes, you know, there can be a view, if  
24 there hasn't been a thorny issue -- well, I should  
25 say if there hasn't been a difficult court case



1 come up within the last couple of years, people  
2 start to think the issue has gone away. That's not  
3 necessarily true.

4 The issue and the problem that we  
5 have in the department -- and it's not just Alaska.  
6 It applies across the board for us in Indian  
7 Affairs. If any of you are students of the legal  
8 history of tribes in the United States, we have  
9 layers of policies, legislation -- some of them are  
10 court cases that have been added on for 200 years  
11 now -- and it's not always clear. And sometimes if  
12 we don't have good decisions that we have made,  
13 that go back to the point of having decisions that  
14 can be well-defended, that then plops it in the  
15 hands of a court and a federal judge, who may or  
16 may not understand the policy issues, the people  
17 issues. All he's going to be looking at are the  
18 legal issues. And so that's for us, I think, part  
19 of the exercise of this, is to flesh out the  
20 policy, the people, issues that are guidance for us  
21 as a matter of policy.

22 we also have legal issues that we  
23 have to work through on this. And that's part of  
24 the difficulty of having these -- you can think of  
25 them like strata, like you're looking at, you know,

1 a canyon, and you can see all the different layers;  
2 right? We've got the IRA. We've got ANCSA. We've  
3 got ANILCA. We've got FLPMA. And from my time on  
4 the Hill, I can tell you I know there are any  
5 number of -- I can't even count them on two hands,  
6 the amendments to those various laws that were  
7 passed, primarily by your delegation here, with the  
8 best of intentions. But it doesn't always lead for  
9 us into a clear path when you have to go back and  
10 consider, you know, where the legislation started,  
11 where it has ended up, and what is our policy path  
12 supposed to be through there.

13 And so that, for us, is the  
14 ultimate goal. And, again, I suppose we could, you  
15 know, kind of stick our head in the sand and say,  
16 "well, we'll just wait for some case to come up,  
17 and then hopefully the judge, hopefully, will rule  
18 in a way that works for us and works for you."

19 But to be honest, that's not my  
20 preference. It's not the Secretary's preference.  
21 I think that there's an opportunity here to maybe  
22 flesh these out and get ourselves on firmer footing  
23 for ourselves, and that's the ultimate goal.

24 There have been -- if you look at  
25 this -- and I don't want to get too far into it,

1 because there's other people here (indicating) who  
2 should be explaining it better. But there have  
3 been attempts by the solicitor's office for decades  
4 to take a look at Alaska as some of these changes  
5 have come along. You know, they've tried to take a  
6 look at how this has changed the landscape. And  
7 one of the -- I guess I would call it more recent.  
8 I don't know. 20 years ago now or whatever. The  
9 solicitor looks into this, though, and said, you  
10 know, "This is a really complicated area of law.  
11 It's a complicated policy area, and Interior should  
12 really take an in-depth look at this."

13 But then close the page, a new  
14 administration came in, and that wasn't really  
15 followed up on.

16 So I think, you know, again, and  
17 we -- we come from a perspective of trying to find  
18 solid policy ground to work on. We looked back and  
19 saw that. That was new to me. I hadn't seen that  
20 before, but that was an interesting view on it, I  
21 thought. And that, in part, engendered our  
22 discussion, that maybe now is the time to do that.  
23 Let's take an in-depth look at this. We'll look at  
24 the legal side of it. And, again, for us, we want  
25 to bolster it with the policy side, the people side

1 of this.

2 And how -- I mean, I know there  
 3 are a lot of corollaries; but as with all of Indian  
 4 country, different parts of the country have  
 5 different histories. Things have progressed  
 6 differently for them. And so I think it's also  
 7 incumbent upon us to work that into this, you know,  
 8 process as we look at it. And that's part of the  
 9 questions that were -- you know, what we're trying  
 10 to ask.

11 So if you follow the Alaska IRA  
 12 provisions on recognition, there are provisions to  
 13 have organizations that are, you know, "Based on  
 14 the sharing of a common bond of occupation." Now,  
 15 at least as a legal matter, that doesn't look like  
 16 the traditional Lower 48 concept of having a tribe  
 17 who may or may not have had a treaty, and then they  
 18 go forward. That's a different construct, you  
 19 know, legislatively and legally.

20 And so our hope is to get an  
 21 understanding of that, and how does that play into  
 22 this question. And it seems like -- and I know  
 23 1934 was a long time ago, but they certainly were  
 24 trying to think of things as they were on the  
 25 ground here. You know, obviously, Alaska, again,

1 has had a different history than much of the Lower  
2 48. And so it's our job, I think, to try to sift  
3 through this and see, you know: what does all that  
4 mean? And at the end of the day, then, where are  
5 we now, and where do we need to be?

