S. HRG. 117–518

S. 3123, S. 3126, S. 3273, AND S. 3381

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED SEVENTEENTH CONGRESS

SECOND SESSION

FEBRUARY 16, 2022

Printed for the use of the Committee on Indian Affairs

U.S. GOVERNMENT PUBLISHING OFFICE
49–895 PDF WASHINGTON : 2022

COMMITTEE ON INDIAN AFFAIRS

BRIAN SCHATZ, Hawaii, *Chairman*
LISA MURKOWSKI, Alaska, *Vice Chairman*

MARIA CANTWELL, Washington	JOHN HOEVEN, North Dakota
JON TESTER, Montana	JAMES LANKFORD, Oklahoma
CATHERINE CORTEZ MASTO, Nevada	STEVE DAINES, Montana
TINA SMITH, Minnesota	MIKE ROUNDS, South Dakota
BEN RAY LUJÁN, New Mexico	JERRY MORAN, Kansas

JENNIFER ROMERO, *Majority Staff Director and Chief Counsel*
LUCY MURFITT, *Minority Staff Director and Chief Counsel*

CONTENTS

WITNESSES

APPENDIX

S. 3123, S. 3126, S. 3273, AND S. 3381

WEDNESDAY, FEBRUARY 16, 2022

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 2:40 p.m. in room 628, Dirksen Senate Office Building, Hon. Brian Schatz, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. BRIAN SCHATZ, U.S. SENATOR FROM HAWAII

The CHAIRMAN. Good afternoon. During today's legislative hearing, we will consider four bills, S. 3123, a bill to amend the Siletz Reservation Act to address the hunting, fishing, trapping, and animal gathering rights of the Confederated Tribes of Siletz Indians, and for other purposes; S. 3126, a bill to amend the Grand Ronde Reservation Act to address the hunting, fishing, trapping, and animal gathering rights of the Confederated Tribes of the Grand Ronde Community, and for other purposes; S. 3273, Agua Caliente Land Exchange Fee to Trust Confirmation Act, and S. 3381, Tribal Trust Land Homeownership Act of 2021.

Senator Merkley's bill, S. 3123 and 3126, would amend the statutes establishing the Siletz and the Grand Ronde Tribes' reservations in order to permit the tribes, the State of Oregon, and the United States, to renegotiate the scope of the tribes' hunting, fishing, gathering, and trapping rights.

Senator Padilla's bill, S. 3273, would clarify the trust status of land exchange between the Agua Caliente Band of Cahuilla Indians and the Bureau of Land Management as part of the creation of the San Jacinto National Monument.

The last bill on our agenda, Senator Thune's 3381, would help address a problem this Committee heard much about last Congress, the lengthy path to tribal homeownership on trust lands. This bill would formalize deadlines for the BIA to process and complete mortgage packages for residential and business mortgages on Indian land, among other improvements.

Before I turn to Vice Chair Murkowski, I would like to extend my sincere welcome and thanks to our witnesses for joining us today. I look forward to your testimony and our discussion.

Vice Chair Murkowski?

STATEMENT OF HON. LISA MURKOWSKI, U.S. SENATOR FROM ALASKA

Senator MURKOWSKI. Thank you, Mr. Chairman.

I will keep my comments brief. I think you have described well the contours of each of these four measures dealing with tribal land issues.

I would like to comment on S. 3381. This is the measure introduced by Senator Thune, as well as Senator Rounds here on our Committee, and Senator Tester and Senator Smith. We all know that the issue of access to housing for Indian communities is something that has been identified as a top priority for the Committee to work on this Congress. Good news is that we have now moved the NAHASDA bill from Committee. That is going to be very helpful with reforms in HUD's Indian Housing program.

According to HUD's 2017 Housing Assessment for American Indian and Alaska Native Communities, in order to eliminate overcrowding in tribal areas, this is actually all data between 2013 and 2015, a total of 68,000 new units would need to be constructed, 33,000 new units and another 35,000 new units to replace units that were severely physically inadequate. Many tribal and regional housing associations believe that this is an underestimate, I certainly believe it is, and think that the need is much, much greater.

According to Freddie Mac's chief economist, the national housing shortage totals nearly 4 million housing units. So with such an obvious need for housing in Indian Country, and nationally, any barriers that we can address, we should. That includes some of the Federal regulations for processing and review of various mortgage packages and title clearance reports on tribal trust lands. That is what S. 3381 aims to do. It sets deadlines for the Bureau of Indian Affairs to adhere to, establishes a realty ombudsman position reporting directly to the Secretary of the Interior to clear out the logjams, and provides access to the Bureau's Trust Asset and Accounting Management System for relevant agencies and tribes.

So I am looking forward to hearing the presentation on these four bills, and the opportunity to exchange questions and answers afterwards. Thank you to the witnesses.

The CHAIRMAN. Thank you, Vice Chair Murkowski.

Now we will turn to Senator Rounds to introduce his witness from South Dakota.

STATEMENT OF HON. MIKE ROUNDS, U.S. SENATOR FROM SOUTH DAKOTA

Senator ROUNDS. Thank you, Mr. Chairman. First of all, she is joining us virtually today. Mr. Chairman and Madam Vice Chair, first of all, I want to say thank you to all of our witnesses for taking time to attend today's hearing.

I am pleased to introduce Ms. Sharon Vogel from my home State of South Dakota, and thank her for her willingness to testify. Sharon Vogel serves as the Executive Director of the Cheyenne River Housing Authority in Eagle Butte, South Dakota, on the Cheyenne River Sioux Reservation. She is also chairwoman of the United Native American Housing Association with 33 member tribally designated housing entities, or TDHEs, from seven different States.

Sharon has spent the past 20 years dedicating her career to bettering the housing opportunities for our Native American communities. I am very grateful that she is taking the time to join us here today. I can just share with you, visiting with her, she knows more about Native housing challenges and the opportunities to improve upon it than about other person I know. I am very pleased she is here with us today.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Rounds.

Now we will turn to Senator Merkley. Welcome to the Committee to introduce your two testifiers from Oregon.

STATEMENT OF HON. JEFF MERKLEY,
U.S. SENATOR FROM OREGON

Senator MERKLEY. Thank you very much, Mr. Chairman, ad Vice Chairman Murkowski, and members of the Committee, for holding today's hearing to look at how we address a few of the broken promises made to Indian Country over the years.

One of the great injustices inflicted on Oregon's tribes was termination of their status as federally recognized tribes in 1954. It would be decades before the damage was so clear that efforts to reverse course gained traction here in Congress.

My predecessor, Senator Mark Hatfield, who I had the pleasure of interning for way back in the 1970s, led the efforts in the Senate to restore the first of our tribes' sovereignty, the Confederated Tribes of the Siletz Indians, in 1977. A few years later, he championed the Grand Ronde Restoration Act, which restored the Confederated Tribes of the Grand Ronde in 1983.

Even then, the two tribes didn't have land to call their own. They were a people without a home. Even when they received land to call home, the final consent agreements imposed upon them, well, took a number of their rights. They were forced to give up the ability to exercise their hunting, fishing, trapping, and gathering rights to acquire that modest land base.

That is why I have introduced S. 3123 and S. 3126, which would repeal the statutory provisions in the Siletz and Grand Ronde Reservation Acts, codifying the consent decrees on under lying hunting and fishing rights agreements. This would give both the State of Oregon and the Siletz and Grand Ronde Tribes the opportunity to renegotiate those agreements to address this historic wrong.

I am pleased to welcome and introduce leaders from these two tribes, Chairman Delores Pigsley, of the Confederated Tribes of the Siletz Indians, and Chairwoman Cheryle Kennedy, of the Confederated Tribes of the Grand Ronde. Originally from Toledo, Oregon, Chairman Pigsley has served as an advocate for the Siletz Tribe since first being elected to the tribal council in 1975, the moment the tribes began seeking to reverse their termination.

For 29 of her 36 years on the council, she has served as its chairman, representing the tribe at Federal, State, local and intertribal government levels. She has also served as a tribal delegate to the National Congress of American Indians, Affiliated Tribes of the Northwest Indians, the National Indian Child Welfare Association, and the National Indian Gaming Association. As someone who is involved with tribal government since before these consent agree-

ments were created, she has unique first-hand knowledge and experience of how these agreements came to be, and why they must be reversed.

For many decades, Cheryle Kennedy has been deeply involved in the restoration of the Confederated Tribes of the Grand Ronde, and the leadership of the tribe. I believe she was first chair in 1985 and 1986. She began serving again on the council after the turn of the century and has spent I think the entire last decade as chair.

Before being elected to serve on the tribal council, she worked as a health administrator for tribes and as a tribe's health director. She is a former commissioner of the Rural Health Council of Oregon, a former commissioner of the Oregon Women's Commission, a member of the National Congress of American Indians, and appointed chair of the Commission on Indian Services by the Oregon legislature.

I can't think of two better individuals to address this Committee over these issues, because they have been involved all the way through from before restoration. Thank you for entertaining these bills and these witnesses today.

The CHAIRMAN. Thank you, Senator Merkley.

It is a pleasure to introduce Senator Padilla, who has already distinguished himself as a real effective advocate for the Native people in California, and the nations within. Senator Padilla, your witness.

STATEMENT OF HON. ALEX PADILLA,
U.S. SENATOR FROM CALIFORNIA

Senator PADILLA. Thank you, Mr. Chairman, Ranking Member Murkowski, for holding this hearing on S. 3237, and for allowing me this opportunity to introduce Reid Milanovich, the Vice Chairman of the Agua Caliente Band of Cahuilla Indians.

Vice Chairman Milanovich will be testifying on this bill that I have introduced together with Senator Feinstein and Congressman Raul Ruiz on the House side, to place certain lands into trust for the tribe. This bill would finally allow the Agua Caliente Band of Cahuilla Indians to manage over 2,500 acres of land that have special cultural value to their people.

Vice Chairman Milanovich was first elected to the tribal council in April of 2014, and served five consecutive terms as a tribal council member. He was sworn in as vice chairman on November 5th of 2019. Prior to serving on the council, Mr. Milanovich served on the board of directors for the Agua Caliente cultural museum, and served on the tribe's scholarship committee.

Mr. Milanovich is one of six siblings, and in fact, his father Richard Milanovich served as tribal chairman for 28 years, until his passing in 2012. It was under the leadership of the vice chairman's father that the effort began to reclaim the land that is covered in my bill. Today, Mr. Milanovich is here to make sure that we get the job done.

For generations, the Agua Caliente Band of Cahuilla Indians have lived in what is now known as the Coachella Valley in the San Jacinto Mountains. But the Federal Government divided up the Agua Caliente's land into even and odd parcels that unknown to this Committee cut up, known as a checkerboard. The govern-

ment allotted the even number parcels to Agua Caliente and the odd number sections for the creation of a railroad. The tribe's reservation was established in 1876, and it only included a small portion of their traditional territories as a result.

It wasn't until 1999 that the Bureau of Land Management and Agua Caliente entered into an agreement to acquire and exchange lands within what would become the Santa Rosa and the San Jacinto Mountains National Monument. In 2000, Congress enacted the decision to establish the monument, authorize the land exchange, and consolidate the checkerboard of land ownership.

For 17 years, the Agua Caliente has worked with the Bureau of Land Management to finalize an agreement, exchange the lands that are addressed by this legislation. In March of 2019, the land exchange was finalized. However, the 2000 law didn't expressly address the status of land that was transferred to the tribe. So the lands covered in this bill were not placed into trust.

My legislation would correct that oversight and finally place the exchanged land into trust as part of the Agua Caliente Reservation. Enactment of this bill would conclude a decades-long endeavor between the Agua Caliente Band of Cahuilla Indians and the Federal Government to complete the original 1999 agreement.

Vice Chairman Milanovich's father began the effort to reclaim this land in the late 1990s. And here we are, more than 20 years later, with the Vice Chairman here to help push this multigenerational effort over the finish line, and finally allow the tribe to manage their ancestral lands.

Thank you, Mr. Chairman, and Ranking Member Murkowski.

The CHAIRMAN. Thank you very much.

Our final witness is Kathryn Isom-Clause, the Deputy Assistant Secretary for Indian Affairs at the Department of Interior. I want to remind our witnesses that we have your full written testimony, and it will be made part of the official record.

Please keep your statement to no more than five minutes, so that members have time for questions. We will have a vote, or two votes, at 3:30. So the tighter we can be, the quicker we can pass these bills.

So we will start with Ms. Isom-Clause.

STATEMENT OF KATHRYN ISOM–CLAUSE, DEPUTY ASSISTANT SECRETARY, INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Ms. ISOM-CLAUSE. Good afternoon, Chairman Schatz, Vice Chair Murkowski, and members of the Committee. My name is Kathryn Isom-Clause, and I am Taos Pueblo. I serve as the Deputy Assistant Secretary for Policy and Economic Development for Indian Affairs at the U.S. Department of the Interior.

Thank you for the opportunity to present the department's views on the bills to be considered today.

Regarding S. 3123, in 1980, the Siletz Reservation Act established a reservation land base for the Confederated Tribes of Siletz Indians of Oregon. Section 4 of the Siletz Act requires that a May 2nd, 1980 consent decree entered into between the State of Oregon and Siletz to service the exclusive and final determination of the tribe's and its members' hunting, fishing, and trapping rights and

that the establishment of the Siletz Reservation does not grant or restore any rights beyond the consent decree to the tribe or its members.

S. 3123 amends Section 4 of the Siletz Act to provide a process by which Siletz and the State may negotiate to amend or replace the existing agreement defining the tribe's hunting, fishing, gathering, and trapping rights. S. 3123 also provides a vital step forward to allow Siletz to come to a new agreement with the State that may permit the tribe to exercise their traditional rights more fully as well as manage hunting, fishing, gathering, and trapping on their lands.

Regarding S. 3126, in 1988, the Grand Ronde Reservation Act established a reservation land base for the Confederated Tribes of the Grand Ronde Community of Oregon. Section 2 of the Grand Ronde Act states that the January 12th, 1987 consent decree entered into between the State of Oregon and Grand Ronde serves as the exclusive and final determination of the tribe's and its members' hunting, fishing, and trapping rights, and that the establishment of the Grand Ronde Reservation does not grant or restore any rights beyond the consent decree to the tribe or its members.

Similar to S. 3123, S. 3126 amends Section 2 of the Grand Ronde Act to allow Grand Ronde to come to a new agreement with the State that may permit the tribe to exercise their traditional rights more fully. The Biden Administration and the Department are committed to working with tribal governments to protect and preserve traditional tribal hunting, fishing, and gathering rights on tribal ancestral lands. To that end, the department supports S. 3123 and S. 3126.

S. 3273 would confirm approximately 2,560 acres of land owned by the Agua Caliente Band of Cahuilla Indians in California as land held in trust for the benefit of the tribe. This bill makes it clear that the land is a part of the tribe's reservation. Additionally, the bill makes it clear that the land is ineligible for gaming under the Indian Gaming Regulatory Act. The tribe plans to manage the land, which is within a national monument area, as conservation lands.

In 1999, the Bureau of Land Management and the tribe entered into an agreement to acquire and exchange lands within what would become the Santa Rosa and San Jacinto Mountains National Monuments. In 2000, legislation was enacted to facilitate the agreement. In March 2019, the lands transferred to the tribe was finalized.

S. 3273 would simply confirm the land transfer and ensure that the land is considered part of the tribe's reservation. The department supports this bill.

S. 3381 would impose a series of statutory requirements on the Bureau of Indian Affairs related to the processing and review of mortgage packages. This legislation would codify current processing deadlines for mortgages, require an annual report to be submitted to Congress regarding the mortgages reviewed by the Bureau, establish a realty ombudsman position reporting directly to the Secretary, and provide access to the Bureau's Trust Asset and Accounting Management System, or TAAMS, for relevant agencies and tribes.

We appreciate Congress' shared interest in ensuring that mortgage packages are reviewed and processed in a timely manner. Notably, the mortgage application review and processing deadlines in this legislation are reflected in the Bureau's regulations, handbooks, and policy.

One specific concern the department has with S. 3381 is that it would mandate read-only access to TAAMS for the Departments of Agriculture, Housing and Urban Development, and Veterans Affairs, as well as tribes. The Bureau currently provides limited TAAMS access to tribes in relevant agencies after the clearance of a background check. Access to TAAMS should be contingent on IT security training and limited to avoid Privacy Act and confidentiality issues.

The Department supports the intent of S. 3381 and looks forward to working with the Committee to provide technical assistance.

Chairman Schatz, Vice Chair Murkowski, and members of the Committee, thank you for the opportunity to provide the department's views on these important bills. I look forward to answering any questions you may have.

