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6 TRIBAL CONSULTATION MEETING ON
REVISING TRIBAL SHARES FORMULAS
7 FOR THE REAL ESTATE APPRAISAL PROGRAM
8
9 Office of the Special Trustee for American Indians
10
11 Taken August 13, 2009
Commencing at 9:10 a.m.
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13 Session I - Pages 1 - 91, inclusive
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1 THURSDAY, AUGUST 13, 2009
9:10 A.M.
2 OPENING REMARKS AND INTRODUCTION

3 DEBBIE MEISNER: We're going to get started.
4 Good morning. My name is Debbie Meisner. I'm with the
5 Office of the Special Trustee for American Indians in
6 Albuquerque, New Mexico. I work directly with Eldred
7 Lesansee.

8 We're going to go around the table here and
9 identify ourselves so that you on the telephone know
10 who's here. And then we would again like to go one more
11 time around out there on the telephone and you tell us
12 again one more time who you are.

13 Some of the ground rules that we would like to
14 follow are we will do questions and answers as we
15 progress. And so if you have a question somewhere along
16 the line, if you can just go ahead and ask the question,
17 identify yourself. We do have a court reporter so we
18 will be reporting and summarizing everything that's
19 being said today.

20 If you do have a side conversation at your
21 location on the telephone, if you could mute so that we
22 don't hear it on this end.

23 And basically that's it, I think.

24 ELDRED LESANSEE: Yes.

25 DEBBIE MEISNER: So we'll start around.

1 Again, I'm Debbie Meisner with OST.
2 ELDRED LESANSEE: Well, we've got a special
3 guest here. We've got Mr. Niles Cesar here, the
4 regional director, and I think he would like to say
5 something to the group, if you like.
6 NILES CESAR: Sure. My name is Niles Cesar.
7 And contrary to public belief, I'm still the regional
8 director in Alaska. I have been reassigned to
9 Minneapolis, but, you know, the fat lady hasn't started
10 singing so we'll see what really happens with that.
11 SPEAKER: The teleconference of appraisals in
12 Anchorage and now Cesar was talking.
13 NILES CESAR: By golly, that's right.
14 I've been here almost -- well, actually 19
15 years next month. I've never had a job with the BIA.
16 It was just one of those things. They said they
17 couldn't find an Alaska Native for the job so that
18 piqued my interest. And it's been a challenging,
19 rewarding job all these years. And people like Glenda,
20 who was here before me and is still here in a different
21 capacity -- many of the people have changed functions
22 over the years. Obviously people come into the system
23 and then find their real niche.
24 When I first met Debbie, I mean, she was
25 telling me she was an Aleut. She's one of the few

1 Aleuts I ever met that had never been to the Aleutian
2 Islands.
3 DEBBIE MEISNER: I've been there now.
4 NILES CESAR: She's been there now. And we're
5 delighted to have you because like most Indians, Alaska
6 Natives, we've got family everywhere. When you go out
7 there in the Bush, you're always running across someone.
8 Oh, yeah, I knew your grandma or, yeah, we're really
9 fifth cousins twice removed, that kind of stuff.
10 We've got about 120,000 Alaska Natives in this
11 state. And so obviously a state this large with this
12 many tribes -- 229 federally recognized. And we have
13 two extras in there which are combination tribes.
14 They're tribes but Congress does some strange
15 manipulations sometimes. But for purposes of dealing on
16 a day-to-day basis, 229.
17 We have over 167 tribes in compacts. They
18 have the largest number of compacts. We have the
19 balance of the tribes either in 638 contracts or in very
20 few instances the tribes get services from us. We
21 basically provide no direct services anymore in terms of
22 programs like social services and those types,
23 everything that's contracted out.
24 And with contracting out comes a lot of good.
25 Tribes are able to make decisions at a local level. And