6 KYLE SCHERER: And I'll just follow  
7 up a little bit. And maybe when written comments  
8 are submitted, we can sort of take another look at  
9 what some of these answers to the questions are.

10 But as John said, you know,  
11 Part 83 is -- Alaska tribes that are trying to seek  
12 acknowledgment are free to use Part 83; but to  
13 date, that hasn't happened. So, you know, we have  
14 applications pending before the department now that  
15 are seeking to use the Alaska IRA for recognition.  
16 And, you know, just looking at that, as Matt said,  
17 some of this is about transparency; right? You  
18 know, Part 83 -- we have an entire office of career  
19 professionals that include ethnographers,  
20 historians, genealogists, that their entire job is  
21 to investigate these issues as they relate to  
22 recognition.

23 There are significant -- you know,  
24 there's rule-making and regulations that talk about  
25 burden of proof. And, you know, the most recent

1 amendments to Part 83 shifted the burden of proof  
2 in certain situations. There are, you know,  
3 opportunities that are spelled out in the  
4 regulations for meetings with OFA, with the Office  
5 of Federal Acknowledgment, for applicant tribes.

6 And so, you know, those types of  
7 criteria are things that we're trying to, you know,  
8 sort of ask questions about. What does that look  
9 like for Alaska tribes that are seeking recognition  
10 under the IRA? Some of it is, again, transparency  
11 for applicant tribes, and some of it is just how do  
12 we actually defend these types of decisions, as  
13 John said, when they do get challenged. You know,  
14 if we were to issue a yes opinion, a court could  
15 take a look and say, "well, is this common bond, a  
16 bond of occupation?" because that is not a criteria  
17 that exists for tribes in the Lower 48. So sort of  
18 fleshing that out I think is important, so when we  
19 do issue yes opinions we're able to better defend  
20 those.

21 HARRIET BROUILLETTE: Good morning.  
22 Harriet Brouillette. I'm the tribal administrator  
23 for the Chilkoot Indian Association from Haines.

24 Just looking through the  
25 questions, Questions 2, 3, and 4 makes me -- you

1 know, it's an issue that I know that I have been  
2 struggling with since I started working for the  
3 tribe over 20 years ago, because it seems like we  
4 sort of tiptoe around common bond and occupancy and  
5 those sorts of things because we have to. It's  
6 part of our constitution, and it also is directly  
7 tied to the way we provide services for our people  
8 in our communities. And if we didn't have the  
9 ability to define our tribe using words such as  
10 "common bond," then we would not be able to provide  
11 those services.

12 we have tribal members in our  
13 community who do not have roots or ancestral ties  
14 to our community; but we have to provide services  
15 for them, and they're part of our tribe. It makes  
16 things difficult in some cases and unclear; but  
17 since we've had to work with this constitution for  
18 so many years, we've learned how to work around  
19 those sorts of issues.

20 But, you know, sitting here  
21 thinking about this, I think this is actually an  
22 opportunity for us, as IRAs and tribal members, to  
23 talk about how we want to reorganize our tribes so  
24 that the definition is not so muddled. I think  
25 this is an opportunity for us as IRAs to redefine

1 ourselves. We knew this day was coming. I mean,  
 2 we all -- realistically, we knew this day was  
 3 coming. So rather than being scared of this, we  
 4 really need to embrace it as an opportunity.

5 And I think that, rather than  
 6 allowing somebody else or a court case to define  
 7 who we are -- I'm just speaking to our fellow  
 8 tribal members -- let's embrace this. Let's get  
 9 together. Let's have our IRAs meet and talk about  
 10 how we want to be defined and tell the federal  
 11 government, "This is how we'd like to be defined,"  
 12 rather than having someone else do it for us.

13 Thank you.

14 JOHN TAHSUDA: Thank you.

15 Ma'am, I'm sorry. I didn't catch  
 16 your name? Can you --

17 HARRIET BROUILLETTE: Harriet  
 18 Brouillette.

19 KYLE SCHERER: And I just wanted to  
 20 make one more point. This is going back, I think,  
 21 to an earlier speaker. But there was a question of  
 22 why, sort of, if we're not thinking about -- you  
 23 know, and certainly this isn't on the table of doing  
 24 anything with currently federally recognized tribes  
 25 and why we are -- thank you. I'll speak up.



1           So the earlier question was: If  
2 this isn't meant to impact already recognized  
3 tribes, then what is the purpose of sort of this  
4 conversation? And I would just say that this is  
5 the same kind of conversation that happened when  
6 Part 83 was revised. You know, when Part 83 --  
7 which is the other recognition process, when we  
8 were -- when the last administration was looking to  
9 revise that process, we looked to already federally  
10 recognized tribes, people who had gone through the  
11 process, as a way of informing us going forward.  
12 And one of the reasons we had a public meeting  
13 under Part 83 and had that conversation was because  
14 that was the only way to bring in tribes that were  
15 not already federally recognized, because  
16 consultations are obviously limited to already  
17 acknowledged or recognized tribes.