[The prepared statement of Ms. Isom-Clause follows:]

PREPARED STATEMENT OF KATHRYN ISOM-CLAUSE, DEPUTY ASSISTANT SECRETARY, INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Introduction

Hello and good afternoon Chairman Schatz, Vice Chair Murkowski, and members of the Committee. My name is Kathryn Isom-Clause, and I serve as the Deputy Assistant Secretary for Policy and Economic Development at Indian Affairs at the U.S. Department of the Interior (Department).

Thank you for the opportunity to present the Department's testimony on S. 3123, a bill to amend the Siletz Reservation Act to address the hunting, fishing, trapping, and animal gathering rights of the Confederated Tribes of Siletz Indians, S. 3126, a bill to amend the Grand Ronde Reservation Act to address the hunting, fishing, trapping, and animal gathering rights of the Confederated Tribes of the Grand Ronde Community, S. 3273, the Agua Caliente Land Exchange Fee to Trust Confirmation Act, and S. 3381, the Tribal Trust Land Homeownership Act of 2021.

S. 3123—A bill to amend the Siletz Reservation Act to address the hunting, fishing, trapping, and animal gathering rights of the Confederated Tribes of Siletz Indians, and for other purposes

In 1980, the Siletz Reservation Act (Siletz Act), P.L. 96–340, established a reservation land base for the Confederated Tribes of Siletz Indians of Oregon (Siletz or Tribe). Section 4 of the Siletz Act requires that a May 2, 1980 consent decree entered into between the State of Oregon and Siletz serve as the exclusive and final determination of the Tribe's and its members' hunting, fishing and trapping rights, and that the establishment of the Siletz Reservation does not grant or restore any rights beyond the consent decree to the Tribe or its members.

The May 2, 1980 consent decree provides that the Tribe has limited locations and take amounts for salmon fishing and deer and elk hunting, no special trapping rights, limited gathering rights, and an option to obtain annual amounts of State-furnished salmon, deer, and elk. The consent decree otherwise prohibits Tribal hunting, fishing, gathering, and trapping activities except as authorized under Oregon State law.

S. 3123 amends Section 4 of the Siletz Act to allow the April 22, 1980 agreement between the State, the Tribe, and the United States defining the Tribe's hunting, fishing and trapping rights to be amended or replaced upon mutual agreement of the Tribe and the State. Upon the State and the Tribe coming to a new or amended agreement, S. 3123 provides that the Tribe and the State may return to Oregon Federal District Court to request the modification or termination of the May 2, 1980 consent decree currently in effect.

S. 3123 will provide a process by which Siletz and the State may negotiate to amend or replace the existing agreement defining the Tribe's hunting, fishing, gathering, and trapping rights. The bill will allow for Siletz to negotiate their rights to

hunt, fish, and trap throughout their ancestral homelands. S. 3123 also provides a vital step forward to allow Siletz to come to a new agreement with the State that may permit the Tribe to exercise their traditional rights more fully as well as manage hunting, fishing, gathering and trapping on their lands. The Biden Administration and the Department are committed to working with tribal governments to protect and preserve tribal traditional hunting, fishing, and gathering rights on tribal ancestral homelands. To that end, the Department supports S. 3123.

S. 3126—A bill to amend the Grand Ronde Reservation Act to address the hunting, fishing, trapping, and animal gathering rights of the Confederated Tribes of the Grand Ronde Community, and for other purposes

In 1988, the Grand Ronde Reservation Act (Grand Ronde Act), P.L. 100–425 established a reservation land base for the Confederated Tribes of the Grand Ronde Community of Oregon (Grand Ronde or Tribe). Section 2 of the Grand Ronde Act states that the January 12, 1987 consent decree entered into between the State of Oregon and Grand Ronde serves as the exclusive and final determination of the Tribe's and its members' hunting, fishing, and trapping rights, and that the establishment of the Grand Ronde Reservation does not grant or restore any rights beyond the consent decree to the Tribe or its members.

The January 12, 1987 consent decree provides that Tribal members may fish using Tribal, rather than State, permits in limited geographical areas during State-law fishing seasons, as well as a limited right to hunt deer, elk, and bear in limited geographical areas. The Tribe has no special trapping rights, limited gathering rights, and an option to obtain annual amounts of State-furnished salmon. The consent decree otherwise prohibits Tribal hunting, fishing, gathering, and trapping activities except as authorized under Oregon State law.

S. 3126 amends Section 2 of the Grand Ronde Act to allow the December 2, 1986 agreement between the State, the Tribe, and the United States defining the Tribe's hunting, fishing, and trapping rights to be amended or replaced upon mutual agreement of the Tribe and the State, and allows for the Tribe and the State to return to Oregon Federal District Court to modify or terminate the January 12, 1987 consent decree based on a new or amended agreement.

S. 3126 provides an opening for negotiation between the State and Grand Ronde regarding Grand Ronde's rights to hunt, fish, gather, and trap in their ancestral homelands. It also allows for Grand Ronde to come to a new agreement with the State that may permit the Tribe to exercise their traditional rights more fully as well as manage hunting, fishing, gathering and trapping on their lands. The Biden Administration and the Department are committed to working with Tribal governments to protect and preserve Tribal traditional hunting, fishing, and gathering rights on Tribal ancestral homelands. To that end, the Department supports S. 3126.

S. 3273—Agua Caliente Land Exchange Fee to Trust Confirmation Act

S. 3273 would confirm approximately 2,560 acres of land owned by the Agua Caliente Band of Cahuilla Indians (Tribe) in California as land held in trust for the benefit of the Tribe. This bill makes it clear that the land is a part of the Tribe's reservation. Additionally, the bill makes the land ineligible for gaming under the Indian Gaming Regulatory Act (25 U.S.C. § 2701 et seq.). The Tribe plans to manage the land—which is within a national monument area—as conservation lands.

In 1999, the Bureau of Land Management and the Tribe entered into an agreement to acquire and exchange lands within what would become the Santa Rosa and San Jacinto Mountains National Monument, and in 2000, legislation was enacted to facilitate the agreement. In March 2019, the land transfer to the Tribe was finalized. S. 3273 would simply confirm the land transfer and ensure the land is considered part of the Tribe's reservation. The Department supports this bill.

S. 3381—Tribal Trust Land Homeownership Act of 2021

S. 3381 would impose a series of statutory requirements on the Bureau of Indian Affairs (Bureau) related to the processing and review of mortgage packages. This legislation would codify current processing deadlines for mortgages; require an annual report to be submitted to Congress regarding the mortgages reviewed by the Bureau; establish a Realty Ombudsman position reporting directly to the Secretary; and provide access to the Bureau's Trust Asset and Accounting Management System (TAAMS) for relevant agencies and tribes.

We appreciate Congress' shared interest in ensuring that mortgage packages are reviewed and processed in a timely manner. Notably, the mortgage application review and processing deadlines in this legislation are reflected in the Bureau's existing handbooks and policy.

One specific concern the Department has with S. 3381 is that it would mandate read-only access to TAAMS for the Department of Agriculture, Department of Housing and Urban Development, and Department of Veterans Affairs, as well as tribes. The Bureau currently provides limited TAAMS access to tribes and relevant agencies after the clearance of a background check. Access to TAAMS should be contingent on IT security training and limited to avoid Privacy Act issues.

The Department supports the intent of S. 3381 and looks forward to working with the Committee to provide technical assistance.

Conclusion

Chairman Schatz, Vice Chair Murkowski, and Members of the Committee, thank you for the opportunity to provide the Department's views on these important bills. I look forward to answering any questions.

The CHAIRMAN. Thank you very much.

Next, we have the Honorable Delores Pigsley, the Chairman of the Confederated Tribes of Siletz Indians in Oregon, virtually.

STATEMENT OF HON. DELORES PIGSLEY, CHAIRMAN, CONFEDERATED TRIBES OF SILETZ INDIANS

Ms. PIGSLEY. Thank you, and it is my pleasure to be able to be here to testify on Senate Bill 3123. My name is Delores Pigsley. I am the Tribal Chairman for the Confederated Tribes of Siletz Indians of Oregon. I represent over 5,500 tribal members.

As you know, our tribe was terminated back in 1954, restored in 1977. It was a very difficult time back in 1975 when the tribe was trying to be restored. We were treated very badly by the State of Oregon. We once had a one-million-acre reservation in 1855 that dwindled down to practically nothing. In order to get the land back during restoration, we had to agree to hunting and fishing rights, they gave us absolutely no subsistence rights, or no way to gather and to continue hunting. Because our tribe was terminated, many of our members still did, still practiced hunting, fishing, and helping to feed the community. They were arrested, jailed, and sometimes given high fines for what they were doing.

That brings us to today. Our Congressional leaders, the Governor, and the State of Oregon recognized the wrong. This is an opportunity to right that wrong. The Siletz tribal members were raised on deer and elk and seafood. We always fed our families based on the community need. We hunted, fished, and shared all those foods.

Today, we are regulated with all of our hunting and fishing and gathering rights with the State of Oregon. The only unlimited right we have is to gather mussels. Families do that, and they share the food with those communities, just like they have always done in the past.

The tribes before you today, Siletz and Grand Ronde, are the only tribes in the United States that were forced to agree to give up a sovereign right in order to be restored and have those small reservations created. It has been a disastrous policy for Siletz, as far as termination, restoration. It has been 40 years trying to get these rights back.

All we want for Siletz is to be treated equally, like other tribes, whether that is good or bad. We know there are bad treatments. But we are in this to establish equal rights for our tribe in order to be able to hunt and fish and gather as we traditional did for time immemorial.

We look forward to the opportunity to answer any questions. This has been a long process, and we are very hopeful that this group will be able to support the legislation to recognize our rights, and to give us back those rights that we lost.

We thank you.

[The prepared statement of Ms. Pigsley follows:]

PREPARED STATEMENT OF HON. DELORES PIGSLEY, CHAIRMAN, CONFEDERATED TRIBES OF SILETZ INDIANS

My name is Delores Pigsley and I am Chairman of the Tribal Council for the Confederated Tribes of Siletz Indians. My tribe is a confederation of all the bands and tribes of western Oregon that were removed to the Siletz Reservation. If still intact, this reservation would be the largest in Oregon at over 1 million acres.

In 1954, Congress terminated federal recognition of the Siletz Tribe and all of its antecedent bands and tribes. In 1977, Congress restored federal recognition to Siletz. While we were the first tribe in Oregon to be restored, and the second in the nation, it came at a very high price.

Restoration by Congress

Siletz' restoration effort coincided with the Indian "fishing wars" on the Columbia River and in Washington State—where federal courts were upholding Indian treaty fishing rights. The Oregon Department of Fish & Wildlife (ODFW) joined other states in asking Congress to overturn these court decisions at a national level. Similarly, ODFW opposed Siletz' restoration and insisted that the newly restored Siletz Tribe give up its hunting/fishing rights to become restored and to obtain a small reservation.

The original discussion draft of a Siletz Restoration Act circulated by the Tribe in 1975 would have restored tribal hunting/fishing rights. However, ODFW objected to this language and Siletz adopted neutral language that neither granted nor diminishes any tribal hunting right. This would have left any hunting/fishing right that survived termination unaffected. A year later, the House Report on the Siletz Restoration Act discussed this language:

> "Finally, the committee wishes to emphasize the intent of the legislation to be neutral on the question of hunting and fishing rights for the Siletz Tribe. If the Siletz Tribe had a treaty or other special hunting or fishing right which was terminated by the termination Act of August 13, 1954 (69 Stat. 724), this legislation does not restore such right. If the Siletz Tribe had such a special right prior to termination which survived the Termination Act, this legislation does not abrogate or impair such a right." [1]

At this point, ODFW accelerated its opposition to the Siletz Restoration Act—and insisted that Congress expressly extinguish any pre-existing hunting/fishing rights Siletz might still have. This would have engendered national tribal opposition; and what ODFW didn't achieve in the actual Restoration Act, it achieved in the Consent Decree. Moreover, in 1976, ODFW even proposed alternative legislation that would have made individual Siletz Indians eligible for federal Indian benefits/services, but would not have restored the Siletz Tribe itself.

ODFW also objected to the restoration of a Siletz Reservation because of the State's fear of tribal exercise of sovereignty over its own land. The restoration act was eventually amended to eliminate the specific creation of a reservation for Siletz and did not itself restore any land to Siletz. Instead, the Restoration Act called for a two-year study followed by congressional action before a reservation could be created.

With changes made to accommodate ODFW, Congress passed the Siletz Restoration Act on November 18, 1977. The final legislative language on hunting/fishing reads:

> "This Act shall not grant or restore any hunting, fishing, or trapping right of any nature, including any indirect or procedural right or advantage, to the tribe or any member of the tribe, nor shall it be construed as granting, establishing, or restoring a reservation for the tribe."

---

[1] H.R. Report No. 623, 95th Congress, 1st Session; September 23, 1977; House Committee on Interior & Insular Affairs

Negotiating the Siletz Reservation Act

Following congressional restoration, the Siletz Tribe adopted a constitution, elected a tribal governing body and began focusing on establishment of a reservation so it could assume full status as a federally recognized tribe.

As parties negotiated the creation of a reservation for Siletz—the study of which was authorized in the Restoration Act—ODFW continued its demand for the extinction of the Siletz Tribe's hunting/fishing rights. It even suggested monetizing the Tribe's rights and having the federal government forcibly buy those rights and compensate tribal members.

Other state agencies appeared to agree on legislative language that included a neutrality clause that did not grant any new hunting/fishing rights but left any pre-existing hunting/fishing rights for future determination, if ever. The Oregon Attorney General had determined that the Siletz Tribe probably maintained pre-termination hunting rights on at least the land it still possessed at the time of termination. The AG wrote that while the Reservation Act (as drafted) would not create any new rights, "any pre-existing rights would continue to exist."

Based on fear of constituent backlash, Rep. Les AuCoin (D–OR) blocked passage of the Reservation Act until ODFW agreed with the extent of Siletz hunting/fishing rights, giving it a veto over those rights. Siletz' hunting/fishing rights were essentially terminated. This ultimately led to Siletz being forced to a near-total extinguishment of its hunting/fishing rights as a condition to obtaining a small reservation.

The result was a hunting/fishing agreement between Siletz and the State of Oregon. It allows the Tribe to only take up to 200 salmon a year for cultural and subsistence purposes, and bans tribal members from exercising even these limited rights on the main-stem Siletz River because tribal members' presence and fishing might offend or anger non-Indian fishers. The agreement also allows for the Tribe's annual harvest of up to 25 elk and up to 400 deer (minus the number of elk taken).

Federal Court Decree and Order

Siletz Tribe v. Oregon (Civil No. 80–422 [May 2, 1980]) was the result of a "friendly" lawsuit between the parties, which ODFW insisted on to make the Agreement it demanded beyond challenge. The court order/decree enshrines the hunting/fishing agreement entered into between the State and Siletz Tribe (dated April 22, 1980). The original agreement was drafted by ODFW and makes it difficult or impossible to amend or overturn:

> "[The Siletz Tribe and its members] are hereby permanently enjoined from asserting or prosecuting any claim for tribal [hunting/fishing rights] of said Tribe or its members other than as such rights are specified and limited by the terms of said Agreement."

Siletz Reservation Act [P.L. 96–340 [1980])

In addition to the court order/decree, the hunting/fishing agreement with the State of Oregon was also codified into the Siletz Reservation Act passed by Congress later in 1980:

> "The establishment of the Siletz Reservation or the addition of lands to the reservation in the future, shall not grant or restore to the tribe or any member of the tribe any new or additional hunting, fishing, or trapping right of any nature, including any indirect or procedural right or advantage, on such reservation beyond the rights which are declared and set forth in the final judgment and decree of the United States District Court for the District of Oregon, in the action entitled Confederated Tribes of Siletz Indians of Oregon against State of Oregon, entered on May 2, 1980. Those rights as declared and set forth in the May 2,1980, final judgment and decree shall constitute the exclusive and final determination of all tribal rights to hunt, fish, or trap that the Siletz Tribe or its members possess."

This provision impedes the Siletz Tribe from exercising any treaty hunting/fishing rights that it may possess and has never given up.

Recently the Governor of Oregon and ODFW have agreed that this original 1980 hunting/fishing agreement is unconscionable and contrary to the State's policy to acknowledge and recognize tribal rights. The State supports the Tribe's efforts to overturn the 1980 Agreement and replace it with a more equitable agreement.