1 I think by and large they do a good job. But it also
2 provides for a lot of oversight needed and a lot of
3 assistance to the tribes. And as the money has faded,
4 our ability to really do that has faded also. So at any
5 given time, I would assume we have 30 to 40 tribes in
6 trouble. That's just the nature of the beast.
7 When you're contracting with a little tribe
8 out in the Aleutian Islands and the education director
9 might be the housing officer who might be the social
10 worker -- I mean, that's the kind of situation you run
11 into. There's not enough people. There's not enough
12 money.
13 But of late with our superintendent and his
14 awarding officials, they've been out quite a bit this
15 last year or so. And our superintendent for the West
16 Central Agency, Gene Virden, is a CPA and he worked for
17 us before as our finance officer, so he's well versed.
18 And the biggest key, I think, is he's well liked out in
19 the villages. People know that he's coming in to help
20 and he's not there to harangue them or give them a bad
21 time, but to really get their finances straight because
22 it makes it easier for everybody. So we're really
23 pleased to have Gene.
24 And like most regions, we've been cut back
25 drastically in our ability to hire awarding officials

1 and to really get out there to do the job we should be
2 doing. And so it's hard for us to really go after the
3 tribes about their inability sometimes to do what
4 they're supposed to do if we can't even do it on our
5 end. So we really try to work with them as opposed to
6 finding things wrong with them.
7 And I think that's -- from our experience that
8 seems to be the way it works best for us. But, you
9 know, we're not -- we've not been shielded from the IG.
10 We had a terrible IG report on our transportation
11 department. And when you look at the report and
12 understand the report and see where they were coming
13 from, to be in the seat and all of the fallacies in the
14 report in terms of what they were really looking at, you
15 know, things like -- just for an example, they really
16 blasted us about overtime for several of our
17 construction workers.
18 And what they fail to realize is that it costs
19 us about $600,000 to mobilize equipment. So if you're
20 shipping out to the Aleutians and you're out there for a
21 year's project, that barge is going out there and it's
22 costing one hell of a lot of money to get the stuff
23 there. So when the stuff is there you can't be saying,
24 well, you can only work eight hours today.
25 If the creeks are high, and they often are

1 early on spring, early summer, you can't get into the
2 streambed to extract gravel. You just can't do it. So
3 that means when the day comes that you are able to do
4 it, you might work 18 hours a day to get that thing
5 done. Because if you don't get it done, that equipment
6 is still going to leave the village and that project is
7 not going to get done.
8 So we have to improvise. And government does
9 not like improvision. Let's face it. They want things
10 a certain way. And I think -- I support that, except
11 you know, there's got to be some common sense in how we
12 conduct our business. And I think we try to do that.
13 We get -- sometimes some years we get really well at it
14 and other times we don't do so well.
15 Again, that's the nature of the beast. That's
16 the nature of Indian business where you might run out
17 there and the entire tribal council was unelected,
18 everybody has quit, and they're behind six months on
19 their reports. So what are you going to do? You've got
20 to get the money so they can get the services out there,
21 so you have to make allowances for that.
22 And, again, we're not good -- the government
23 is not real good at doing that. We take a, you know,
24 1,000-mile view of these things where the first step is
25 a certain way and the last step should be a certain way

1 also, and that's just not realistic.
2 But over the years, I think Alaska has had a
3 reputation for running a very good region. We have
4 people in our region, many people, who have worked here
5 their entire careers. And they enjoy both working with
6 us and obviously a number of them are Alaska Native
7 people. And a lot of down south Indians come up here
8 and just stay forever. We can't blast them out of here.
9 We have several here that are retiring at the
10 end of the month, one with 28 years all in Alaska and
11 he's a Yankton Sioux. I mean, where do you make that
12 connection? He doesn't even see -- I don't know, do
13 they have fish in that part of the world? And they have
14 minnows and stuff but they don't have any fish. And 20
15 years ago he won the Golden North Salmon Derby, catching
16 a 59-pound fish. So his family is deeply ingrained and
17 rooted in Alaska now. So that's the kind of people that
18 we attract.
19 When we have openings, please apply. We like
20 to have folks come up from wherever. I think you'll
21 find us as a good region, struggling of late only
22 because of the money that's involved and the perilous
23 times we're all in across government. But it's going to
24 improve. And I think as long as we keep our sense about
25 us and work with the people life will turn out fine.