18           MATT KELLY: If I could ask one  
19 follow-up question as well on one of the points you  
20 raised, just to make sure that I understand it  
21 correctly.

22           Is one of your concerns that,  
23 because of the language in your constitution which  
24 references this language from the IRA, that  
25 discussion, particularly with the phrase, "common

1 bond of occupation," for example, would have an  
2 impact on how the tribe looks at its members or the  
3 services it provides to members and so on that  
4 would have a sort of backward effect as well?

5 HARRIET BROUILLETTE: Yes.

6 MATT KELLY: Thank you.

7 ROB SANDERSON JR.: Is it morning,  
8 or noon? It's still morning.

9 Mr. Chair. Thank you. My name is  
10 Rob Sanderson Jr. I serve as the Fourth  
11 Vice-President of Tlingit & Haida Central Council.

12 And on Question 4, you know, it  
13 talks about the common bond of occupation and the  
14 ability to exercise sovereign governments. And,  
15 gentlemen, I just want to -- I hope to enlighten  
16 you on a way of life that has been practiced for  
17 thousands of years here in Alaska. And if you  
18 could just bear with me just for a little bit.  
19 This won't take very long.

20 For the balance of our people here  
21 in the state of Alaska, the overregulation of  
22 subsistence resources have thrown our rural  
23 communities out of balance. The loss of our  
24 ability to harvest what is needed to sustain our  
25 livelihoods has left most Alaskans in conflict with

1 their traditional beliefs and modern system of  
2 management.

3 More emphasis is needed to be  
4 placed on giving the ability to manage the fish and  
5 game back to the customary and traditional users.  
6 Localizing management will reinstate the local  
7 ownership of the resources. This will help bring  
8 our communities and the people back into balance  
9 with our resources.

10 Stewardship of the land is  
11 essential for the long-term health of everything  
12 that lives in the areas that we call home. Our  
13 spiritual connection to the land, air, and sea,  
14 which abound, give our people purpose and identity.  
15 It is more than just a food source. It provides  
16 the ability to harvest resources from nature, which  
17 gives each person, family, and community a reason  
18 to live in an area which they have called home.

19 There is a special connection to  
20 the land, air, and sea which our people have  
21 developed thousands of years ago, that our  
22 ancestors have encountered with the animals, birds,  
23 sea life, our environment when harvesting,  
24 gathering, hunting, traveling, migration, or even  
25 war.

1                   That special encounter with an  
 2 animal in our environment to this day survives and  
 3 reminds us that our people have endured with the  
 4 same determination to perpetuate the history of our  
 5 subsistence way of life for the next several  
 6 generations. The harvest results in food, shelter,  
 7 heat, and artistic accomplishments. This  
 8 opportunity also nourishes our bodies and souls.  
 9 This has been a way of life since time immemorial,  
 10 our way of life. The ability of our hunters and  
 11 gatherers to bring the spoils and share with the  
 12 greater body of people binds our communities  
 13 together, and this way is not really known to the  
 14 larger population out there.

15                   And, gentlemen, what I'm reading  
 16 to you here is something that I've put together  
 17 over the years, and it just -- I just want to give  
 18 you -- what I'm reading to you is how we practice  
 19 our way of life. And I'm going to get to the end  
 20 of this, and I want to explain to you just what I  
 21 mean by that.

22                   Our way of life has always  
 23 provided for the economy of Alaska Natives. It has  
 24 provided the ability to harvest adequate customary  
 25 and traditional resources in a short window of

1 opportunity and has proven instrumental in  
 2 sustaining our way of life. Barter and trade has  
 3 always provided stable economies in our traditional  
 4 lifestyle, and this is the reality for most Alaskan  
 5 Natives. It is just part of life.

6 with certain resources that are  
 7 always scarce, such as fuel in rural Alaska, the  
 8 activity to barter and trade to meet our needs is  
 9 what keeps us moving in a direction of tribal  
 10 self-sufficiency. We must do all we can to protect  
 11 this lifestyle, which we call our way of life.

12 The ability to gather resources in  
 13 Alaska for a person, family, or community takes  
 14 immense pressure off the state and federal  
 15 government. If the government had to provide for  
 16 all of our needs in rural Alaska, the cost would be  
 17 outrageous. Our way of life has always been best  
 18 for the best social and economic benefits. I share  
 19 with you when I have enough, or you may share with  
 20 me when I need it and you have enough.