Siletz Tribe's Legislative Request

There are three components of the Siletz Tribe's effort to overturn its 1980 Consent Decree:

1. Rescinding Language in the Siletz Reservation Act that Incorporates the 1980 Consent Decree.

The 1980 Siletz Reservation Act incorporates the Consent Decree into the legislation and states that it is the final statement of Siletz HFT&G Rights. This makes that legislation independent authority on the Tribe's HFT&G Rights, over and above the federal court Consent Decree. Therefore the Tribe needs to have this legislative language rescinded to overturn its 1980 Consent Decree. S. 3123 strikes the relevant provision from the 1980 Siletz Reservation Act, P.L. 86–340.

2. Replacing the 1980 HFT&G Agreement with A Different Arrangement.

The Siletz Tribe has already drafted a proposed replacement agreement—to be entered into with the State—and has been discussing the language of that draft with ODFW and various stakeholders. S. 3123 protects the interests of other parties by providing that the 1980 HFT&G Agreement does not go away until a new Agreement has been finalized and approved by ODFW.

3. Vacating the 1980 Federal Court Consent Decree.

Congress cannot directly overturn a previous federal court decree and judgment. The State of Oregon, the United States—as trustee for the Siletz Tribe, and the Siletz Tribe were parties to the original court decree and will have to approach the federal court together to vacate that decree. The Tribe is in discussions with the State and federal government to jointly petition the federal court to vacate the 1980 Consent Decree under FRCP 60(b)(6) and believes the State and federal government will support that effort, but that is ultimately the discretionary decision of those governments. S. 3123 provides only that if such a petition is filed, the federal court can consider that petition without first having to address technical legal obstacles such as res judicata that might limit the court's authority to entertain the joint petition. This limited legislative approach has been upheld by the Supreme Court in the 1980 *Sioux Nation* decision.

Support for legislation

The Siletz Tribe has been in active discussions with the State of Oregon regarding a potential replacement agreement. We believe that the State is supportive of this legislation and allowing a process for Siletz to determine its hunting and fishing rights.

We have also had extensive government-to-government discussions with the Confederated Tribes of Warm Springs, the Confederated Tribes of the Grand Ronde Community of Oregon and the Confederated Tribes of the Umatilla Indian Reservation regarding this legislation.

We are insistent that any replacement agreement after enactment respect the rights of other tribes and not negatively impact them.

The Siletz Tribe is deeply grateful to the support from our congressional delegation to right this historic wrong.

The CHAIRMAN. Thank you very much for your testimony.

Next, we have the Honorable Cheryle Kennedy, the Chairwoman of the Confederated Tribes of the Grand Ronde in Oregon.

STATEMENT OF HON. CHERYLE KENNEDY, CHAIRWOMAN, CONFEDERATED TRIBES OF GRAND RONDE

Ms. KENNEDY. Good afternoon, everyone. I want to thank the Committee for this opportunity to present testimony before you today. I just for the record want to state that we have provided written comments, along with letters of support from two western Oregon tribes, and our two local county governments.

Thank you, Chairman Schatz, Vice Chairman Murkowski, and members of the Committee. My name is Cheryle Kennedy. I am the tribal council chairwoman of the Confederated Tribes of Grand Ronde in Oregon. Our tribe is located on the Grand Ronde Reservation in Polk and Yamhill Counties.

Before I present my testimony, I want to thank Senator Merkley for his generous introduction. Grand Ronde has worked with the Senator for many years. Both our Council and our tribal members

are grateful for the longstanding partnership that we have developed with him.

Grand Ronde appreciates the opportunity to testify today in support of S. 3126, which would amend the Grand Ronde Reservation Act to address hunting and fishing issues involving our Tribe. Before you is a similar bill that Grand Ronde also supports, S. 3123, which addresses the same hunting and fishing issues involving the Confederated Tribes of Siletz Indians.

The objectives of these two bills are very simple. They would permit both Tribes to negotiate new hunting and fishing agreements with the State of Oregon. In place today are Grand Ronde and Siletz hunting and fishing agreements with the State that are more than 35 years old. These agreements have provisions in them that prohibit any amendments or modifications. These two bills simply authorize a process to permit Grand Ronde and Siletz to amend these older agreements and negotiate updated hunting and fishing arrangements that meet the needs of both the State of Oregon and the Tribes.

I am sure you are curious about why Grand Ronde and Siletz are the only tribes in the Country that are not able to negotiate hunting and fishing issues with the State in which their respective reservations are located. Here is the history.

In 1954, both tribes were terminated by Congress, along with other tribes in western Oregon. In the 1980s, Congress reversed itself and legislatively restored both tribes. At that time, the Congress was considering these measures, the State of Oregon demanded that each tribe sign a permanent agreement with significant restrictions on their hunting and fishing and rights. Only then would the State support Congressional legislation to return to the tribes a small part of their historic land base.

Grand Ronde leaders were left with no choice but to sign such an agreement. I was on the tribal council during this time and agreed with other tribal members to believe that this bargain with the State was one made with a gun to our heads. The 1970s and 1980s were a time when the Oregon tribes and the State were frequently at odds on hunting and fishing issues. Oregon tribes had achieved victories in several tribal hunting and fishing lawsuits, and the State was frustrated with its loss in Federal court. Over several decades now, the tribal-State relationship has improved dramatically.

In particular, Grand Ronde has been recognized by the Oregon Department of Fishing and Wildlife as an exceptional land manager and worked diligently and successfully to restore critical wildlife habitat in western Oregon. These accomplishments have been achieved while working under the unwieldy regulatory framework established in the tribe's 1986 agreement with the State.

These circumstances have changed significantly over the years, the past 30 to 40 years. The tribe would like to have the ability to amend and modernize our hunting and fishing agreements with the State of Oregon. This will only occur if the Grand Ronde and Siletz Reservation Acts are amended.

The proposed legislation does not mandate or recommend specific hunting and fishing terms, and any new agreement between the State and tribes. Instead, both bills would amend each tribe's res-

toration act to permit these 1980 and 1986 hunting agreements to be replaced, amended, or otherwise modified through new agreements between government and government. Once our new hunting and fishing agreements are executed, the legislation contemplates that the State and the tribe would return to the Federal court to request the termination or modification of the consent decree currently in place. A provision of this bill facilitates that process.

This proposed legislation also states that these reservation act amendments do not alter or change treaty rights of any other Indian tribes.

We urge your support for the passage of this bill today. We are open and available for any comments or questions you might have. Thank you.

[The prepared statement of Ms. Kennedy follows:]

PREPARED STATEMENT OF HON. CHERYLE KENNEDY, CHAIRWOMAN, CONFEDERATED TRIBES OF GRAND RONDE

Chairman Schatz, Vice Chairman Murkowski, and Members of the Committee, my name is Cheryle Kennedy and I am the Tribal Council Chairwoman of the Confederated Tribes of Grand Ronde ("Grand Ronde" or "Tribe"). Our Tribe is located on the Grand Ronde Reservation in Polk and Yamhill Counties within the State of Oregon.

Before I present my testimony, please let me take a moment to thank Senator Merkley for his generous introduction. Grand Ronde has worked with the Senator for many years now and both our Council and our tribal members are grateful for the long-standing partnership we have developed with him.

Grand Ronde appreciates the opportunity to testify today in support of S. 3126, which would amend the Grand Ronde Reservation Act to address hunting and fishing issues involving our Tribe. Before you is a similar bill that Grand Ronde also supports, S. 3123, which addresses the same hunting and fishing issues involving the Confederated Tribes of Siletz Indians ("Siletz").

The objectives of these two bills are very simple. They would permit both Tribes to negotiate new hunting and fishing agreements with the State of Oregon. In place today are Grand Ronde and Siletz hunting and fishing agreements with the State that are more than 35 years old. These agreements have provisions in them that prohibit any amendments or modifications. In other words, these are permanent agreements that cannot be changed. S. 3126 and S. 3123 simply authorize a process to permit Grand Ronde and Siletz to amend these older agreements and negotiate updated hunting and fishing arrangements that meet the needs of both the State of Oregon and the Tribes.

I am sure you are curious about why Grand Ronde and Siletz are the only Tribes in the country that are not able to negotiate hunting and fishing issues with the state in which their respective reservations are located. Here is the history.

In 1954, both Tribes were terminated by Congress, along with other tribes in western Oregon.[1] In the 1980's, Congress reversed itself and legislatively restored both Tribes. The Siletz were first, restored by the Siletz Indian Tribe Restoration Act in 1977.[2] Congress then passed the Grand Ronde Restoration Act in 1983.[3] These two enactments restored Federal recognition to both Tribes and re-applied the Indian Reorganization Act and other federal laws of general applicability to both Tribes and their members.

Both the Siletz and Grand Ronde Restoration Acts required that the reservations for both Tribes would be re-established by subsequent Congressional legislation. After each Tribe developed a Reservation Plan with local and State input, Congress passed the Siletz Reservation Act in 1980,[4] and the Grand Ronde Reservation Act in 1988.[5] At the time that Congress was considering these measures, the State of Oregon demanded that each Tribe sign a permanent agreement with significant re-

[1] Public Law 83–588 (Aug. 13, 1954), originally codified at 25 U.S.C. § 691, *et seq.*
[2] Public Law 95–195 (Nov. 18, 1977), originally codified at 25 U.S.C. § 711, *et seq.*
[3] Public Law 98–165 (Nov. 22, 1983), originally codified at 25 U.S.C. § 713, *et seq.*
[4] Public Law 96–340 (Sept. 4, 1980), originally codified at 25 U.S.C. § 711e note.
[5] Public Law 100–425 (Sept. 9, 1988), originally codified at 25 U.S.C. § 713f note.

strictions on their hunting and fishing rights. Only then would the State support Congressional legislation to return to the Tribes a small part of their historic land base.

The Siletz signed its hunting and fishing agreement in 1980. Six years later, when faced with the alternative of either signing a restrictive hunting and fishing agreement or receiving no reservation land back, Grand Ronde leaders were left with no choice but to sign such an agreement. I was on the Tribal Council during this time and I agreed with other Tribal members who believed that this bargain with the State was one made with "a gun to our head."[6]

For the record, let me now summarize the details of this unique hunting and fishing regulatory framework.

The Siletz Hunting and Fishing Agreement

The Siletz executed their Hunting and Fishing Agreement in April of 1980.[7] This Agreement contained language in multiple provisions stating that this would be a permanent agreement that could not be amended, even if circumstances changed over time. This Agreement was approved by a Federal Court shortly thereafter and a Consent Decree was issued by the Court on May 2, 1980.[8]

This Agreement was also ratified through Section 4 of the Siletz Reservation Act, which incorporated the May 2 consent decree.[9] Section 4 states that the Agreement and the consent decree "shall constitute the exclusive and final determination of all tribal rights to hunt, fish, or trap that the Siletz Tribe or its members possess."[10]

The Grand Ronde Hunting and Fishing Agreement

When the Grand Ronde Reservation Act was under consideration by Congress in 1986, the same process was used to define the hunting and fishing rights of Grand Ronde and its members. The Grand Ronde Hunting and Fishing Agreement was executed by the Tribe in December of 1986.[11] Except for the geographical areas covered, the Grand Ronde Agreement is almost identical to the earlier Siletz Agreement. Like the Siletz, this Hunting and Fishing Agreement was approved by a Federal Court shortly thereafter and a Consent Decree was issued by the Court on January 12, 1987.[12]

Again, similar to Siletz, this Agreement was ratified through Section 2 of the Grand Ronde Reservation Act, also incorporating the January 12 Consent Decree.[13] Section 2 of the Act states that the Grand Ronde Agreement and the Consent Decree "shall constitute the exclusive and final determination of all tribal rights to hunt, fish, and trap that the Confederated Tribes of the Grand Ronde Community of Oregon or its members possess."[14]

The 1970s and 1980s were a time when Oregon Tribes and the State were frequently at odds on hunting and fishing issues. Oregon Tribes had achieved victories in several tribal hunting and fishing lawsuits and the State was frustrated with its losses in Federal courts. One example of the State's hostility can be found in a 1975 news article about Siletz restoration legislation being considered by Congress.[15] When asked about these efforts, Oregon State Wildlife Director, John McKean, responded by saying its "Circle the wagons, boys, here they come again."[16]

Over several decades now, the Tribal-State relationship has improved dramatically. In particular, Grand Ronde has been recognized by the Oregon Department of Fish and Wildlife as an exceptional land manager and has worked diligently and successfully to restore critical wildlife habitat in western Oregon. And these accomplishments have been achieved while working under the unwieldy regulatory framework established in the Tribe's 1986 agreement with the State. Every time we work with the State on a new initiative, our tribal attorneys must find a workaround to

---

[6] Ron Karten, "Tribal Hunting & Fishing Rights," at 8, Smoke Signals (Oct. 1, 2005).

[7] Agreement Among the State of Oregon, the United States of America and the Confederated Tribes of Siletz Indians of Oregon to Permanently Define Tribal Hunting, Fishing, Trapping, and Gathering Rights of the Siletz Tribe and its Members (Apr. 22, 1980).

[8] Confederated Tribes of Siletz Indians of Oregon v. State of Oregon, No. 80–433 (D. Or. May 2, 1980) (final decree & order).

[9] Section 4 of Public Law 96–340 (Sept. 4, 1980).

[10] *Id.*

[11] Agreement Among the State of Oregon, the United States of America and the Confederated Tribes of the Grand Ronde Community of Oregon to Permanently Define Tribal Hunting, Fishing, Trapping and Animal Gathering Rights of the Tribe and its Members (Dec. 2, 1986).

[12] *Confederated Tribes of the Grand Ronde Community of Oregon v. State of Oregon*, No. 8__-____ (D. Or. Jan. 12, 1987) (final decree & order).

[13] Grand Ronde Reservation Act, Section 2, Public Law 100–425 (Sept. 9, 1988).

[14] *Id.*

[15] Pete Cornacchia, "Poor who?" *Eugene Register-Guard* (Nov. 25, 1975).

[16] *Id.*

the 1986 Agreement—a time-consuming process. Likewise, the State is forced to enact regulations to implement new tribal arrangements, instead of simply amending a government-to-government agreement with the Tribe.

1S. 3126 and S. 3123, Amendments to the Grand Ronde and Siletz Reservation Acts

In the opinion of Grand Ronde and Siletz, and as described above, both Tribes were forced into agreeing to the 1980 and 1986 Hunting and Fishing Agreements, in order to secure approval of their Reservation Acts. Circumstances have changed significantly over the past 35–40 years and the Tribes would like to have the ability to amend and modernize their hunting and fishing agreements with the State of Oregon. This can only occur if the Grand Ronde and Siletz Reservation Acts are amended.

The proposed legislation does not mandate or recommend specific hunting and fishing terms in any new agreements between the State and the Tribes. Instead, both bills would amend each Tribe's Reservation Acts to permit these 1980 and 1986 Hunting and Fishing Agreements to be replaced, amended, or otherwise modified through new government-to-government agreements between the Tribes and the State.

Once new hunting and fishing agreements are executed, the legislation contemplates that the State and the Tribes would return to Federal Court to request the termination or modification of the Consent Decrees currently in place. A provision of this bill facilitates that process.

The proposed legislation also states that these Reservation Act amendments do not alter or change the treaty rights of any other Indian Tribe.

Conclusion

On behalf of Grand Ronde, we hope the Members of the Committee on Indian Affairs will support both of these bills and vote them favorably out of Committee.

Thank you for the opportunity to present our Tribe's views on S. 3126 and S. 3123. I am happy to answer any questions that the Members of the Committee may have.

The CHAIRMAN. Thank you very much, Chairwoman.

Next, we have the Honorable Reid Milanovich, the Vice Chairman of the Agua Caliente Band of Cahuilla Indian Tribal Council in Palm Springs, California.

STATEMENT OF HON. REID MILANOVICH, VICE CHAIRMAN, AGUA CALIENTE BAND OF CAHUILLA INDIANS

Mr. MILANOVICH. Good afternoon, Chairman Schatz, and Vice Chair Murkowski, and distinguished members of the Committee. My name is Reid Milanovich, and I am the elected Vice Chairman of the Agua Caliente Band of Cahuilla Indians. Thank you for the opportunity to provide testimony on behalf of the tribe regarding S. 3273, an act to take certain lands in California into trust for the benefit of the Agua Caliente Band of Cahuilla Indians and for other purposes.

First, I would like to thank Senators Padilla and Feinstein for sponsoring S. 3273. The bill is a non-controversial legislation that authorizes the United States to take approximately 2,560 acres of land owned by the tribe into trust and to make the lands part of the Agua Caliente Indian Reservation.

On December 8th, 2021, the House of Representatives passed H.R. 897 via suspension. H.R. 897 is the House counterpart to S. 3273, and we hope the Senate will consider acting soon.