1 I'm glad that you're here and enjoy the not so
2 good weather. You just missed it. We've had beautiful
3 weather all summer long, which is the first summer in
4 several years we've had any summer at all. The guys
5 from Dillingham and places like that, they're the only
6 ones that like it up here in this kind of weather, so we
7 don't mind that.
8 So, anyway, that's my short introduction. And
9 if there's anything we can do to help you while you're
10 here, any services you need, call Glenda. I'm going to
11 Seattle tomorrow to officiate at a wedding so I won't be
12 in town, but nice to meet you all.
13 ELDRED LESANSEE: Thank you very much.
14 DEBBIE MEISNER: Thanks, Niles.
15 ELDRED LESANSEE: Thank you. We appreciate
16 you taking the opportunity to come out and do the
17 introductions. I think you set a good stage for us and
18 gave us a little bit of insight as to how you're set up.
19 And I was really surprised to see the numbers, I mean,
20 particularly the number of federally recognized tribes.
21 NILES CESAR: It's about 40 percent of the
22 nation up here. Nice to meet you all.
23 ELDRED LESANSEE: Thank you very much.
24 DEBBIE MEISNER: Thanks.
25 Should we continue around the table?

1 ELDRED LESANSEE: Yes, please.
2 GLENDA MILLER: Good morning. This is Glenda,
3 the trust officer for Alaska.
4 ROSE FOSDICK: Good morning. I'm Rose
5 Fosdick. I'm from Nome. I'm the VP for Natural
6 Resources Division and I'm here to learn and understand
7 and help with the programs of appraisal and allocation
8 processes.
9 ERIC LARSEN: Good morning. I'm Eric Larsen
10 from Kawerak Land Management.
11 LEE FRAZIER: I'm Lee Frazier with the Office
12 of the Special Trustee, Office of External Affairs. And
13 I just wanted to add something very quickly to what
14 Debbie said. During the course of this consultation, if
15 you have a question -- and this is for both the people
16 on the phone and around the table, if you could state
17 your name for the record so the court reporter is aware
18 of who is saying what.
19 ELDRED LESANSEE: And the reason for this is
20 to help us carry the message forward. And if you have
21 comments and so forth, we can identify where it came
22 from. And so if we need to do a follow-up, it will help
23 us out.
24 My name is Eldred Lesansee. I'm the deputy
25 chief appraiser for the Office of Appraisal Services

1 with OST, and I'm located in Albuquerque, New Mexico.
2 PAUL ROEHL: What street?
3 Hi. This is Paul Roehl. Good morning, guys.
4 BIA supervisor and realty specialist. Good to see you
5 guys.
6 ELDRED LESANSEE: What street?
7 THE REPORTER: My name is Valerie Martinez.
8 I'm the court reporter with Midnight Sun Court Reporters
9 in Anchorage.
10 GINA DOUVILLE: Gina Douville, Association of
11 Village Council Presidents, Bethel, Alaska.
12 TOM HOSETH: Tom Hoseth, realty officer, BBNA.
13 LYNDA NASHALOOK: Lynda Nashalook, Office of
14 Appraisal Services.
15 JENNESS BURNS: Jenness Burns, regional
16 supervisory appraiser, Office of the Special Trustee
17 Appraisal Services, Alaska Region.
18 TROY WALSEN: Troy Walsen, review appraiser,
19 Office of Appraisal Services in Anchorage here.
20 LONA SCHROEDER: Good morning. My name is
21 Lona Schroeder. I'm with the Bristol Bay Native
22 Association Land Management Services out of Dillingham.
23 I'm a realty specialist.
24 ELDRED LESANSEE: Well, welcome, everybody.
25 Can we have an introduction of the people on