21 It is a way that we care for each  
 22 other in tough economic times. It is our ability  
 23 to do this for one another that gets us through  
 24 each day. Our food is our wealth. It is the  
 25 tradition that is of the most high respect. Our

1 families and communities use the wealth of this  
2 land, air, and sea to barter, trade, and share.  
3 This method socially connects us from points as far  
4 as from Southeast Alaska to the furthest points  
5 north. This was our way, and our people were  
6 spiritually connected in the words that I have just  
7 spoken above.

8                   So, gentlemen, you know, this is  
9 just a way of life that can be jerked away in a  
10 heartbeat. And in looking at your letter, as our  
11 president stated, it almost looks like a Dear John  
12 letter. And so if something were to happen, going  
13 down the road -- I firmly believe that this  
14 administration has the power just to wipe that off.

15                   We have the status already. And,  
16 yes, we know there are applications out there.  
17 Again -- and I want to echo this. You know, we  
18 don't want it to hurt our other tribal members, our  
19 other tribes in the state of Alaska and what they  
20 have already going on for themselves. Our people  
21 have worked too darn hard over the years, all the  
22 way back to the 1930s when the IRA was established.  
23 My grandmother, Helen Sanderson -- she was the ANS  
24 Grand President, 1939-1944, and they fought hard to  
25 get the status to us. And I believe that she'd be

1 rolling in her grave right now if she could see all  
 2 that's going on and the work they had to put in on  
 3 this.

4 You know, another thing, too,  
 5 gentlemen, I would like to know what percentage of  
 6 both the Interior and the BIA -- what capacity are  
 7 you guys at right now in terms of pushing out your  
 8 laws and regulations about Indian country,  
 9 including wanting to take more tribes into  
 10 consideration? We have 229 tribes in the state of  
 11 Alaska. We have a few more that have applications.  
 12 Do you have the manpower to do this, to look into  
 13 each and every tribe in the state of Alaska? To my  
 14 understanding, if you can answer me this, where are  
 15 you guys at in terms of filling out your positions  
 16 in both departments? Is it 75 percent?  
 17 25 percent?

18 JOHN TAHSUDA: Well, I'm not clear  
 19 on what you're asking, I guess, because, again, this  
 20 is not intended to be an exercise at looking at all  
 21 the tribes that are currently recognized.

22 ROB SANDERSON JR.: I understand.  
 23 Uh-huh.

24 JOHN TAHSUDA: And so, you know --  
 25 so I don't know. I guess I'm not clear if you're

1 asking --

2                   ROB SANDERSON JR.: Well, it seems  
3 to be such a large undertaking, considering that the  
4 BIA and the Interior is understaffed, in my opinion,  
5 and from what I'm hearing. Do you guys have the  
6 manpower to carry a lot of these regulations out  
7 now?

8                   JOHN TAHSUDA: We have the manpower  
9 to meet our responsibilities, and that's what we're  
10 doing.

11                   I think that, you know, this is an  
12 effort to get it right. You know, if there's going  
13 to be recognition of additional tribes in Alaska,  
14 then we want to do that right. And so it's  
15 incumbent upon us to find the resources to do that.

16                   So that's -- you know, but at this  
17 point, you know, we're going through trying to  
18 build a basis to go forward. And if, at the end of  
19 the day, you know, we want to find a way to have  
20 Alaska groups go through Part 83, then there's  
21 resources already there for that.

22                   If there would be a new process,  
23 we would have to, you know, promulgate some  
24 regulations, and we would have to move on that. So  
25 that would be an effort that we would make at that



1 time. whether it would take new staff or not, we'd  
2 have to make that determination at that time.

3 ROB SANDERSON JR.: All right.  
4 well, you know, you mentioned that you guys want to  
5 get it right, and we want you to get it right. We  
6 do. We're pulling for you to get it right. And we  
7 also want, down the road, for our tribal recognition  
8 to remain intact. We don't need to open up the Act  
9 and have things moved around or just completely wipe  
10 us off the map, and that could very well happen.  
11 So, you know, I know what you're saying; but, you  
12 know, there's a lot of feeling that that may happen,  
13 you know.

14 So those are my comments, and I  
15 thank you.

16 JOHN TAHSUDA: Thank you.

17 So it's not actually within our  
18 authority or even the President's to change  
19 legislation. The legislation is there. The issue  
20 for us, as I said before, is we have multiple  
21 pieces of legislation that were enacted over  
22 decades. And sometimes they're not entirely in  
23 sync, and we have to find our way through that  
24 patchwork.