The ancestors of my tribe thrived in the deserts and canyons of what is now known as the Coachella Valley. The Agua Caliente Indian Reservation was established in 1876. The tribe, based what has become the greater Palm Springs area, is a historic Indian

tribe that is a steward for thousands of acres of our ancestral lands, spanning many city and county jurisdictions.

The nearby Santa Rosa and San Jacinto Mountains National Monument was established in 2000. The legislation establishing the monument rightfully acknowledges the special cultural value of the mountains to the tribe, including significant cultural sites, village sites, and petroglyphs located there. The tribe has worked hard to preserve the resources and values of our mountains and has made significant contributions to the cooperative management of these lands

The legislation establishing the national monument provided land-exchange authorization that allowed the Bureau of Land Management, BLM, and the Tribe to exchange federally owned property for tribally owned property. However, due to a drafting error the legislation did not expressly address the status of any land transferred to the tribe through such an exchange. The authorizing language should have included text mandating that such exchanged lands be held in trust by the United States for the exclusive benefit of the tribe.

BLM and the tribe worked for 17 years, from 2002 to 2019, to finalize a Binding Exchange Agreement for these 2,560 acres that are the subject of S. 3273. Through a consolidation process of checkerboard land ownership in and around the tribe's Reservation, the Exchange will allow for more logical and consistent land management by the tribe and the BLM. Having adjacent squares within the checkerboard allows tribal management to be more efficient and provides for jurisdictional consistency within a more manageable geographic area.

The Exchange lands now owned in fee status by the tribe have longstanding cultural and natural resource value to the Cahuilla people. Taking these lands into trust as part of the reservation has been thoroughly vetted in the surrounding community. Any concerns regarding public access have also been addressed, and there is no known opposition to this legislation.

The Tribe has a long-recognized history of maintaining public access to trails within the monument boundary and will continue this commitment to the lands in question. In fact, changing or curtailing public access to trails on the land is not feasible or practical, given its remote nature.

Finally, S. 3273 does not allow these remote lands to be used for gaming purposes.

The lands at issue in S. 3273 are located within the exterior boundaries of the Reservation and have longstanding cultural and natural resources value to the Cahuilla people. Making these lands part of the Reservation will allow for more logical and consistent management by the tribe.

Thank you for your time and for the opportunity to testify in support of S. 3273. I am happy to answer any questions that you may have.

[The prepared statement of Mr. Milanovich follows:]

PREPARED STATEMENT OF HON. REID MILANOVICH, VICE CHAIRMAN, AGUA CALIENTE BAND OF CAHUILLA INDIANS

Good afternoon Chairman Schatz, Vice Chairman Murkowski, and distinguished members of the Committee. My name is Reid Milanovich, and I am the elected Vice Chairman of the Agua Caliente Band of Cahuilla Indians (Tribe). Thank you for the opportunity to provide testimony on behalf of the Tribe regarding S. 3273—an act to take certain lands in California into trust for the benefit of the Agua Caliente Band of Cahuilla Indians and for other purposes.

First, I would like to thank Senators Padilla and Feinstein for sponsoring S. 3273. The bill is non-controversial legislation that authorizes the United States to take approximately 2,560 acres of land owned by the Tribe into trust for the Tribe and make those lands part of the Agua Caliente Indian Reservation. The Tribe strongly supports S. 3273, and we urge you to support this bill as well. On December 8, 2021 the House of Representatives passed H.R. 897 via suspension. H.R. 897 is the House counterpart to S. 3273, and we hope the Senate will consider acting soon to pass this important legislation that will allow the Agua Caliente Band of Cahuilla Indians to improve management of its wilderness areas.

To begin, I would like to share with you the history of these lands and their importance to the Tribe. The ancestors of my Tribe thrived in the desert and canyons of what is now known as the Coachella Valley. The Agua Caliente Indian Reservation was established in 1876. The Tribe—based in what has become the greater Palm Springs area—is a historic Indian tribe that is a steward for thousands of acres of our ancestral lands, spanning many city and county jurisdictions.

The nearby Santa Rosa and San Jacinto Mountains National Monument was established in 2000. The legislation establishing the Monument rightfully acknowledges the special cultural value of the mountains to the Tribe, including significant cultural sites, village sites, and petroglyphs located there. The Tribe has worked hard to preserve the resources and values of our mountains and has made significant contributions to the cooperative management of these lands. The Tribe was a Member of the National Monument Advisory Committee, the National Monument Management Plan Steering Committee, and participated in the development of the National Monument Science Plan. Moreover, the Tribe has provided interpretive panels for the Monument and sponsors an annual festival for a non-profit which supports the Monument.

The legislation establishing the National Monument provided land-exchange authorization that allowed the Bureau of Land Management (BLM) and the Tribe to exchange federally-owned property for Tribally-owned property. However, due to a drafting error the legislation did not expressly address the status of any land transferred to the Tribe through such an exchange. The authorizing language should have included text mandating that such exchanged lands be held in trust by the United States for the exclusive benefit of the Tribe. BLM and the Tribe worked for 17 years, from 2002 to 2019, to finalize a Binding Exchange Agreement (Exchange) for these 2,560 acres that are the subject of S. 3273. Through a consolidation of "checkerboard" land ownership in and around the Tribe's Reservation, the Exchange will allow for more logical and consistent land management by the Tribe and the BLM. Having adjacent squares within the "checkerboard" allows Tribal management to be more efficient and provides for jurisdictional consistency within a more manageable geographic area. The Exchange lands now owned in fee status by the Tribe have longstanding cultural and natural resource value to the Cahuilla people. S. 3273 allows these Exchange Lands, now owned by the Tribe, to be taken into trust and made a part of the Tribe's Reservation.

Taking these lands into trust as part of the Reservation has been thoroughly vetted in the surrounding community. Any concerns regarding public access have also been addressed, and there is no known opposition to this legislation. The Tribe has a long-recognized history of maintaining public access to trails within the Monument boundary and will continue this commitment to the Exchange lands in question. In fact, changing or curtailing public access to trails on the land is not feasible or practical, given its remote nature. Finally, S. 3273 does not allow these remote lands to be used for gaming purposes.

In conclusion, the lands at issue in S. 3273 are located within the exterior boundaries of the Reservation and have longstanding cultural and natural resources value to the Cahuilla people. Making these lands part of the Reservation will allow for more logical and consistent management by the Tribe. Thank you for your time and for the opportunity to testify in support of S. 3273. I am happy to answer any questions that you may have.

The CHAIRMAN. Thank you very much.

Finally, we have Sharon Vogel, the Executive Director of the Cheyenne River Housing Authority, in Eagle Butte, South Dakota.

STATEMENT OF SHARON VOGEL, EXECUTIVE DIRECTOR, CHEYENNE RIVER HOUSING AUTHORITY

Ms. VOGEL. Thank you, Mr. Chairman, Madam Vice Chair, and members of the Senate Committee on Indian Affairs. My name is Sharon Vogel. I am the Executive Director of the Cheyenne River Housing Authority in Eagle Butte, South Dakota, on the Cheyenne River Sioux Reservation.

I appear today on behalf of the South Dakota Native Homeownership Coalition to express our strong support for Senate Bill 3381, the Tribal Trust Land Homeownership Act of 2021.

Before I begin, I would like to thank Senate Thune and his staff for his leadership on this bill to promote homeownership opportunities for Native people living on tribal land. I also want to thank you, Mr. Chairman, along with Senators Thune, Rounds, Smith, Tester, Cramer, Cortez Masto, and Warren, for cosponsoring Senate Bill 2092, the Native American Rural Homeownership Improvement Act of 2021, which would make the very successful USDA 502 Relending Demonstration permanent and authorize USDA to expand the program to Native communities nationwide, including Native Hawaiian homesteads and Alaska Native villages.

Our Native CDFI, Four Bands Community Fund, was able to borrow $800,000 in capital from USDA, leverage it and re-lend it to 11 eligible borrowers, totaling $1.2 million in loan volume. The 11 loans deployed through this partnership in two years was nearly four times as many mortgage loans as USDA deployed on its own directly in the previous decade.

Four Bands has since documented a pipeline of nearly $7 million in mortgage financing without any marketing or advertising. We are hearing similar levels of demand from the Native CDFIs in our neighboring state of Montana, nearly $9 million. This is a powerful indication of the demand for homeownership.

Accordingly, we urge Congress to enact Senate Bill 2092 to make this important and much-needed source of capital available to Native families in rural communities across Indian Country as soon as possible.

One other word of recognition. I would like to thank Senator Rounds and his staff for their hard work on reforming the U.S. Department of Veterans Affairs Native American Direct Loan Program.

Now I would like to talk about Senate Bill 3381. We appreciate the emphasis this bill places on designing and implementing the Bureau of Indian Affairs' processes in a way that is compatible with private mortgage industry practices. Native people should be able to enter mortgage transactions just as any other citizen in this Country.

Unfortunately, that is not always the case due to the delays and inconsistencies with the BIA processes. Senate Bill 3381 will go a long way to build on the momentum we are seeing across Indian Country to increase the homeownership rates of Native families. Overall, we applaud the legislation for prioritizing the mortgage processes within the BIA and setting a tone of accountability.

The following provisions have potential to offer great solutions. The bill establishes timelines for review and processing guidelines for mortgage related documents. It also mandates an annual report to Congress about the volume of mortgage package documents and whether the applicable timelines were met. We appreciate the inclusion of this Congressional oversight, and hope that it is adequate to ensure compliance with these statutory requirements.

We strongly support the provision that would require BIA to give tribes and Federal agencies read-only access to the Trust Asset and Account Management System.

Another key element we are pleased to see is the requirement for the first certified tribal status report to be issued within 14 days. Receiving this document from the BIA has varied widely by BIA regions from 30 days to 365 days or more in many cases. We strongly support the bill's mandate for a GAO study about the need and cost for the digitalization of mortgage related documents. The BIA must modernize and enter today's world of technology, so that it can provide timely services to support homeownership transactions for Native families.

Often, homebuyers on trust land feel like their mortgage packages fall into a black hole somewhere within the depths of BIA. Therefore, we strongly support the establishment of the realty ombudsman to ensure compliance with timeframes and to receive inquiries from tribal citizens, tribes, lenders, and others. It will be important, however, for this position to have the authority to take action where appropriate.

In conclusion, the South Dakota Native Homeownership Coalition would like to offer one additional suggestion. As Congress works toward enactment of this legislation, we encourage the Committee to create an advisory group to work with the BIA to identify antiquated leasing regulations that are no longer needed due to the evolution of tribal governments and sophistication of tribal borrowers. We hope the Committee will consider amendments to authorize the creation of such an effort.

Thank you for the opportunity to testify. We look forward to working with each of you to improve homeownership opportunities for Native people, wherever they may reside. I would be happy to answer any of your questions.

Thank you.

[The prepared statement of Ms. Vogel follows:]

PREPARED STATEMENT OF SHARON VOGEL, EXECUTIVE DIRECTOR, CHEYENNE RIVER HOUSING AUTHORITY

Introduction

Mr. Chairman, Madame Vice Chair, and members of the Senate Committee on Indian Affairs, my name is Sharon Vogel. I am the executive director of the Cheyenne River Housing Authority in Eagle Butte, SD on the Cheyenne River Sioux Reservation. I appear today on behalf of the South Dakota Native Homeownership Coalition to express our strong support for S. 3381, the Tribal Trust Land Homeownership Act of 2021.

I am also the Chairwoman of the United Native American Housing Association (UNAHA), with 33 member tribally designated housing entities (TDHEs) from the states of North and South Dakota, Nebraska, Montana, Utah, Wyoming, and Colorado. In addition, I am serving my first term on the Board of Directors of the National Low Income Housing Coalition (NLIHC) and continue my service as a Board Member of the National American Indian Housing Council (NAIHC).

Before I begin, I would like to thank Senator Thune and his staff from my home state of South Dakota for his leadership on this bill to promote homeownership opportunities for Native people living on tribal land. Both of our South Dakota Senators—Senator Thune and Senator Rounds—have visited the Cheyenne River Reservation many times and have seen firsthand the challenges we have with providing safe and sanitary housing for our tribal members. We are so appreciative that they both recognize that any good housing development strategy in Indian Country must include homeownership as a component.

I also want to thank you, Mr. Chairman, along with Senators Thune, Rounds, Smith, Tester, Cramer, Cortez Masto, and Warren for co-sponsoring S. 2092, the Native American Rural Homeownership Improvement Act of 2021, which would make the very successful USDA 502 relending demonstration permanent and authorize USDA to expand the program to Native communities nationwide, including to Native Hawaiian Homesteads and Alaska Native Villages. Two Native community development financial institutions (Native CDFIs) participated in this $2 million demonstration. One of them, Four Bands Community Fund, the Native CDFI serving the Cheyenne River Reservation, was able to borrow $800,000 in capital from USDA, leverage it with funds from the State of South Dakota's Housing Opportunity Fund, and relend it to 11 eligible borrowers, totaling $1,271,779.79 in loan volume. The 11 loans deployed through this partnership in two years were nearly four times as many mortgage loans as USDA deployed on its own directly in the previous decade.

Since the completion of this pilot, Four Bands has documented a pipeline of nearly $7 million in mortgage financing without any marketing or advertising—all by word of mouth—a powerful indication of the demand for homeownership in our small community of less than 12,000 tribal members and we are hearing similar levels of demand from the Native CDFIs in our neighboring state of Montana—nearly $9 million. Accordingly, we urge Congress to enact S. 2092 to make this important and much-needed source of capital available to Native families in rural communities across Indian Country as soon as possible.

One other word of recognition—I'd like to thank Senator Rounds and his staff for their hard work on reforming the U.S. Department of Veterans Affairs Native American Direction Loan program. At the request of Senator Rounds and the Senate Veteran Affairs Committee, the Government Accounting Office (GAO) is conducting a comprehensive review of the barriers to homeownership for Native American veterans. We anticipate that GAO will release its findings this spring, and we are looking forward to assisting any legislative efforts that will follow.

Feedback on S. 3381

Now, I'd like to talk about S. 3381. We appreciate the emphasis this bill places on designing and implementing the Bureau of Indian Affairs' (BIA's) processes in a way that is compatible with private mortgage industry practices. Native people should be able to enter mortgage transactions just as any other citizen in this country. Unfortunately, that is not always the case due to delays and inconsistencies with the BIA's processes. As our trustee, the BIA has a fiduciary duty to protect tribal land and prevent it from leaving its trust status. However, this trust responsibility should not impede tribal members' ability to utilize their property rights to achieve their dreams of homeownership.

S. 3381 will go a long way to build on the momentum we are seeing across Indian Country to increase the homeownership rates of Native families. Overall, we applaud the legislation for prioritizing the mortgage processes within the BIA and setting a tone of accountability. The following provisions have the potential to offer some great solutions:

1. *Review and Processing Timeframes.* The bill establishes timelines for review and processing guidelines for leasehold mortgages, right-of-way documents, land mortgages, and title status reports (TSRs). It also mandates an annual report to Congress about the volume of mortgage package documents and whether the applicable timeframes were met. We appreciate the inclusion of this congressional oversight and hope that it is adequate to ensure compliance with these statutory requirements. To date, the BIA's administrative Mortgage Handbook (52 IAM 4–H) issued in 2019 sets out similar timeframes, which have not been adhered to in many cases. We recommend that the Congressional oversight committees monitor compliance closely and consider more stringent enforcement mechanisms, as appropriate.

2. *TAAMs Terminals.* We strongly support the provision that requires BIA to give tribes and the federal agencies "read only" access to Trust Asset and Accounting Management System (TAAMS) terminals. It is critical for the BIA to

take the steps necessary to provide access to TAAMs terminals as expeditiously as possible to ensure that mortgage processes are not unnecessarily stalled. We were encouraged to hear the remarks of Assistant Secretary for Indian Affairs Bryan Todd Newland during his confirmation hearing last summer. He committed to this Committee, in response to questions from Senator Daines, to make TAAMs terminals available as quickly as possible, including to tribes who have adopted their own leasing processes under the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (HEARTH Act).

3. *1st Certified Title Status Report.* Another key element we are pleased to see is the requirement for the 1st certified TSR to be issued within 14 days. Off reservation, county assessors' records allow one to see title records within minutes, and title policies are issued by title companies for underwriting purposes usually within two to four weeks. Receiving comparable documents from the BIA has varied widely by BIA Region from 30 days to 365 days or more in many cases. Lenders require certified Title Status Reports to document title for underwriting purposes. These reports are submitted to loan underwriters along with the loan application and traditional underwriting information. Requiring a 14-day timeline for obtaining the 1st certified TSR moves the process one step closer to the timing of the industry experiences on fee simple land for home loan transactions.