1 the phone?
2 MARILYN EGOAK: Marilyn Egoak for Kwethluk.
3 ELDRED LESANSEE: Welcome.
4 NELLIE RIGHT: My name is Nellie Right,
5 calling from Sitka, from the Sitka Tribe.
6 ELDRED LESANSEE: Welcome.
7 THELMA STARR: Thelma Starr from the Tanana
8 Tribal Council.
9 ELDRED LESANSEE: Welcome.
10 And who else?
11 JUDITH RAMOS: Judith from Yakutat Tlingit
12 Tribe.
13 ELDRED LESANSEE: Welcome.
14 And the next person?
15 MATTHEW WILSON: Matthew Wilson, the
16 superintendent for the Fairbanks office.
17 ELDRED LESANSEE: I'm glad you're able to
18 attend.
19 LESLIE DeWILDE: Leslie from the Fairbanks
20 office.
21 CAROLINE NOTTI: Caroline from the Fairbanks
22 office.
23 ELDRED LESANSEE: Anybody else?
24 Welcome. Has everybody got a copy of the
25 presentation?

1 SPEAKER: Yes. Fairbanks has it.
2 NELLIE RIGHT: Sitka has it.
3 MARILYN EGOAK: Kwethluk has it.
4 THELMA STARR: Tanana has it.
5 ELDRED LESANSEE: Anyone that doesn't have it?
6 We can send it to you if you give us a fax number.
7 Okay. I think it would help to have a copy of
8 the presentation as we go along. But what we'll do is
9 since we have a small group, as long as we identify
10 ourselves before we present a comment or suggestion or
11 recommendation and so forth, I think we can answer your
12 questions as we go along in the presentation. And then
13 at the end, we can also open up the presentation -- the
14 discussions. We can have a Q&A session on anything that
15 you want to relate to appraisals. We can't answer
16 questions on realty, but we can be sure to give it a try
17 as far as evaluations are concerned.
18 And we've had just broad discussions on
19 various things. And we've learned from each other as
20 each session went along. And we'll present some of the
21 ideas and comments that we've gathered along the way,
22 too, as well.
23 The purpose of the tribal consultation is to
24 discuss ideas in developing new tribal shares and to
25 evaluate existing tribal shares formulas that were used

1 to apportion funds to tribes performing -- or those
2 tribes interested in performing the appraisal
3 preparation function pursuant to the Public Law 93.638
4 and the self-governance compacts -- 93.638 contracts and
5 self-governance compacts.
6 We're hopeful that these -- that the tribal
7 shares formula that results at the end of all these
8 discussions provides uniformity, transparency, and on
9 the funding shares funding residual for the federal
10 inherent functions and also to provide information to
11 the tribe as to how much money is available as far as
12 after the residual is taken out for contracting and
13 compacting.
14 And the other thing that I think became
15 apparent is tribes are asking for information on how
16 much is -- what is the appropriation for the appraisal
17 program in general for OST and then the allocations for
18 each of the regions and how that's done. And at the
19 end -- I mean, as we go along, I think all the
20 information is going to be presented so that it will
21 help, I think, facilitate a decision on how and where we
22 go with this tribal shares project.
23 To give you a little bit of background. In
24 1995, tribal shares formulas were generated for each of
25 the 12 regions, the BIA regions, and appraisals was part

1 of the real estate services program at the time. And in
2 some cases some regions were separated from the real
3 estate services program, but others, they were combined
4 together.
5 And since that time there was a decision made
6 to freeze the tribal shares amounts. We've heard
7 from -- some information that the reason -- maybe part
8 of the reasons why the tribal shares were frozen was
9 they didn't anticipate, you know, new tribes to be
10 recognized, many changes as far as new tribes coming on
11 board, the funding to change from year to year, and also
12 to provide stability for tribes so that, you know, if
13 they hire people that they'll have the money in place to
14 have some stability so that they don't have the
15 fluctuations in budgets and so forth. That's some of
16 the information that we've gathered.
17 But I think what we're hearing the last seven
18 years is that the amount of tribal shares to those
19 tribes that are participating, and maybe those tribes
20 that anticipate on coming on board, feel that there
21 isn't -- think that there isn't enough money available
22 to carry out the program. And that's part of the reason
23 why we're here, to discuss -- you know, to present the
24 issues and also to get -- gain -- to get your ideas
25 on -- and your thoughts and your comments about this