25 So I'm glad there is -- again,

1 this is not any exercise in trying to relook at the  
 2 tribes that are here. You know, our boss is very  
 3 comfortable with Indian country. He loves to meet  
 4 tribal leaders, going around the country. We have  
 5 great backing from the Secretary. And, in fact, he  
 6 calls himself the greatest champion of Indian  
 7 country, because that's the primary focus of our  
 8 bureau, is Indian country.

9 So this is not an exercise in  
 10 that. This is really just an exercise looking  
 11 forward for us, making sure that we're going to be  
 12 going forward on a good foundation and good basis.

13 CATHERINE EDWARDS: Mr. Chairman,  
 14 Catherine Edwards, Sixth Vice-President, Central  
 15 Council Tlingit & Haida.

16 I had some other questions, but in  
 17 response to what you just said, if you're not  
 18 relooking at something, why would you treat the new  
 19 applications any different than you treated the  
 20 other ones? And that goes into part of my  
 21 question. If your effort is to be transparent in  
 22 asking and holding this session today, is what we  
 23 say here today going to affect those current  
 24 applications? That's part of my question.

25 Then I have a question about

1 No. 4. "In your view, should a group of Alaska  
 2 Natives sharing a common bond of occupation have  
 3 the ability to exercise sovereign governmental  
 4 powers?" I'm wondering why that would even be a  
 5 question. Why would it be any different than the  
 6 IRA tribes that we already have, that are already  
 7 established? They have those sovereign powers.

8 And then "Should there be any  
 9 limit to those powers?" Also, again, why would  
 10 that be a question and why would the new  
 11 applications be treated any different than the  
 12 previous applications?

13 Question No. 1, "Is the Alaska  
 14 IRA's organization provision still relevant in  
 15 today's Alaska?" Did the IRA amendments in 1994  
 16 take care of that? Again, I'm wondering why it  
 17 would be any different in establishing, in these  
 18 sessions, new ways of handling these new  
 19 applications.

20 KYLE SCHERER: So part of the  
 21 answer is transparency for potential applicants.  
 22 And just to compare it to the Lower 48, when the IRA  
 23 was originally passed and the department was in the  
 24 process of administratively recognizing tribes, we  
 25 found ourselves in a similar situation. Part 83

1 didn't exist yet. And so, just like in the Lower  
2 48, regulations were developed to build an  
3 administrative record for the agency to defend its  
4 decision to say yes.

5 And just like Part 83 was  
6 promulgated long after the IRA was passed in 1934,  
7 it has also been amended, you know, most recently  
8 in 2014.

9 So we're always looking for sort  
10 of a transparency element to provide tribes the  
11 best information about what criteria actually will  
12 get to a yes. And, again, you know, that's very  
13 much spelled out for the Lower 48. You know, there  
14 are, I think, maybe four or five different ways to  
15 get to Category B, which is different criteria;  
16 right? For Alaska tribes trying to organize under  
17 the IRA, it's really just this language in the  
18 statute, and that becomes difficult to defend  
19 should we get to yes. And --

20 CATHERINE EDWARDS: So what we are  
21 saying here today is going to affect those yes  
22 decisions?

23 KYLE SCHERER: We haven't made any  
24 decisions, and that's part of the problem. Or I  
25 shouldn't say "problem," but that's the part of the

1 reality that we're in, is that we have had tribes,  
 2 you know, that have been in front of department --  
 3 not only in this administration, not only in the  
 4 last administration -- but it began, the IRA  
 5 recognition process, you know, in some cases close  
 6 to 20 years ago.

7                   And so part of the reason it's  
 8 taken so long is because we don't have guidance or  
 9 rule-making in the same way that we do for the  
 10 Lower 48. So we're hoping that we can hear from  
 11 you as to what that might look like. How do we get  
 12 to, you know, what do these criteria look like that  
 13 we should be using? what does a "common bond of  
 14 occupation" mean?"

15                   CATHERINE EDWARDS: well, what did  
 16 it mean when the other IRA tribes in Alaska were  
 17 organized? That's where I'm confused. Are you  
 18 creating two classes of IRA tribes? why would they  
 19 have anything different?

20                   KYLE SCHERER: I'm not necessarily  
 21 saying that they would. I'm not necessarily saying  
 22 that the answers would be no or yes.

23                   CATHERINE EDWARDS: well I guess  
 24 then I'm wondering why you gave raised the question.  
 25 You gave us a list of questions. So why was it

1 raised?

2 JOHN TAHSUDA: So part of your  
3 question, I think, relates back to the -- there's a  
4 temporal issue here, a time issue; right? Just like  
5 with the Lower 48 IRA tribes, there was a lot of  
6 activity in the 1930s and '40s in which tribes were  
7 recognized. And then that was not exercised for a  
8 long period of time. And when it was started to be  
9 re-exercised again in the '70s, there was the  
10 realization that we needed a more formal process.