4. *GAO Study.* We strongly support the bill's mandate for a GAO study about the need and cost for digitization of mortgage related documents. The BIA must modernize and enter today's world of technology so that it can provide the appropriate level of service necessary to support homeownership transactions for Native families. We urge Congress to appropriate the funds necessary to implement the findings of the GAO study as quickly as possible.

5. *Realty Ombudsman.* Often, homebuyers on trust land feel like their mortgage packages fall into a "black hole" somewhere within the depths of the BIA. Therefore, we strongly support the establishment of a Realty Ombudsman to ensure compliance with timeframes and to receive inquiries from tribal citizens, tribes, lenders, and tribal and federal agencies. It will be important, however, for this position to have the authority to take action where appropriate. For example, we would like to see the Ombudsman have the authority to utilize automatic waivers and assumed approval if timelines for reviewing mortgage packages are not being met.

In conclusion, the South Dakota Native Homeownership Coalition once again commends Senator Thune and his staff for introducing S. 3381, and we would like to offer one additional suggestion. As Congress works towards enactment of this legislation, we encourage the Committee to create an advisory group to work with the Bureau of Indian Affairs to identify antiquated leasing regulations that are no longer needed due to the evolution of tribal governments and the sophistication of tribal borrowers. We hope that the Committee will consider amendments to authorize the creation of such an effort.

Thank you for the opportunity to testify. We look forward to continuing to work with our South Dakota Senators, this Committee, and all of Congress to improve homeownership opportunities for Native people wherever they may reside.

I would be happy to answer any questions you may have.

The CHAIRMAN. Thank you very much, Ms. Vogel.

Ms. ISOM-CLAUSE, WHAT IS GOING ON HERE? WHY DOES IT TAKE UP TO A YEAR TO DO SOMETHING THAT OUGHT TO TAKE SOME NUMBER OF WEEKS, MAYBE A MONTH?

Ms. ISOM-CLAUSE. Thank you for the question, Chairman Schatz. Just to begin to answer, I want to recognize that, as you know, homeownership on tribal lands contributes to the well-being of tribal families as well as builds economies in tribal communities. Assisting in homeownership is one of our most important purposes in our mortgage approvals.

We agree that this process should be easy for homeowners on tribal lands, and we want to——

The CHAIRMAN. Okay, so what is going on?

Ms. ISOM-CLAUSE. It is hard to answer your question specifically, Chairman. I think there are a lot of complexities dealing with the trust land, dealing with the many partners involved in this.

The CHAIRMAN. Let's pretend it is just the two of us and we are having a cup of coffee. Now, what is the deal? Is it that there is a thicket of regulations that everybody feels they have to follow? Is it training? Is it organizational culture? Is it a lack of staff? What is the deal here?

Look, we are going to try to pass this bill. And we will take your TA on the technical question of the TAAMS system. I get all of that. But I am a little worried that we are going to pass this bill and we are going to sort of congratulate ourselves, we got the ombudsman and we got new shot clocks. And we are going to be back here in five years with no improvement to the actual operation of the generation of the documents that people need to get a mortgage.

So what do we do? What is the problem?

Ms. ISOM-CLAUSE. Thank you, Chairman. I apologize for not being more specific in the answer. We are looking at comprehensive reform, is kind of the best way I can think of it. We are not looking at this just in one silo of mortgage. We are looking at our entire realty programs, how we can make this more efficient overall.

We have tracking and trainings that we are implementing with the mortgage approval processes specifically. That has been a several years-long process. We are working on a new inquiry portal, which allows for easier tracking, monitoring and reporting that we expect to roll out in the next six months that may be of assistance as well.

I think there may be kind of multiple ways we can attack this problem. The department is committed to working with you on that if there are ways to improve that further in the bill.

The CHAIRMAN. Well, but you have to execute the laws, right? Under the Constitution, you have to execute. I am still not satisfied that I know what your theory of the case is. If you don't' know what your theory of the case is because it is a relatively new Administration and you want to do some analysis and get back to us, I will accept that.

But I would like, a shot clock and better visibility and just sort of where your permit is or is not in the process. That is all fine. But the foundational problem is, when you are trying to generate a mortgage, you are in a hurry. If this is the rate-limiting factor, and rates right now are going up. So I am sure people are a little bit antsy while they sit there.

So let's just presume that this bill were already enacted. So we have an ombudsman. We have a statute that now matches the existing, I don't know if it is a rule or whatever, but it is something that you are already trying to abide by, but not meeting the mark. And then congratulations, now, person who needs a mortgage, you get to know exactly where your thing is in terms of its lateness, but it is not any less late.

I am not satisfied with your answer. I would rather you say, we don't have an answer, and we are going to get back to the Committee than just tell me that homeownership is important, because

we all stipulate to that. But you have to execute on this. I am not satisfied that you have a plan.

Ms. ISOM-CLAUSE. Chairman Schatz, we will return to you with a more specific plan on that. Thank you.

The CHAIRMAN. Thank you. Vice Chair Murkowski.

Senator MURKOWSKI. Thank you, Mr. Chairman. I was hoping you would get an answer so that I wouldn't have to ask my question.

But let me reframe it just a little bit differently in context with this Indian Affairs mortgage handbook. It was August of last year in the Wall Street Journal, they described the mortgage process on Indian lands as a "byzantine process." They went on to describe the approvals, the applications that a potential homeowner on tribal lands has to go through. Pretty torturous, actually.

Then the department came before, well, actually the department came before this Committee in October of 2019, so prior to that article, committed to improving the process on the tribal lands. The Committee was provided with testimony that BIA was making improvements to expedite the process via updates to the mortgage handbook.

So here we are, two years after the department's assurances to the Committee. We see the articles, obviously in the Wall Street Journal, saying it doesn't look like there has been much action here with regard to what was raised before the Committee.

Specific to where we were the last time there was an update before this Committee on where the department is on implementing the reforms to the Indian Affairs mortgage handbook, have you done that level of detail? Have those reforms been implemented per your own handbook?

Ms. ISOM-CLAUSE. Thank you for the question, Vice Chair Murkowski. Yes, I believe we have implemented the reforms to our handbook. That is completed, to my knowledge.

Senator MURKOWSKI. So, and not having the handbook to reference, as the Chairman has noted, I am assuming that the reason we put the reforms in the handbook was to actually get to the root of the problem, which is, you have a byzantine process that doesn't allow for the potential homeowners to receive any kind of assurance that this process is going to be efficient in any way.

So you say that you have implemented the reforms. I think what would be helpful for us is for you to detail for the Committee exactly what reforms have been addressed in compliance with that handbook. So we will look forward to that.

You have also noted in your testimony that Interior cites a privacy concern with tribes and some of the other Federal agencies accessing the TAAMS data. But in 2019, the department testified that the handbook update would allow the tribes and HUD and anybody to get the data without having to actually get into the system and go through the background checks and the IT training that is required. So the legislation authorizes this access.

The simple question is, why is the department raising concerns with a policy that you seem to believe is needed, at least according to what we heard from the department last time they came before the Committee on this?

Ms. ISOM-CLAUSE. Thank you for the question, Vice Chairman Murkowski. I believe that that is referring to the loan inquiry portals, so it provides access to the information relevant to that tribe or person inquiring without providing broader access to other information that might be personally identifiable from other tribes or other individuals.

So our testimony is specific to Privacy Act concerns overall in the entire TAAMS system. But we do——

Senator MURKOWSKI. You said that there was a read-only policy for certain departments. So it is not system-wide?

Ms. ISOM-CLAUSE. Right. Well, there was the departments that have loan programs, those were the ones that I mentioned.

But yes, I mean, we just have to follow the requirements. You have a background check, and IT security training, and once those are completed, if a tribe has a 638 contract or compact, they can have the access they need for TAAMS, because they have taken over that realty function for themselves.

Senator MURKOWSKI. Mr. Chairman, this is really kind of important here. We have, certainly you and I have prioritized, and I think this Committee has prioritized housing for all kinds of good reasons. It is concerning to me that to hear that as we have prepared for this hearing, and as the department has prepared for this hearing, there are no real answers here about how we are going to have a better process. We might be able to move legislation, hopefully the NAHASDA is going to go through, but it seems to me that we need to have a little bit better clarity as to the compliance within the department and the agencies.

The CHAIRMAN. I was going to ask a quick question of Ms. Isom-Clause. The concerns you have, could they be, do they need to be fleshed out in statutory law? Or can we just give you the authority? And obviously, we don't expect that a rank-and-file tribal member from California can access someone else's mortgage information in Minnesota or Hawaii. Nobody thinks that is good public policy.

So I am happy to receive TA, but I also wonder whether this belongs in statute or just in implementation. So I will leave you with that question, because I do think there are legitimate concerns that you are articulating. I am just not sure that we are best equipped to figure out and be so proscriptive, especially as the system is hopefully about to be changed, right? We hope that you will clear out this thicket that everybody has to go through so that you probably need resources to execute. But you also just need a simpler process.

So I would hate to tie Federal statute to a process that is about to change. I want to build in enough flexibility so that if you fix this, then there is not a statute that doesn't hook up with the rules. Let's work this through.

But I don't think anybody on this Committee or any of the authors of this bill are suggesting that everybody should get access to the whole data base. It is really more of an accountability measure so that we can kind of figure out where we are. If you can take that for the record.

Senator Smith is next, followed by Senator Rounds.

STATEMENT OF HON. TINA SMITH,
U.S. SENATOR FROM MINNESOTA

Senator SMITH. Thanks, Chair Schatz, and Vice Chair Murkowski.

First I just want to thank you for your work on reauthorizing NAHASDA. Last summer, Senator Rounds and I actually held a subcommittee hearing of the Banking and Housing Committee on housing challenges in tribal nations. Reauthorizing and strengthening NAHASDA was one of the top issues that we heard about.

Ms. Vogel was one of the members of the panel for that discussion. I am looking forward to coming to you in a minute with a question. It is nice to see you again.

I just want to associate myself with the questions and the pushing that both Vice Chair Murkowski and Chair Schatz are doing on this question of how we get better results from the department. Having worked on the Executive Branch side as well as now on the Legislative Branch side, I know that we hear on the Legislative side might feel great about passing laws that ask the department to do things quicker. But it doesn't get to the core question of why things aren't happening quicker now. That is the tenor of the questions that I think Senator Murkowski and Senator Schatz were asking on behalf of all of us.

So let us, as a cosponsor of the legislation, let us be your ally in trying to figure this out and making it work. Also, accountability for making sure that this isn't just about passing a law, this is about making sure that we actually get better results for Native people who are trying to figure out how to address the deep inequities around homeownership that we see on tribal land.

Ms. Vogel, it is nice to see you again, as I said. I want to go to this question and get your perspective on this question on the legislation that I am working on with Senator Thune and Senator Rounds and Senator Tester. We know that we have this long timeline. We know that this has impacts on people's ability to get mortgages, and it also has impacts on lenders being willing to engage to make mortgages on tribal land.

Can you just tell us a little bit about how improving these processing times, making, which our Tribal Trust Land Homeownership Act would do, can you just give us a sense of what difference this would make, how this is going to help us to address the underlying challenge of homeownership on tribal lands?

Ms. VOGEL. Thank you, Senator Smith, for that question. One of the things that we always are looking for is to be able to provide our tribal members with opportunity, more than one lender to choose from, so that they have a menu. One of the things that we have found is that in earlier years, it used to be that finding a lender willing to make mortgages on trust land was the challenge. It still is.

But that is starting to change with the movement spearheaded by the Native CDFIs, the tribally owned banks, and national lenders like First Tribal Lending.

One of the things that this bill will do for lenders is the timelines identified in the legislation provide the lending industry with assurances and dependability. Hopefully these assurances will bring

back more lenders into the market. This is one of the reasons we lost some lenders from the HUD 184 loan guarantee program.

So reform is necessary. We know that processing the documents is going to make a huge difference in a time sensitive environment. Thank you.

Senator SMITH. Thank you very much. Could I stay with you, in the little bit of time I have left, I would love to hear your on the ground practical take on why it matters to do the NAHASDA reauthorization.

Ms. VOGEL. Thank you for that question. Of course, I was very excited to see the vote of the Committee earlier. Thank you for that support.

Housing authorities, TDHEs, are really becoming sophisticated. We are learning how to leverage, we are creating a balance between rental and homeownership opportunities. So being able to move forward is really important. The changes in NAHASDA are really going to help us. They are going to open new doors of opportunity. They are going to create opportunities for new partnerships.

So on the ground, as a housing practitioner, I see many opportunities to use the new NAHASDA changes to be able to promote housing development in our reservation. Thank you.

Senator SMITH. Thank you so much, Ms. Vogel. And thank you again, Chair Schatz. I yield back.

The CHAIRMAN. Senator Rounds.

Senator ROUNDS. Thank you, Mr. Chairman.

I am going to go right back to Ms. Vogel for just a moment. I would love to have her share with the Committee the challenge with what happens when we try to actually get title or permission to build a home on a reservation, what happens with tribal trust. I think that is one of the major challenges we have, is how do you have the expertise? Where does the expertise come from?

Ms. Vogel, could you just briefly share the process that you go through, who you talk to, and what really happens when you ask for the information to provide a title or an authorization, so that a person wanting a home can actually go to a lender?

Ms. VOGEL. Thank you for that question, Senator Rounds. I am sure it is going to vary from reservation to reservation. But here on Cheyenne River, when our borrower has reached that point that they have decided on a piece of land, either they own it or it is going to be a home site from the tribe, and they receive their approval, then the next step is getting the TSR. That is making sure, and we start at our agency office.

Senator ROUNDS. What is a TSR?

Ms. VOGEL. It is a document that is really an important document. It is the certified title status report. That particular document is a requirement for anyone's mortgage loan application. It shows that the borrower has authorization to the land that they want to build their home on.

Senator ROUNDS. Who does that document come from?

Ms. VOGEL. That comes from the Bureau of Indian Affairs.

Senator ROUNDS. Is that part of the challenge we have right now, getting that authorization?

Ms. VOGEL. Yes. There is some discussion around should there be approval granted to the agency superintendent, so that we don't

have to go up to the area office, and at time maybe even the headquarters.

So we are really looking forward to being able to have discussions with the Bureau as they reform to really look at what is working and what isn't working.

Senator ROUNDS. How long does it take to get that authorization now? If you ask for it, or they ask for it as part of the process, how long does it take before you get a response back before you have to go follow up?

Ms. VOGEL. If we are lucky, we can get it back in a month. That is if we stay right on top of it. We try to work very hard with our agency staff. But there have been times that it has taken six months, and it has taken longer. That really stalls out the mortgage loan process for that borrower. That is really unfair to them. Because up to that point, they have done everything that they needed to do to be able to move their mortgage loan application to the lender in its final form.

Senator ROUNDS. How often does that happen, to have a delay like that?

Ms. VOGEL. Of six months or more?

Senator ROUNDS. More than 60 days.

Ms. VOGEL. It is, well, unfortunately the land process does take too long in a time sensitive environment. I would say that almost 50 percent of our delays in the mortgage loan process relate back to the timely processing and receiving appropriate lease-mortgage documents regarding the land assignments.

Senator ROUNDS. And that basically shuts down the process for that new home purchaser, doesn't it?

Ms. VOGEL. Yes, it does. If they are in the final stages of presenting their package to their lender, and they don't have that required document, they don't go any further.

Senator ROUNDS. I was just thinking back, it seems to me that we have had conversations, it is not just loans through a commercial entity. What about another Federal agency such as the VA? I believe that you and I have had discussions about the challenges of getting a VA loan. Do you recall having a discussion with me about the success of the Minneapolis region with regard to the number of VA loans that were successfully provided to Native Americans in terms of the upper Midwest?

Ms. VOGEL. Yes, I do remember that conversation.

Senator ROUNDS. Would you share that story with us, please? Would you please share that story?

Ms. VOGEL. Our Native veterans definitely believed that a home loan was something that would be an easy process for them, that they knew that they had that opportunity to get the Native American Direct Loan Program. When they started on their own, it was not successful. We did not have veterans being able to navigate that process.

As a result, we had frustrated veterans that would come to us and say, I don't want to try that, because it takes too long. I don't understand it, they keep changing loan officers. So the success of the Native American Direct Loan Program did not get off to a good start. For a number of years, there were not loans being closed for Native American veterans.

So the Coalition started to advocate and see, what are the problems. Of course, there were a host of problems. Now we have learned, we, the TDHEs, housing practitioners, have learned the process. So we have to be the advocates to be able to do the loan packaging, to be able to walk them through the loan process. Even then, right now we are working with one of our tribal members that is, in fact he is the commander of our American Legion here. We have been going on over a year trying to close his loan and get the right documents through the St. Paul office.