1 tribal shares formula and this problem -- this issue
2 that's brought to our attention.
3 And with that, I think -- we appreciate --
4 first of all, I really appreciate you taking the time to
5 come out and listen to what we have to say. And I
6 open -- I hope that we have a candid open dialogue on
7 the issues. And maybe there's some unique issues here
8 in Alaska that we're not aware of, but we will present
9 what we've heard in the previous discussions.
10 We've had tribal shares consultations in
11 Oklahoma City. We started there on June 30th. And then
12 we went to Rapid City on the 14th. And we just ended
13 another session in Billings, Montana, on August 4th.
14 And this is the fifth session, and we'll end in
15 Albuquerque on the 18th. And then from there we'll
16 determine which direction we'll go. And we'll share
17 some of the comments that we've had from some of the
18 tribes so far.
19 And with that, we'll start the presentation
20 with the background.
21 SLIDE PRESENTATION ON TRIBAL SHARES PROJECT
22 ELDRED LESANSEE: We already talked about the
23 1995 region-by-region formulas to allocate tribal
24 shares. The appraisal program was transferred from BIA
25 to OST in 2002. And the awarding officials in BIA and

1 OST agreed to continue the region-by-region formulas to
2 maintain continuity.
3 Back in the -- one thing I need to add to this
4 presentation was when we were transferred -- prior to
5 being transferred, we had a vacancy in the Office of
6 Appraisal Services in the chief appraiser's position.
7 And our budget was at that point in time around $3.4
8 million. And when they hired the chief appraiser and
9 our office also separated into a separate unit, the
10 budget went up to about -- let's say around $10.9
11 million, I believe. And then we were transferred over
12 to OST in 2002 at the decision of the Special Trustee at
13 the time, Tom Slonaker -- wasn't it -- and by Secretary
14 Order 3258, I believe. The program was transferred to
15 OST.
16 Existing Tribal Share Formulas. Across the 12
17 regions we've identified these -- the following
18 formulas; equal division, land-based division,
19 population-based division, workload-based division, and
20 the hybrid division using the weighted components.
21 The easiest, I think, to determine is probably
22 the -- starting with the equal division. It's easiest
23 to calculate but it's probably not compliant with the
24 existing statutes and it probably doesn't also correlate
25 with the amount of appraisal needs by the region.

1 And I think the -- as far as we know, Lee, I
2 think probably the Midwest Region is the only region
3 that's currently applying this.
4 LEE FRAZIER: Yeah. Midwest Region is the
5 only one that we've identified so far that uses that.
6 And it's very simple what they do. They just take
7 the -- they take the regional allocation, the regional
8 budget, they take away the residual -- which I think
9 across the board now is 20 percent -- they take away the
10 20 percent residual, and what remains then, they simply
11 divide by the number of tribes in the region and every
12 tribe gets that allocation -- gets that equal division
13 no matter what their workload needs are.
14 And so, again, it's very easy to calculate.
15 We have questions about whether that method of
16 allocating is in compliance with the law, but we can get
17 back to that later, why we think it may or may not be.
18 ELDRED LESANSEE: Yeah. We'll go in detail as
19 to how each of these formulas are applied.
20 The land-based division has no strong
21 correlation with appraisal needs. I believe Alaska
22 Region uses the land-based division but I believe you
23 guys use, not acreage but parcel, number of parcels.
24 LEE FRAZIER: I think it's -- in Alaska, they
25 do use acreage but they also have what's essentially a

1 weighted component for town sites. They give a little
2 boost to the town sites.
3 No? How do you figure in-town sites?
4 GLENDA MILLER: I believe -- is it still just
5 purely trust parcels, Paul?
6 PAUL ROEHL: I don't know how they calculate
7 that.
8 GLENDA MILLER: For realty?
9 LEE FRAZIER: Oh, I'm sorry. You're right. I
10 said acreage. It's parcels. It's parcels. But don't
11 you give -- when the town sites are figured in, are they
12 not given a bump?
13 GLENDA MILLER: No.
14 LEE FRAZIER: So it's just purely --
15 GLENDA MILLER: Purely trust parcels for the
16 appraisal. And the pure realty programs for like ANILCA
17 and other programs, there's different weights applied.
18 But for appraisals, it's purely trust parcels.
19 LEE FRAZIER: In the Indian Country Alaska is
20 the only region that uses a purely land-based --
21 ELDRED LESANSEE: Yes.
22 LEE FRAZIER: -- method for dividing up.
23 ELDRED LESANSEE: And the population-based
24 division is similar to the land-based. There's no
25 strong correlation with appraisal needs. And like the