11 Part of this is also the way the  
12 federal government handles its business. If you go  
13 back and look -- and the IRA itself is a good  
14 example of this, I think. It's an old piece of  
15 legislation. It's very broad, has very broad,  
16 sweeping terms, and leaves a lot open to be -- you  
17 know, there's not a clear guidance from Congress to  
18 the administration on that. We have had problems  
19 with that. All right? We've had litigation over  
20 that, and it's been an issue that the department  
21 has worked hard on to develop a regulatory  
22 structure that bolsters the Act itself.

23 Nowadays when Congress passes an  
24 Act -- and there has been a fair amount of Supreme  
25 Court guidance on this, that Congress needs to do

1 this. It needs to be pretty specific on what it's  
2 directing the administration to do; right? And  
3 that's sort of the regime of federal law that we're  
4 under now, administrative law, and making sure that  
5 we have provided whatever it is -- due process,  
6 public notice, transparency, all these things that  
7 are now part of how we view the government does  
8 business. We didn't have that fully fleshed out  
9 100 years ago, and so that's part of where we are  
10 now.

11 A lot of what happened with the  
12 tribes that are recognized now under the Alaska IRA  
13 happened a long time ago, and then there has been  
14 this large gap. And not only has there been a  
15 large time gap, but there have been a number of  
16 intervening pieces of legislation that may or may  
17 not have changed the outlook from Congress  
18 directing us on what to do.

19 And so, again, I don't want to  
20 belabor this point, but that's part of what we're  
21 wanting to do here is, we have to fix that; but we  
22 want to hear from you, both on the legal side but  
23 also on the policy side, what would be the best way  
24 for us to interpret these different intervening  
25 laws.

1           And then at the end of day, when  
2 we come to now, if we're going to exercise this  
3 provision out of this old statute, probably the  
4 best way for us to issue decisions is to have a  
5 strong administrative record, to have regulations  
6 that have been promulgated using full promulgation,  
7 due process, public notice and comment. Once we  
8 have those in place, then the record that is built  
9 out of that is far more defensible for us in court.

10           And so that's a long way around of  
11 saying yes, we're hoping, actually, that what we  
12 get from you and what we go forward with from here  
13 will guide us in making these decisions.

14           RALPH WOLFE: Thank you. Ralph  
15 wolfe, Fifth Vice-President for Central Council.

16           I have a couple of questions here.  
17 So my first one is, it seems that the way that  
18 you're approaching this will absolutely create two  
19 different classes of Natives. We're looking at --  
20 we've already done this before. When you look at  
21 ANCSA, we separated from village corporation to  
22 regional corporation; and it's absolutely something  
23 that we don't want to go back to and look upon.

24           And I still don't see how it's  
25 different from tribes in the Lower 48. To be more



1 specific, the Fort Peck Reservation and the Fort  
2 Berthold Reservation are under common ground. It's  
3 pretty straightforward. They're there, they are  
4 acknowledged, and they move forward.

5 I think that for us, separating  
6 another classification for us, the indigenous  
7 people of this land, is absolutely horrifying and  
8 takes us back ten steps. I think that we need to  
9 keep moving forward. And I understand your wanting  
10 to get it out there and to get the questions asked,  
11 but the way we're going about this -- and it's been  
12 mentioned before, and I'm going to keep -- I hope  
13 everybody keeps saying this -- the vagueness of the  
14 questions, the vagueness of the agenda, the  
15 vagueness of what you guys are trying to get out of  
16 this -- and we're getting more answers now, thank  
17 you, but it puts us on edge. We don't need any  
18 more separation. We don't need any more lines to  
19 be drawn.

20 Thank you.

21 JOHN TAHSUDA: Thank you,  
22 Mr. Wolfe. Let me comment real quick. I had to do  
23 this in a number of contexts. But I want to say  
24 that this is a public meeting, of course, but we're  
25 also doing consultations; and we're really having a

1 lot of the same discussion.

2 so for us, it's always a bit of a  
3 challenge, striking the right position for us to be  
4 in when it comes to consultation. We need to have  
5 enough information for us to have a discussion and  
6 start a consultation. But if we have provided too  
7 much information, then I think there is a  
8 presumption, oftentimes by tribal leaders, that  
9 we've gone too far down the road without consulting  
10 with them first. So we're always trying to strike  
11 the right balance there in getting enough  
12 information to start a discussion, but not getting  
13 too much so that we get plenty of input from you to  
14 guide us forward.

15 So I think, you know, hopefully,  
16 as we go through with these, we'll get more and  
17 more information out, and we'll get more from you,  
18 and we can react more that way.