So it continues to be a frustrating process. I am hoping that with your leadership that we will have some changes coming soon.

Senator ROUNDS. Thank you very much.

Mr. Chairman, I apologize for going on on this thing. The point I would like to make is, it is not just IHS that is impacted by this, but it is because we can't get these trust documents in an appropriate fashion. It impacts our veterans' ability to get them as well. In fact, I believe this particular St. Paul office for the VA actually won an award for the most number of VA home mortgages issued in, I believe, 2018, in the entire Nation, they had five. That tells us basically what the challenge is here.

So I want to thank Ms. Vogel, because she has been a champion on this. It really is time to get to the bottom of it.

The CHAIRMAN. Before I turn it over to Vice Chair Murkowski for her second round of questions, I want to suggest that some of the authors of this bill may want to get together. A legislative strategy I think is appropriate. But there may be room for a workshop, a couple of actual working meetings, and doing real oversight and working with the Administration to get to the bottom of this. I am not satisfied that we can enshrine in statute what needs to be done. A lot of what needs to be done is strategies, execution. We have to get to the execution piece of this.

Vice Chair Murkowski.

Senator MURKOWSKI. I do think there is recognition that something has to be done. What we are dealing with is simply not tenable.

I want to ask a quick question. This is to our witnesses that have testified with regard to the Merkley bills, the Siletz and Grand Ronde. This is to Chairman Kennedy and Chairman Pigsley. Both of your tribes have indicated that your work relationship with the State of Oregon has dramatically improved. You are now implementing some conservation programs and other work to help fulfill the tribes' subsistence needs.

This may be a general question, but I think it helps us on the Committee. If you can share with us what you expect a new agreement with the State to look like if you are successful in being able to negotiate and replace the existing agreements. Can you tell us whether or not co-management will be a part of that new agreement? Explain where you think you might be there.

Ms. PIGSLEY. I will go ahead, Cheryle, if that is okay with you.

Senator MURKOWSKI. Certainly, go ahead.

Ms. PIGSLEY. We have worked extensively with ODFW, and we are currently negotiating what our new relationship will look like. We do co-manage right now. It gives us a greater flexibility and

ability to provide services to our membership, but also to work with the State. We meet with them annually, anyway.

So I believe it is a very good relationship and very productive for us.

Senator MURKOWSKI. Very good, thank you.

Ms. KENNEDY. Thank you for the question. The escrow management is part of the way that we view moving forward, as stated. We do have a good working relationship with the State, and the Oregon Fish and Wildlife Department. We have been able to work through different issues, given the consent decree being there.

We meet, as Chair Pigsley stated, regularly with the State. We have dialogue with the governor once a month. We talk with the Department of Fish and Wildlife probably more regularly than that.

In Oregon, there is the Legislative Commission on Indian Services that all of the tribes of Oregon participate in. That gives us more opportunity to talk with the State of Oregon on issues like this.

So yes, the relationship is good. As far as if you are asking, what is the final document going to look like, that is not in place. This will give us the opportunity to explore all of those issues before us. We are thankful that you are able to hear us today, and hopefully support the endeavors of our two tribes.

Senator MURKOWSKI. Thank you both.

Mr. Chairman, I know that we have a couple of votes that are beginning. I want to thank the witnesses. I also want to recognize the Vice Chairman here. We haven't peppered you with questions, but know that we also appreciate your being here on behalf of the Agua Caliente and speaking to Senator Padilla's bill as well.

Thank you.

The CHAIRMAN. Thank you for being here in person, and I assure you, not getting peppered with questions is a good thing, not a bad thing. Just ask Ms. Isom-Clause.

[Laughter.]

The CHAIRMAN. If there are no more questions for our witnesses, members may also submit follow-up written questions for the record. The hearing record will be open for two weeks. I want to thank all of the witnesses for their time and their testimony.

This hearing is adjourned.

[Whereupon, at 3:49 p.m., the hearing was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF THE CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION

Dear Honorable Chair Schatz and members of the Committee:

On behalf of the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), we write to express our positions on S. 3123 and S. 3126 regarding the treatment of hunting and fishing activities of the Confederated Tribes of Siletz Indians (Siletz) and the Confederated Tribes of the Grand Ronde Community of Oregon (Grand Ronde). We respectfully request that this letter be included in the record for the February 16, 2022 hearing on these bills, and considered by the Committee.

The recently introduced S. 3123 (Siletz) and S. 3126 (Grand Ronde) would amend those tribes' restoration and/or reservation acts to allow them to seek new agreements with the State of Oregon regarding their tribal hunting and fishing activities, on- and off-reservation. While we were not consulted by congressional offices prior to introduction of these bills, we have had extensive conversations with Siletz regarding its legislation and its intentions if enacted.

Siletz has been exceptionally transparent with us in the development of its draft federal legislation, and the elements of the co-management agreement with Oregon that it seeks as a replacement for its current Consent Decree. Based on council-to-council and staff-level conversations with Siletz, we reached an intertribal agreement for protections of our interests at Willamette Falls. We also were provided with the draft replacement agreement that Siletz would seek with the State of Oregon, along with an opportunity to provide comments that were incorporated by Siletz. Further, Siletz expressed its support for our history and continued use of Willamette Falls. Therefore, we support S. 3123 and Siletz's process for seeking improved hunting and fishing access for its tribal members in Oregon.

The same cannot be said for Grand Ronde's approach. CTUIR has had one government-to-government meeting with Grand Ronde on this subject in which neither draft legislation nor a draft replacement agreement was shared. When Grande Ronde finally did share a very rough draft replacement agreement, we raised significant concerns about that agreement. Grand Ronde refused to acknowledge our Tribe's history and continued use of Willamette Falls as usual and accustomed fishing areas under our Treaties, or under any other basis. Indeed, Grand Ronde explicitly told the CTUIR that no assurances could be made with respect to Willamette Falls. Further, Grand Ronde suggested that CTUIR, a Treaty Tribe with reserved federal rights, should follow the process that Grand Ronde used for fishing at Willamette Falls and put itself under the jurisdiction of the State of Oregon. We also understand no that formal or substantive meetings have taken place between other concerned tribes and Grand Ronde on this matter.

How the Siletz and Grand Ronde replacement agreements made possible by S.3123 and S. 3126 involve the Willamette Falls area is of great concern. The Willamette River is a tributary of the Columbia River. The CTUIR, along with its sister Columbia River Treaty Tribes, have long claimed Willamette Falls as a usual and accustomed fishing area reserved by our 1855 treaties, and we continue to use the Falls annually for subsistence and ceremonial harvest. We have not claimed exclusive fishing or gathering rights at Willamette Falls relative to other tribes. Our conversations with the Siletz Tribe have given us confidence that it has not and will not use any replacement agreement with the State of Oregon to challenge or interfere in any way with our claims or our annual harvest activities at Willamette Falls. Unfortunately, the Grande Ronde Tribe has failed to provide similar assurances. Instead, the Grand Ronde Tribe promotes a false narrative of historic control of tribal fisheries at Willamette Falls, along with a claim of primacy or exclusive rights for fishing at Willamette Falls.

To make matters worse, Grand Ronde has aggressively engaged in adversarial proceedings to exclude our tribes from the Willamette Falls area. These actions include, but are not limi ted to:

- Grand Ronde's production of multiple "reports," compiled by a non-Indian historian, that falsely discredit our tribes' history and use of Willamette Falls, and refer to our own history, as told by anthropologists on our Cultural Resources Program staff, as "intellectually dishonest";
- Grand Ronde's repeated attempts to exclude other tribes from the historical narrative and implementation of a potential National Heritage Area at Willamette Falls;
- Grand Ronde's refusal to allow the Willamette Falls Legacy Project to proceed if other tribes with rights and interests at the Falls are involved. (The Legacy Project is a state-county-municipal project that would redevelop former industrial areas around the Falls into a riverwalk and opportunities to reconnect people to the magnificence of the Falls, largely funded by state and private contributions.)

These exclusionary actions give us significant concern for how Grand Ronde might use new congressional authority as further justification to exclude CTUIR or other treaty tribes from accessing Willamette Falls, as well as other "usual and accustomed" areas protected by our treaties. As mentioned above, the CTUIR is a Treaty Tribe with explicitly reserved fishing, hunting and gathering rights in our Treaty of 1855. 12 Stat. 945, Art. I. The Grand Ronde is a restored tribe, and as such, do not possess treaty rights. Further, the treaties the Grand Ronde does claim, even if they were in effect, did not reserve off-reservation rights. (Other tribes also claim the same treaties.) While this legislation is no doubt well-intended, we are regrettably unable to provide our support to S. 3126, and actively oppose S. 3126, until such time as Grand Ronde meets directly with CTUIR and provides adequate assurance of protections for our treaty rights at Willamette Falls and its surrounding area.

Please contact us if you have any questions or if we can provide any further information.

PREPARED STATEMENT OF THE CONFEDERATED TRIBES AND BANDS OF THE YAKAMA NATION

Chairman Schatz, Vice Chairwoman Murkowski, and Honorable Members of the Senate Committee on Indian Affairs, thank you for considering our views on the referenced bills.

We have the greatest respect for the Senators and House Members who have introduced these, and the House companion bills, but we strongly oppose their enactment unless they are amended to be consistent with both history and clear black letter law.

While we are concerned about precedents that could be established through the enactment of S. 3123, affecting the Confederated Tribes of Siletz Indians, and request clarifying provisions be added to it, we wish to focus this statement on S. 3126, legislation amending the Grand Ronde Reservation Act of 1988.

Through an unrelenting public relations initiative, the Confederated Tribes of Grand Ronde (CTGR) have perpetuated an amazing degree of historical revisionism. Simply put, their claims of pre-existing treaty related hunting and fishing rights never existed and no amount of wishful thinking or rewriting of more recent history can make it so.

Some key facts must be in evidence here:

1) The CTGR have never been adjudged to be the successors in interest to any ratified treaty.

2) The treaties they claim to be successors to contained no off-reservation hunting or fishing rights.

How then can the Congress now act, or authorize the State of Oregon to act, to restore rights if those rights never existed? The Congress should not ignore over a century of federal law determining how Indian fishing rights affirmed by treaties have been established. Doing so has the potential for serious damage to treaty-reserved rights we retain and to the treaty-reserved rights retained by a number of tribes throughout various regions of the country, not the least being the Pacific Northwest.

The Treaties signed by the Yakama Nation, the Confederated Tribes of Warm Springs, the Confederated Tribes of the Umatilla Indian Reservation, and the Nez Perce Tribe—as well as by tribes in the Puget Sound, the Confederated Salish and Kootenai of Montana and elsewhere—contained provisions establishing, or more precisely affirming, explicit reserved hunting, fishing and gathering rights. Our Treaty

and others also confirmed "the right of taking fish at all usual and accustomed places in common with the citizens of the Territory." The same is not true for the CTGR.

For the past century, the Yakama Nation has been at the forefront defending our rights to fish off reservation at usual and accustomed places, in the Columbia River Basin. Federal and state courts have repeatedly ruled that we, as a treaty fishing tribe, have rights to fish off reservation in a manner regulated by our tribal government. In the first case—the famous *Winans* decision of 1905 (198 US 371)—the US Supreme Court examined our Treaty of 1855 and established the treaty fishing reserved rights doctrine.

In 1919, in the case of *Seufert Brothers Co. v. United States*, 249 U.S. 194, the US Supreme Court ruled that the Yakama Treaty allowed tribal members to fish on the Oregon side of the Columbia and beyond the area of lands ceded in our Treaty.

In 1942, in the case of *Tulee v. Washington*, 315 U.S. 681, the Supreme Court held that Yakama Tribal member Sampson Tulee did not need a state fishing license due to the provisions in our Treaty of 1855.

In 1967, in *State v James*, 72 Wn.2d 746, 435 P.2d 521, the Washington State Supreme Court affirmed a ruling of the Superior Court for Skamania County that Yakama tribal members have the right to fish below Bonneville Dam. That right was further affirmed in a MOA between the Washington State Department of Fish and Wildlife and the Yakama Nation in 2007.

In 1968, fourteen Yakama tribal members filed suit in a case known as *Sohappy v. Smith*, 302 F. Supp. 899 which challenged Oregon's attempts to regulate off-reservation fishing against members of the Yakama Nation. That case was joined by the Umatilla, Warm Springs, Nez Perce and the Yakama tribes and eventually combined with the significant and precedential *US. v. Oregon* decision (302 F. Supp. 899), which affirmed that the governments of the Treaty Tribes, and not the states or Washington or Oregon, had the authority to regulate Indian fishermen fishing pursuant to the respective treaties of those tribes.

In 1980, Congress passed the Northwest Power Act which included over 20 amendments drafted and lobbied for by the Yakama Nation mandating that power production and fisheries be managed as coequal interests and directing BPA to protect salmon through the establishment of a new Fish and Wildlife Program.

There are many other Yakama initiated lawsuits which we won't discuss in detail, including annual suits in the early 1980s against the Secretary of Commerce requiring the Pacific Ocean commercial fleet to be managed in such a fashion to ensure reasonable quantities of fish returned to the Columbia River.

The basis of Vaka ma Nation's legal fights has always been the rights reserved by the Vaka ma Treaty, which have never been extinguished and hold true today just as they did when our Treaty was signed in 1855. The CTGR does not share this history. Any treaties they claim were extinguished, as was their status as tribe when they were terminated in 1954. Despite the restoration of the CTGR's status as a tribe in the 1980s, no court has ever ruled that the CTGR are the successors in interest to any ratified treaty and there are various tribes in western Oregon, including the Siletz, Coos and Lower Umpqua Tribes of Oregon who claim to be successors in interest to some of the same treaties claimed by the CTGR. As importantly, the treaties claimed by the CTGR simply do not contain any language reserving off-reservation rights to hunt or fish and instead focus significantly on farming. For instance, Articles 2, 3 and 4 of the Willamette Valley Treaty reference funds for stock, agricultural implements, seeds, fencing, the employment of a representative for farming operations and a survey of lands that can be established as farming lots; the Treaty with the Umpqua and Kalapuya references opening farms, fencing, breaking land, providing stock and seeds and agricultural instructors. These treaties claimed by the CTGR make no mention of fishing, not to mention off-reservation fishing in usual and accustomed areas.

So, the question is what exactly does CTGR need to renegotiate with Oregon? The State already allows the CTGR to hunt and fish both on and off-reservation as part of the State harvest share. The members of the Indian Affairs Committee should closely examine the testimony submitted by the Umatilla Tribe of Oregon on this legislation. The Umatilla chronicle the aggressive tactics of the CTGR in their attempts to exclude the Yakama Nation, the Umatilla, and Warm Springs Tribes from a) Willamette Falls in general, b) from the future National Heritage Area at the Falls, and c) from the Willamette Falls Legacy Project, despite there being ample evidence of those tribes historical fishing of lamprey and other fish at Willamette Falls consistent with the provisions of their respective treaties. The CTGR have, remarkably, suggested that none of the Columbia River Tribes have authority to fish in the lower Columbia as the entirety of it is in within the claimed ceded lands of

the CTGR, despite more than a century of litigation and precedential decisions holding otherwise. Sadly, all of this is completely consistent with the CTGR's tactics when they spent millions of dollars in public relations campaigns to try and deny casinos and the opportunities for job creation to the Warm Springs Tribes of Oregon and Cowlitz Tribe of Washington State, as they are now doing again relative to the proposed Siletz casino in North Salem. The CTGR argued in favor of the Carcieri decision as a means of opposing the Cowlitz casino. As this committee knows, the Carcieri decision was so repugnant to Indian law and to tribes in general that the Congress rejected and reversed it.