19 KYLE SCHERER: And then the only  
20 thing that I would add to your point is, I do hear  
21 your concern. And I would just say that, looking at  
22 the Lower 48 example, there were sort of pre-Part 83  
23 tribes. There were Part 83 tribes that existed  
24 pre-2014, when the rules were amended. And, you  
25 know, the Department of the Interior treats all of

1 those tribes the same way. And, in fact, in the  
2 privileges and immunities amendments, the IRA tries  
3 to make sure that we can't treat those tribes  
4 differently, depending on sort of the unique  
5 circumstances in which they were recognized.

6 HEATHER KENDALL-MILLER: Good  
7 morning. My name is Heather Kendall-Miller. I work  
8 with Native American Rights Fund, representing  
9 tribes in Alaska for the past 25 years. Thanks for  
10 coming to Alaska. Thanks for being here, listening  
11 to people.

12 I have risen today because I  
13 wanted to follow some of our tribal leaders in  
14 emphasizing the fact that the notice that you have  
15 put out of the public meetings has been met with a  
16 lot of anxiety by our tribal leaders. I wanted to  
17 say that, in part, I think that the notice was very  
18 unclear.

19 You are looking specifically for  
20 information regarding a process that applies to  
21 maybe only three tribes that are seeking to be  
22 recognized. And yet the way that the questions  
23 were presented and put out for public review has  
24 raised all kinds of questions among the tribal  
25 community and made people interrupt their

1 subsistence activities, made them spend money to  
2 come into town to be able to appear before your  
3 various panels, made them expend financial  
4 resources, scarce financial resources, on getting  
5 their attorneys to look at the questions and try to  
6 ascertain the extent to which these are serious  
7 questions that may impact the legal status of  
8 existing tribes that have obtained federal  
9 recognition.

10 Now, as you probably know, Alaska  
11 tribes that are federally recognized, and have been  
12 for many, many years, include tribes that haven't  
13 organized under the IRA; right? So we have many  
14 traditional tribes as well that have all of the  
15 preexisting authorities, tribal authorities, that  
16 haven't been extinguished. This notice has put  
17 questions in people's mind as to whether or not the  
18 department is interested in creating classes or  
19 categories of different tribes.

20 So I would like to suggest that,  
21 prior to coming to AFN and having your next round  
22 of consultation, which should be consultation, that  
23 the department think clearly about modifying the  
24 questions that have been posed and clarify that  
25 they really are not intended to in any way impact

1 the tribal status of existing federally recognized  
2 tribes.

3 Your inquiry pretty much focuses  
4 on the two to three tribes that are seeking tribal  
5 recognition, and it should not -- the questions  
6 should not be the basis to bring a lot of people  
7 into town at great expense, that have to stay over  
8 and meet, just to get assurances that tribal  
9 existence itself is not under any threat. That  
10 would be very much appreciated. That clear  
11 communication would be really, really helpful.

12 I also wanted to suggest that your  
13 next round of meetings -- I know you're going to  
14 have one down in Ketchikan tomorrow -- that it be  
15 treated as one -- as a tribal consultation, because  
16 the questions that you're asking go to the heart --  
17 especially this afternoon's round of questions,  
18 when you're speaking about the IRA relationship  
19 with the Secretary and taking lands into trust and  
20 such, that deserves a tribal consultation in its  
21 full form -- not just showing up and putting your  
22 name down and hoping to have an opportunity to  
23 speak at the microphone for three minutes, but a  
24 real engagement. Because, obviously, these issues  
25 have long histories, cover 20, 30 years, not just

1 different executive administrations but litigation;  
2 and they deserve that kind of fullness and fairness  
3 in discussion.

4           So I hope -- I'm assuming that the  
5 nature of the questions here are focused on  
6 specific questions that can be responded to by  
7 tribal leaders through letters and other things,  
8 because this little engagement is not sufficient.  
9 And I think, as I mentioned earlier as I opened,  
10 the questions themselves established a presumption  
11 in tribal leaders' minds that, for whatever reason,  
12 their existing tribal status is potentially being  
13 relooked at. And with that possibility, obviously  
14 that's a great concern, a grave concern to all  
15 tribal nations in the state of Alaska.

16           So it would be really helpful,  
17 before your next round in October when you come to  
18 AFN, for the department to clarify specifically and  
19 delineate very carefully what it is that you are  
20 asking the tribes to comment on with respect to  
21 these lines of questions. Because, from what I'm  
22 hearing from you and what has been reported to me  
23 from the other listening session, is the department  
24 is not interested in existing tribes, but in asking  
25 for input on the process for recognition of the

1 three communities that are seeking tribal  
2 recognition.

3 So with that, I thank you.

4 (Applause.)