Senator Merkley's press release announcing the introduction of this legislation includes the following language, "For more than 35 years, the Grand Ronde and the Siletz tribes of American Indians have been bound by legal agreements that strip them of the right to manage their own hunting and fishing seasons *on tribal land* (emphasis added). His press release also includes the following quote referenced to CTGR Chairwoman Cheryle Kennedy, "Kennedy said she is hoping her tribes will be able to renegotiate their agreement with the state of Oregon so the tribal government can manage its own hunting and fishing seasons *on about 12,000 acres that the tribe now owns* (emphasis added). Chairman Schatz, Vice Chairwoman Murkowski, and Committee Members, if that is in fact what the Oregon Senators and the CTGR want, we have no problem with it to the extent contemplated actions are limited to existing reservation lands. But please read the language of S. 3126 and tell us where you see anything that would limit the authorized future agreement with Oregon to off-reservation tribal land or any private land that the CTGR now own? Subsection 2(b)(l) authorizes Oregon and the CTGR to enter into a new agreement "relating to the hunting, fishing, trapping and animal gathering rights of the Confederated Tribes of the Grand Ronde Community." Subsection 2(b)(2) authorizes still further amendments to the initial agreement in 2(b)(l) whenever it might be mutually agreed to by Oregon and the CTGR. There is no reference to those agreements being limited to existing reservation land. Three years ago, the CTGR purchased the former Blue Heron Paper Mill in Willamette Falls, 75 miles east of the Grand Ronde Reservation. CTGR could well petition to have it placed in trust, and it would then be entirely consistent with how this tribe operates to suggest that they would push the powers that be in Salem to establish future fishing rights and even managerial authority over this land and portions of the Willamette River adjacent to it. Again, please read the Umatilla Tribe's testimony and the summary of the actions the CTGR have taken at Willamette Falls on page two above. These aggressive actions and attempts at excluding the Umatilla, Warm Spring and Yakama tribes from Willamette Falls are being undertaken now. Imagine the degree these efforts will expand if this bill passes, and you can be assured those efforts will be further buttressed by continued large scale campaign contributions by the CTGR in Salem.

If the Indian Affairs Committee sees justification in this legislation, we make three requests for amendments to the bill. First, it should stipulate that the 1986 Consent Decree to "Permanently Define [Grand Ronde] Tribal Hunting, Fishing, and Animal Gathering Rights" can be amended only relative to their existing Grand Ronde reservation lands in Yamhill and Polk Counties. Second, that no future agreement could allow the extension of commercial fishing or co-management of Columbia River fishing. And third, ensure there can be no limit on the exercise of existing treaty-reserved fishing rights by other federally recognized tribes in either the Columbia River or at Willamette Falls. If the CTGR do not agree to these changes, it should become obvious that they have misled folks and have intentions that are well beyond what they have claimed. We have read the savings clause in Section 2(d) and feel it needs to be extended further as suggested above.

Finally, we urge the Committee to carefully examine the Judicial Review Subsection 2(c) of S. 3126. This provision seems to be giving congressional authority to CTGR to challenge the existing consent decree, which under federal case law in the 9th Circuit is considered a final judgment for purposes of res judicata and collateral estoppel. This bill is proposing the extraordinary step of allowing any party to the consent decree to be able to challenge the merits of its substantive provisions in federal court, with no issue or claim preclusion to prevent any future litigation or new court rulings on CTGR rights. We think members of the federal judiciary and attorneys everywhere would find this to be problematic.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BRIAN SCHATZ TO KATHRYN ISOM-CLAUSE

Question 1. This Committee has heard that BIA's realty systems contribute to the lag in mortgage approvals for residences and businesses on Tribal lands. Please describe in detail the source of the delay and any internal reforms BIA has developed/is developing to address it.

Answer. Several factors could cause delays in processing mortgage applications, as each application is unique. Delay can stem from incomplete applications or faulty paperwork included in the incoming application to the inability to gain consent from co-owners. For second mortgage applications, the delay often stems from the lack of satisfaction and release documents for former mortgages. However, the Bureau of Indian Affairs (BIA) can provide information to the applicant to facilitate timely receipt of needed documentation.

In cases where lenders provide BIA loans without approved mortgages, BIA Regional Offices need to perfect the mortgage to be approved. These cases still need to go through the review process and, if they legally cannot be approved, the cases may need to be marked as Incomplete and returned to the lender for mitigation. To address these delays, the BIA is working to ensure that lenders are fully aware of all BIA requirements. We recognize that we must continue to ramp up our education efforts to ensure lenders are comfortable working in Indian country. Lenders and Tribes have been unclear as to where the approval authority for leasehold mortgages is under the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (HEARTH Act) lease. Under an approved Tribal HEARTH Act ordinance, which includes provisions for leasehold mortgages, the Tribe has the authority to approve leasehold mortgages. Thus, eliminating the need for Secretarial approval. Tribal approval can significantly decrease the time it takes to process a leasehold mortgage. To address these misunderstandings, BIA is working to educate HEARTH Act Tribes and lenders on the lease and leasehold mortgage approval process.

The BIA is taking steps to expedite the processing of mortgage applications and issued policies and provided training to agency staff and Tribal contract or compact employees regarding BIA mortgage approval requirements and timelines. The BIA plans to conduct additional procedural and system trainings to ensure timeliness. Furthermore, the BIA is looking to implement a new mortgage system within the next six months that will aid in a more convenient application process, which we anticipate will lead to more timely approvals. The system will include enhanced quality control, monitoring, and reporting for BIA.

Question 2. Would the addition of a realty ombudsman help expedite processing Tribal mortgage applications? What, if any, authority would the ombudsman have to ensure the Bureau is responsive or in compliance with the deadlines reflected in S. 3381?

Answer. A realty ombudsman could help expedite the processing of Tribal mortgage applications. Specifically, a realty ombudsman could help Tribal contracted and compacted programs and lenders compile documents needed for complete mortgage applications.

As currently drafted, S. 3381 creates a realty ombudsman who has a primary responsibility of ensuring deadlines related to the mortgage application process are met. That position, along with the already effective Indian Affairs Mortgage Handbook, 52 IAM 4-H, could assist the Bureau of Indian Affairs in the timely processing of mortgage applications.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BEN RAY LUJÁN TO KATHRYN ISOM-CLAUSE

Question 1. Ms. Isom-Clause, what is the average time the Bureau and the Division of Land Titles and Records take to finalize Title Status Reports and loan packages? What is the average time that each Bureau of Indian Affairs Regional Office takes to finalize Title Status Report and loan packages?

Answer. Certified Title Status Reports (CTSRs) are normally completed within two business days of the request being submitted into the Trust Asset and Accounting Management System (TAAMS) TSR Request module. The BIA's Land Titles and Records Office (LTRO) does not have a role with incoming mortgage applications. However, once a finalized mortgage is scanned into TAAMS, LTRO will encode and record (apply to title) the document. An Agency must request the final CTSR through the TSR Request module and L TRO will certify that within two business days and send it to the Agency and/or lender.

Pursuant to Title 25 of the Code of Federal Regulations (CFR), Part 162 and the Indian Affairs Manual (1AM) at 52 1AM 4, there are regulatory timeframes for BIA approval of mortgages. The average time for BIA to approve a leasehold mortgage is 37 days and a land mortgage is 106 days.

Question 2. Ms. Isom-Clause, what barriers currently exist to more expedient processing and certification of Title Status Reports and mortgages?

Answer. Barriers to expedient processing of CTSRs and mortgages originate from both internal processes and external parties.

BIA Region and Agency offices function as the office of record for mortgages. While the number varies from year to year, on average they process approximately 500 mortgages each year. Agency offices must scan the mortgage documents into TAAMS and submit the request(s) for a CTSR to trigger review and recordation. In the past two fiscal years, LTRO completed over 1,000 TSRs each year (1,225 in FY2l, and 1,096 in FY22. In FY22, completion date averages range from 5.3–7.6 days depending on ifwe use the create or assigned date. This does not consider the Agency Realty Office notifying or sending the CTSR to the lender, only the certification timeframe as reported through the module and a Qlik query. Understaffing due to difficulties in filling relevant positions contributes to delays.

External barriers are also numerous. One of the larger barriers is lender understanding of the process and required documents. The lender/applicant is responsible for assembling required documents to support the Bureau's approval of a mortgage. Lenders enter into mortgages with landowners that are not yet approved or recorded by the BIA. Some lenders expect a final CTSR for a transaction that had not yet been requested nor approved.

Coordination of information is another barrier to more expedient processing. For example, lenders will send periodic and duplicative status requests for two to three hundred mortgages at a time. It is a time-consuming exercise for the BIA to repeatedly provide and validate lenders' data.

In many instances, the BIA has provided TSRs back to the lender and the lender has not provided this information to entities such as the United States Department of Housing and Urban Development (HUD). This requires the BIA to duplicate case review and provide the dates the TSR was provided to the lender. Lenders also delay the process by requesting certain information to be on TSR's as there is no standard TSR format.

The BIA is committed to supporting Tribes through lender education efforts, and is striving to increase these efforts to ensure lenders are aware of the process, timeline, and information required.

Question 3. Ms. Isom-Clause, what actions has the Bureau taken to expedite Title Status Reports and processing of mortgage-related documents? What is the status of these actions?

Answer. The Bureau has developed the following guidance and tools to enhance mortgage application processing:

- In May 2018, the BIA issued the TAAMS Title Status Report Reformat Enhancement and Encoding Guidance.
- On May 23, 2018, the BIA implemented and provided guidance on the TAAMS TSR Module.
- On June 14, 2018, the BIA developed the Mortgage Tracker.

  —This tool tracks mortgage packages from receipt to the final CTSR.
- On October 17, 2018, the BIA issued 52IAM 4, Processing Mortgages of Trust Properties.

  —This establishes the BIA' s policy, responsibilities, and procedures for the management and processing of leasehold and land mortgages of trust property.
- On July 15, 2019, the BIA issued the Indian Affairs Mortgage Handbook.

  —This handbook provides instructions to the BIA and guidance for other agencies and lenders.

  —It also includes a process checklist, form and letter templates, and timeframes for the review and approval of mortgages, including the generation of TRSs.
- On October 4, 2019, the Director, BIA issued a memorandum entitled Mortgages Top Priority which established the processing of mortgages as a top priority.
- On August 25, 2020, the BIA provided training to regional and agency staff on the Mortgage Handbook, with an emphasis on timeliness with regard to TSRs and processing mortgage applications within regulatory deadlines.

- In October 2020, the Lender Loan Portal went live.

—The Lender Loan Portal is to be utilized by the U.S. Department of Housing and Urban Development (HUD) and lenders to inquire on the status of a mortgage.

Question 4. Ms. Isom-Clause, currently the Bureau of Indian Affairs does not initiate a National Environmental Policy Act (NEPA) review until after the Title Status Report is complete. To expedite loan packages, why does the Bureau not initiate the processing of both these processes at the same time?

Answer. With regard to NEPA, the approval of a mortgage by the BIA is normally categorically excluded (CatEx) from the preparation of an environmental assessment or environmental impact statement. The CatEx is documented in a checklist prepared by BIA nonrealty staff shortly after receipt of a mortgage for approval and does not add to the overall time for approval.

The purpose of the initial TSR is to demonstrate to the lender that the potential mortgagee has a leasehold interest recorded on Indian title. This TSR issuance is an administrative action and not a federal decision that triggers a NEPA review.

If an applicant is using the Section 184 Indian Home Loan Guarantee program, the Office of Loan Guarantee works to educate program participants that the BIA is not responsible for conducting or completing HUD environmental reviews required by the program. HUD environmental reviews are completed by Tribes pursuant to 24 CFR Part 58. In cases where the Tribe is unable to or declines to perform the environmental review, the Tribe may request that HUD perform an environmental review pursuant to 24 CFR Part 50.

Question 5. Ms. Isom-Clause, how often does the Bureau meet the deadlines reflected in the Bureau's existing handbooks and policy? How often do Bureau Regional Offices meet these deadlines? Please specify which regional offices meet these deadlines and the frequency with which they do so over the course of recent years.

Answer. Below is a snapshot of the percent of mortgages approved within the identified timeframes in fiscal years (FY) 2020, 2021, and 2022. This data is retrieved from data encoded into the Mortgage Tracking System. This data consists of dates and timelines from a coordinated effort between applicants, lenders, and BIA throughout the life of a mortgage application. We recognize that this data shows a need for concerted effort to improve processing times to approve mortgages within identified timelines. We are committed to making internal improvements and external education efforts to ensure that these timeframes are met.

Percent of mortgages approved within the identified timeframes

	FY 2020	FY 2021	FY 2022
Land Mortgage	71%	75%	75%
Leasehold Mortgage	55%	46%	56%

Below is a breakdown of the BIA Regional Offices with percent of mortgages approved within the identified timeframes in FY2020–FY2022. This data is retrieved from data encoded into the Mortgage Tracker System. This data consists of dates and timelines from a coordinated effort between applicants, lenders, and BIA throughout the life of a mortgage application. Not every BIA Region is identified in a fiscal year if no mortgage packages were completed. Please note that the number of mortgages received by each Region varies widely. We are using increased data analysis on mortgage processing to help to focus our efforts to improve processing times.

Percent of mortgages approved within the identified timeframes

Region	FY 2020	FY 2021	FY 2022
A—Great Plains	100%	98%	85%
B—Southern Plains	N/A	N/A	N/A
C—Rocky Mountain	33%	42%	14%
E—Alaska	N/A	N/A	N/A
F—Midwest	81%	74%	83%
G—Eastern Oklahoma	N/A	N/A	N/A
H—Western	27%	17%	0%
J—Pacific	88%	60%	51%
M—Southwest	100%	100%	75%

Percent of mortgages approved within the identified timeframes—Continued

Region	FY 2020	FY 2021	FY 2022
N-Navaio	70%	50%	100%
P—Northwest	70%	63%	76%
S—Eastern	25%	100%	20%

Question 6. Ms. Isom-Clause, how would implementing statutory mortgage review and processing timelines change the Bureau's internal practices?

Answer. Currently, mortgages involving property on trust lands must be reviewed and approved by the BIA in order for the mortgage to be finalized. This pertains to residential, commercial, and right-of-way mortgages, among others. The 2019 Indian Affairs Mortgage Handbook established timelines for BIA offices to process mortgage applications. However, the timelines are not always met. Placing these timelines into statute would strengthen the authority for improving the timeliness of mortgage application processing and ensure applicants are provided homeownership opportunities on trust land.

Question 7. Ms. Isom-Clause, how would creating a Realty Ombudsman position in the Bureau change the Bureau's internal practices and help the Bureau meet the timeframes outlined in the Bureau's 2019 Mortgage Handbook?

Answer. A realty ombudsman could help expedite the processing of Tribal mortgage applications. Specifically, a realty ombudsman could help Tribal contracted and compacted programs and lenders compile documents needed for complete mortgage applications. A realty ombudsman could also serve as a liaison and facilitate communications between the BIA, Tribes, applicants, lenders, and other Federal agencies. An ombudsman could work to improve tracking, reporting and lender education with federal lending partners. All of these functions would help ensure the timeframes in the 2019 Indian Affairs Mortgage Handbook are met.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BRIAN SCHATZ TO HON. DELORES PIGSLEY

Question 1. Please provide examples of how being unable to modify the current consent decree creates additional barriers for your Tribe.

Answer. We are a Tribe of over 5000 people but are extremely limited in the number of fish, deer and elk we may harvest under the existing Consent Decree with the State of Oregon. This precludes us from being able to provide subsistence foods to our elders and other tribal members in need.

Question 2. How would the proposed amendments in S. 3123 help modernize and improve your access to hunting and fishing opportunities, as well as management?

Answer. The changes as proposed in S. 3123 would allow the Siletz Tribe to pursue a new agreement with the State of Oregon for additional harvest of traditional foods for ceremonial and subsistence purposes. It would modernize our access to hunting and fishing opportunities to the extent the geographic scope would be broadened to better reflect the Tribe's ancestral areas in Oregon. In so doing, we look forward to having more input with the State of Oregon in wildlife management to improve resources for all Oregonians.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BRIAN SCHATZ TO HON. CHERYLE KENNEDY

Question 1. Please provide examples of how being unable to modify the current consent decree creates additional barriers for your Tribe.

Answer. Grand Ronde's Consent Decree was signed in 1987 and authorized hunting and fishing rights within the State of Oregon's Trask Wildlife Unit. As such, the current agreement does not include provisions for hunting and fishing regulations that have been adopted by the State of Oregon after 1987.

This means that Tribal hunting and fishing rights do not meet the same requirements as State hunting and fishing regulations, often putting Tribal members at a disadvantage when compared to the opportunities granted to participants purchasing State of Oregon hunting and fishing licenses. Specific examples include:

Fishing

The Consent Decree only allows fishing from the high water mark of a waterway, but a State fishing license allows off-shore fishing in bays and the ocean. Modifications would reconcile this inequity.

At the time of the agreement, salmon and steelhead harvest cards were not required by the State and Tribal members could harvest these fish as needed. A harvest card is now required, and Tribal members must purchase these documents from the State; this is a monetary cost for something that used to be free.

Shellfish Harvesting

The State of Oregon regulates shellfish harvesting through a shellfish license and the Consent Decree does not include any authorization to harvest shellfish. Therefore, Tribal fishing licenses did not include the opportunity to harvest shellfish, including crab.