5 JOHN TAHSUDA: Ms. Kendall-Miller,  
6 can I ask you a question real quick? So we have  
7 three applications that have been pending before the  
8 department, and so I would ask you: You've been an  
9 attorney with NARF but also up here for a long time.  
10 Am I mistaken in thinking that there would be more,  
11 if we had a clear process laid out, that might want  
12 to avail themselves of that?

13 HEATHER KENDALL-MILLER: I cannot  
14 speak to that. I'm not aware of more than the  
15 three. But I think the historic process has been  
16 adequate and has worked. As you probably know from  
17 reading the history, the policy history of Alaska,  
18 there were reasons why the IRA didn't necessarily  
19 apply to Alaska initially until it was readopted in  
20 '38. And at that time, it was recognized that  
21 tribes have a different history up here than they do  
22 in the Lower 48. And because of that reason, they  
23 were not required to go through the Part 83  
24 standards.

25 Now, I think those -- the reasons

1 why that was, still exist today. And that should  
 2 be the inquiry, if anything; rather than imposing a  
 3 new standard on Alaska, given our history and the  
 4 relationship that we've maintained over many, many  
 5 years, utilizing that standard and not putting in  
 6 more difficult standards.

7 And, again, I just want to get  
 8 back to -- and then clarifying to tribes, federally  
 9 existing tribes, that this is not intended to  
 10 impact or affect the government-to-government  
 11 relationship in any way. This is being done solely  
 12 to seek a better way of dealing with those three  
 13 tribes that are seeking recognition.

14 Thank you.

15 JOHN TAHSUDA: Thank you.

16 WILL MICKLIN: I just had a  
 17 quick -- will Micklin, Central Council Tlingit &  
 18 Haida Tribes of Alaska, Third Vice-President. I  
 19 just have a quick follow-up question to Heather  
 20 Kendall-Miller's line of inquiry.

21 So my question is whether the  
 22 Tribal List Act of 1994 doesn't settle this issue.  
 23 It requires in statute that tribes in Alaska be  
 24 treated the same as tribes in the Lower 48 without  
 25 distinction, without disparate class.



1           The question arose and in  
2 discussion as if the bonds of -- in Section 16,  
3 where it refers to occupation, association, or  
4 residence, are any different than the three  
5 affiliated tribes. I've talked to my friend  
6 Sherman Fox about the challenge of governing  
7 Mandan, Hidatsa, and Arikara people, widely  
8 disparate people on the same reservation, treated  
9 as a single tribe. They're not unique --  
10 Confederated Tribes of Washington, Colville, the  
11 Morongo Reservation in California, Rincon and  
12 Luiseño and others thrown into the mix -- really,  
13 people that were thrown together in the initial  
14 Indian period in the late 1800s. There is no  
15 distinction between the two, and how one can draw  
16 that there is a difference between that in the  
17 Lower 48 and in Alaska, given that the Tribal List  
18 Act governs, is the question.

19           So there was stated that you're  
20 not seeking to change statute. So in regard to the  
21 response that there's pre-Section 83 tribes and  
22 post-Section 83 tribes, I'll just refer to  
23 25 U.S.C. Code 5119, where it provides that  
24 sections in that title apply to the Territory of  
25 Alaska, provided that groups of Indians in Alaska

1 not recognized prior to May 1, 1936 -- so these are  
2 the IRA tribes recognized under Section 16 -- as  
3 bands or tribes, but having a common bond of  
4 occupation or association or residence within a  
5 well-defined neighborhood community or rural  
6 district, may organize to adopt constitutions and  
7 bylaws and to receive charters of incorporation and  
8 federal loans under the various sections of that  
9 title.

10 So there are post-1936 IRA tribes  
11 that this statute governs. So that's one class.  
12 And it requires that there not be a separate or  
13 distinct class with rights, privileges, and  
14 immunities lesser than this in statute. If you're  
15 not looking to change statute, you're governed by  
16 this statute, and you're governed by the Tribal  
17 List Act; so I don't see the line of argument that  
18 is being put forward here.

19 If there are three applicants, it  
20 ought to be decided under the statute that they're  
21 applying under, and the regulation, without  
22 distinction. You're governed by the Tribal List  
23 Act and 25 U.S.C. Code 5119. So I don't see the  
24 prerogative, and I don't see the difference in  
25 tribes that exist in the Lower 48.

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(Applause.)

JOHN TAHSUDA: Thank you. Thank you for your comments. Again, we have to shut down here. They have another event happening in just a few minutes. And I know we got off a little slow this morning, so if we want to have more discussion on this issue after we have this afternoon's discussion, we're happy to stay here and visit with you some more. But we'll close this meeting. Thank you.

(Public Meeting concluded at 12:00 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 )  
FIRST JUDICIAL DISTRICT ) Ss.

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.



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