The Tribe spent years negotiating a separate agreement to authorize Tribal membership to harvest shellfish which took 4 years of staff to staff coordination; while this was successful, it was not efficient.

Hunting

The Consent Decree limits the number of tags the Tribe may receive from the State of Oregon for hunting big game such as deer, elk, and bear. There are two inequities from these restrictions developed in 1987:

First, they do not account for the increase in Tribal membership over time. The number of tags the agreement authorizes was set for a membership of 1,761 people; today, the current enrollment is 5,616.

Second, the agreement is missing additional game that the Tribe and its membership would like to be recognized, including game birds, furbearers, squirrels, etc. Similarly to the shellfish agreement, Tribal staff developed a Tribal Wildlife Management Plan and spent 8 years negotiating with Oregon Department of Fish and Wildlife (ODFW) biologists on it prior to the ODFW Commission authorizing it under an Oregon Administrative Rule in September 2014; while successful, again it was not efficient and not a rational way of doing business.

The Consent Decree limits elk tags distributed to the Tribe (45 for first season and 45 for second season) while the State of Oregon does not limit the number of over the counter purchases for these elk tags (hunters must choose one season, but no limit to the number of tags in those season).

The Consent Decree limits the Tribe to "harvest" 350 deer, 45 combination tags for one deer or one elk, and 5 bear tags.

Under ODFW, combination tags do not exist and have now defaulted elk tags.

Harvest success rate is 10 percent so the Tribe should actually receive more tags to get to the harvest rage of 350, 45, and 5.

Consent Decree is only recognized in the Trask Unit; it does not allow for the Tribe to issue tags for Tribally owned lands outside of the Trask.

Question 2. How would the proposed amendments in S. 3126 help modernize and improve your access to hunting and fishing opportunities, as well as management?

Answer. The proposed amendments in the bill would help modernize and improve hunting and fishing opportunities by providing an updated agreement that holds a mechanism to keep up with today's issues such as State of Oregon modifications to hunting and fishing regulations (such as shellfish, trout stamps, salmon and steelhead harvest cards, etc.)

The Consent Decree is a static document and literally says it cannot be changed; this is not a way of doing business in natural resources management that depends wholly on adaptive management as resources change. Modifications would create a more flexible and dynamic document (not static), which will allow the Tribe to work with the State of Oregon and ODFW in a co-management environment to protect the resources; target, modify, respond to issues;

It represents a time period of being stuck in 1987; modifications would allow a more current agreement that reflects current conditions; better managed and intentions; there are a ton of regulations implemented since 1987 that don't fit this agreement.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BEN RAY LUJÁN TO SHARON VOGEL

You state in your testimony that often Tribal home buyers feel as though their mortgage packages "fall into a black hole" at the Bureau of Indian Affairs. Because of this, you emphasize the importance of the Tribal Trust Land Homeownership Act

of 2021 establishing a Realty Ombudsman with the authority to issue automatic waivers and assume approval if timelines for mortgage packages are not met.

Question 1. Ms. Vogel, how would providing this authority to a Realty Ombudsman change outcomes for lenders and Native Americans pursuing homeownership on Tribal lands?

Answer. Over the course of the approximately 25-year history of mortgage lending on tribal trust and restricted lands, a major challenge has been accountability and transparency by the BIA Realty Services and Land Titles and Records Offices (LTRO) in the processing of leases, title information, and mortgage packages. Prior to August 2019 with the introduction of the BIA Mortgage Handbook, there was little standardization among the 100+ BIA Agency Offices and 12 Regional Offices. Lenders and prospective homeowners have been at the mercy of this system and virtually no one outside of the BIA has ever seen a report on the performance of processing mortgage-related documents by either Realty Services or LTRO.

A Realty Ombudsman could be an escalation resource to:

- Provide a mechanism for lenders and borrowers to resolve delays resulting from documents stuck in the system at the Agency or Regional Offices, or LTRO Offices.
- Interface with management regarding policy and procedure issues.
- Ensure systems like the Mortgage Package Lookup Portal are performing as intended.
- Monitor performance of document flow and identify trouble spots that are inconsistent with the timeframes identified in this legislation.

You also suggest that the creation of an advisory group to work with the Bureau of Indian Affairs would help identify unnecessary leasing regulations.

Question 2. Ms. Vogel, whose perspectives are important to hear on an advisory group related to leasing?

Answer. It is important to hear the perspectives of all the stakeholders involved with the homebuying process on tribal land including: BIA officials, tribes and tribally designated housing entities (TDHEs) who have prioritized homeownership in their communities, tribes who have adopted their own residential leasing regulations pursuant to the HEARTH Act, lenders, secondary market investors, Native community development financial institutions, and title companies and closing agents.

Question 3. Ms. Vogel, what existing regulations currently hinder Tribal homeownership? Please specify which changes would best streamline the process for Native American homebuyers and Tribal lenders.

Answer. The U.S. Department of Housing and Urban Development has been in the process of revising its Section 184 Home Loan Guaranty program for the past five years. HUD should publish its proposed regulations as soon as possible.

Question 4. Ms. Vogel, what additional statutory changes would help increase Native American homeownership on Tribal lands?

Answer. In addition to streamlining the BIA processes as proposed in S. 3381, the Coalition proposes the following statutory changes:

1. Congress should enact S. 2092, the Native American Rural Homeownership Improvement Act of 2021, to improve access to the USDA 502 single family direct home loan program on tribal land.

The Native American Rural Homeownership Improvement Act of 2021 (S. 2092, H.R. 6331) would make the U.S. Department of Agriculture (USDA) 502 home loan relending pilot permanent by authorizing the USDA Secretary to use $50 million of existing 502 single family direct home loan appropriations for a national relending program so that Native community development financial institutions (CDFIs) across the country can increase access to affordable home loans in rural Native communities.

USDA Rural Development has limited staff resources to provide Single Family Housing direct loans on tribal land. Native community development financial institutions have experience operating on tribal land. In addition, they provide extensive financial and homebuyer education to their clients. The proposed demonstration relending program would make Native CDFIs eligible borrowers under the 502 direct loan program and enable them to relend for the construction, acquisition, and rehabilitation of affordable housing to eligible families.

2. Reform the VA Department's Native American Direct Loan Program to make it more accessible to Native veterans living on trust land.

The Native American Direct Loan (NADL) program is a veteran home loan program authorized by 38 USC ⧫3761 to provide direct loans to Native American

veterans living on trust lands. Despite the availability of these funds earmarked for Native veterans, loans are not being made to qualified borrowers. The U.S. Department of Veterans Affairs (VA Department) lacks adequate staff resources to conduct outreach and provide the required level of technical assistance to effectively deploy the NADL program to qualified Native American veterans on trust land.

The Government Accounting Office (GAO) is currently conducting a review of the NADL program. Congress should act swiftly to consider the GAO's recommendations and enact legislative reforms to improve the deployment of this NADL program.

3. Provide adequate resources for the implementation of the HEARTH Act to allow tribes to manage their own trust land leasing processes. Congress should provide the U.S. Department of Interior Bureau of Indian Affairs adequate staffing and training resources to support training and capacity building for tribes to implement the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (the HEARTH Act). While this law appeared to provide a promising mechanism for tribes to streamline the mortgage process by providing the authority for tribes to manage their own leasing processes, the full benefit of this authority has not yet been realized because the BIA does not have adequate resources to support the implementation of the Act.

4. Amend federal statute to explicitly provide authority for the Department of Justice (DOJ) U.S. Attorney's Office to adjudicate HUD Section 184 foreclosures in tribal court. The HUD Section 184 loan guarantee program, codified at 12 U.S.C. ⧫1715z-13a, authorizes loan guarantees for housing loans for Indian tribes, tribally designated housing entities, and Indian families. If the borrower defaults on the loan, the lender may either foreclose on the property or assign the loan to HUD. If the lender assigns the loan to HUD, HUD works with the DOJ Office of U.S. Attorneys to pursue foreclosures in state or federal court.

According to HUD counsel, 28 U.S.C. ⧫1345 does not authorize the filing of foreclosure actions by the U.S. Attorney on HUD's behalf in tribal courts, unless permitted by some other act of Congress. The statute authorizing the U.S. Attorney to foreclose on property in state court, 28 U.S.C. ⧫2410, does not provide similar authority to conduct such foreclosures in tribal court.

Section 248 of the National Housing Act (12 U.S.C. ⧫1715z-13) authorized the HUD Section 248 Mortgage Insurance on Indian Land Program. According to 12 U.S.C. ⧫1715z-13(g)(5), HUD's Section 248 foreclosure proceedings "may take place in a tribal court, a court of competent jurisdiction, or Federal district court." This statutory authority should be extended to the HUD Section 184 loan guarantee program.

5. Streamline and coordinate the requirements of each federal agency to conduct an environmental assessment pursuant to the National Environmental Policy Act (NEPA).

Congress should designate HUD as the lead federal agency to manage a single, unified, and coordinated environmental review process on trust land pursuant to the requirements of NEPA so that tribes can use a HUD environmental clearance to satisfy the requirements of all federal agencies involved. In addition, Congress should provide the statutory authority for the HUD 184 program to issue a categorical exclusion under NEPA.

Under current law, ever federal action requires an environmental review (ER) which means that the BIA issuing a residential lease may trigger an ER requirement and then approving a mortgage encumbrance may require another ER. In addition, if multiple federal agencies are involved in the construction of one home, there could be multiple environmental reviews requirements from multiple federal agencies.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BRIAN SCHATZ TO SHARON VOGEL

Question 1. Please explain why the path to homeownership on Tribal lands takes so long, as compared to non-Tribal lands. Are the reforms in S. 3381 necessary—if so, how so?

Answer. Homeownership on Tribal lands is complicated. The primary issue concerns the Laws, Regulations and procedures required by the Bureau of Indian Affairs to effect a marketable title to assign to a lender. The process is complicated and hails back to a time when tribes had little understanding of the components

of securing interest in land. The process implemented by the Bureau of Indian Affairs has on occasion been updated but the outcomes for Tribes pursuing homeownership under current rules, are still not working. S.3381 could help but as I testified in February, we do not see any effective penalty to the BIA for not meeting deadlines required by the proposed legislation. Even with an ombudsman, what leverage is included to provide accountability and what additional options do tribes have available if established time lines are not met?

The second impediment to lending on Tribal trust lands continues to be limited secondary markets for loans once they are completed by a qualified lender. Almost all Trust land loans are "qualified" due to secondary market requirements that most Trust land loans cannot meet. (Title insurance, appraisal, market data, etc.)This issue is compounded by the costs of initiating loans on trust land, and the time delays that reduce the profit margins on most trust land loans.

The third issue impacting length of time required to finalize trust land loans is the inflexibility of federal programs that offer trust land mortgages such as the HUD 184 program and the USDA RD 502 Guarantee program. Neither program has been willing to negotiate with tribes regarding certain lease forms, tribal court issues and program procedures. Most are not statutory but reside more in each agencies OGC. A fear of tribal sovereignty issues and an absence of federal/tribal law seems to cause both agencies to take a more conservative approach to making their loans available.

Question 2. Are there additional statutory changes Congress should consider?

Answer. We believe that tribes and lenders would benefit from the creation of a new government -sponsored entity (GSE).This concept was discussed in the early 1990's but lost momentum when Congress passed legislation that allowed Tribes to Develop Community Development Financial Institutions. (CDFI) While native CDFI's continue to show great potential, they too need a market for their home loans. Certain economic development loans initiated on restricted Tribal lands could also benefit from a Native GSE. UNAHA has also advocated a tribal set-aside for USDA Rural Development funding. Tribes are not accessing these programs in large numbers due to the lack of recognition of Tribal sovereignty by USDA.

Question 3. In your testimony, you recommended the creation on an advisory committee that would assist the Bureau to identify and remove antiquated leasing regulations. Are there specific sections you suggest removing? How would removing these sections assist in processing lease documents: What impact, if any, would the removal of these sections have on proposed S. 3881?

Answer. UNAHA believes that an Advisory Committee made up of BIA Leasing Officials and knowledgeable tribal housing leaders experts and lenders could address needed changes in current regulations and procedures. While S.3381 adds urgency and focus to existing processes, we are proposing a beginning to end review that would allow the Bureau and tribes to create a document that would lighten the load for both parties.

An example would be that currently, under the Bureau's PROCEDURAL HANDBOOK for Leasing and Permitting, Section 2.0 GENERAL AUTHORITIES AND POLICIES, 2.1 Federal Law, allows leasing pursuant to Section 17 of the Indian Reorganization Act (IRA) to take place without Secretary Approval. Are tribes made aware of this option when creating the legal status of their housing TDHEs?

The Bureau's PROCEDURAL HANDBOOK also limits residential leases to a term not to exceed twenty-five years and a single renewal, when elsewhere in the HANDBOOK, it recognizes that NAHASDA (25 U.S.C. 4211) allows a 50 year lease. (NAHASDA allows 50 year residential leases without further regulation) Under 2.8 of the Handbook, the Bureau seems to give tribes more leeway regarding residential leases. It states in part; "the BIA will recognize applicable tribal laws regulating activities on land under agricultural, residential and business lease". This appears to be a strong argument tribes to review the HEARTH Act and its potential.

The Advisory Committee could review each of the relevant statutes and recommend changes or amendments to simplify the process and recognize imperfections in current process. In S.3381, the Ombudsman could be authorized to work with the committee whether the Advisory Committee is formalized in legislation or is organized separately. It would be beneficial to make it official so that recommendations have some opportunity to become regulatory.

We would also recommend that the Senate Committee on Indian Affairs revisit the HUD 184 program. As written originally, many of the issues we are facing today could have been addressed. HUD unilaterally has made changes over the past 25 years, many benefiting non restricted land borrowing by tribes. We would encourage the Senate Committee to hold an oversight hearing on this eight billion dollar federal program that has had new regulations in development (with no real tribal

input) for nearly four years! It works fine on fee land, but it was created for Tribal Trust Land!!

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BRIAN SCHATZ TO HON. REID MILANOVICH

Question 1. How will clarifying the status of the land transferred from BLM to the Tribe assist the Tribe in managing its natural and cultural resources on the reservation?

Answer. The BLM, while well meaning, does not have the staff or resources that the Tribe dedicates to monitoring trails and resources under its authority, especially when land ownership is mixed in a square mile checkerboard manner. Holding the exchanged lands in trust reaffirms the Tribe's authority and removes any confusion about which sovereign is responsible.

Question 2. You stated in your testimony that the Tribe intends to continue to allow public access on former BLM Lands that are currently within the boundaries of its reservation. Does the Tribe retain a similar level of management influence over Tribal lands that were transferred to the BLM as part of the land exchange that helped to create the San Jacinto National Monument?

Answer. No. The Tribe relinquishes its responsibility and influence over lands that are transferred to and managed by the BLM. The Tribe will continue to be a co-manager of the Monument as originally envisioned.

Question 3. Would greater influence in the development of federal land management plans, specifically related to the protection of cultural and sacred places and practices, benefit the Tribe? At what stage in the decisionmaking process should Tribes be involved?

Answer. Yes. The Tribe, through its Tribal Historic Preservation Office, and the agency would greatly benefit from early comprehensive consultation prior to the timing required in the statutes. It will allow for a collaborative process whereby the Tribe could provide input on culturally sensitive areas for siting projects on federal lands. It would result in an efficient planning and implementation process for the agency and could possibly streamline the compliance process in the event of an inadvertent discovery during the construction phase of any ground disturbing project.

As the designated steward of the Tribe's cultural heritage, charged with protecting, preserving, and managing resources on all tribal lands within the exterior boundary of the reservation, the Tribal Historic Preservation Office (THPO) is the appropriate office for managing the Tribe's cultural resources, sacred sites, and places of cultural or religious importance. Assigning the property to Trust status provides protection to cultural and sacred places by placing the lands under THPO oversight. The THPO complies with the National Historic Preservation Act (NHPA), American Indian Religious Freedom Act, Executive Order 13007 on Indian Sacred Sites, Native American Graves Protection and Repatriation Act (NAGPRA), and the Archaeological Resource Protection Act (ARPA).

NHPA section P.L. 102–575 allows federally recognized Indian Tribes to take on formal responsibilities for the preservation of significant Historic Properties on tribal lands. Specifically, Section 101(d)(2) allows Tribes to assume any and all of the function of a State Historic Preservation Officer (SHPO) with respect to tribal land. Additionally, agencies are required to consult with the THPO in lieu of the SHPO for undertakings occurring on, or affecting Historic Properties on tribal lands. The Agua Caliente THPO assumed these responsibilities through designation as a THPO with the National Park Service in 2005.

○