1 land-based formula there are some limitations, which we
2 can talk in detail later on.
3 Workload-based formulas is strictly looking at
4 the amount of work that OES provides each of the tribes
5 or groups or entities. And that seems to have the
6 strongest correlation to the amount of appraisal needs,
7 but there are some limitations, too, as well.
8 The hybrid division uses weighted components.
9 It could use the population, the workload-based, and
10 also the land-based. And that is complicated, too, and
11 we'll demonstrate that.
12 And the complications come with the gathering
13 of information. And it also is complicated in just
14 trying to understand it because you use weighted -- you
15 know, weights to try and, I guess, identify what factors
16 have direct correlation with the assumption that
17 certain weight -- the higher weights have direct
18 correlation with the amount of appraisals that's needed
19 for the tribes.
20 Reasons for Revising. Tribal shares, as I
21 mentioned before, were calculated in 1995 and haven't
22 changed. Tribal shares have not been recalculated in
23 step with increased regional appraisal budgets. There
24 may be inequities between tribes that have contracted or
25 compacted at different times, meaning that those who

1 have contracted back in 1995, they may have been
2 negotiated under a budget, a nationwide budget, of
3 $3.4 million. And those that recently came on board,
4 they may have negotiated based on current dollars at a
5 higher amount. And the other difference might have been
6 the residual that was applied to the allocation of each
7 of the regional offices or where the -- applied to the
8 regional appraisal budget at the point in time when they
9 negotiated.
10 Benefits of Revising. Revised formulas will
11 ensure uniformity and transparency in determining tribal
12 shares and funding residual for the inherent federal
13 functions. Currently the inherent federal functions
14 that are identified for the appraisal program is the
15 review and approval functions. And what the commercial
16 activity that's available to the tribes to contract and
17 compact is the appraisal preparation function.
18 LEE FRAZIER: We're on -- for everybody
19 following along, we're on slide six now, which says
20 Statutes and Regulations. And what we have here is the
21 statute. This is actually the statutes from Title I,
22 which applies to contracting. There's basically the
23 same language in the Title IV portion of the statute
24 that applies to compacts. And I believe everyone in
25 Alaska is a compacting tribe, but the language is the

1 same.

2 And I'll just read -- this is the language

3 that we believe is controlling for how we should go

4 about determining the allocations. And I'll just read

5 it:

6 "The amount of funds provided under the terms

7 of the self-determination contracts" -- read compacts

8 for you -- "under the terms of the compacts entered into

9 pursuant to this subchapter shall not be less than the

10 appropriate Secretary would have otherwise provided for

11 the operation of the program or portion thereof for the

12 period covered by the contract."

13 Now, what exactly that means is not crystal

14 clear, but what we interpret that to mean -- have

15 interpreted that to mean is that a share is -- the share

16 that should be allocated to the tribe is what the

17 Secretary otherwise would have expended, providing

18 direct services to that now contracting or compacting

19 tribe for that program.

20 In other words, if you were not a compacting

21 or contracting tribe, if the service were being provided

22 to you as direct service, what other -- whatever money

23 the Secretary would have spent providing that direct

24 service to you, if you now compact that program, then

25 the share you should receive for that shall not be less

1 than what the Secretary otherwise would have spent on
2 you.
3 PAUL ROEHL: Hey, Lee?
4 LEE FRAZIER: Uh-huh.
5 PAUL ROEHL: We had two people call in.
6 Hello, do we have new people on the phone?
7 DESIREE DUNAN: Yeah. This is Desiree.
8 PAUL ROEHL: Hey, Desiree.
9 DESIREE DUNAN: Hi. Yeah, we had a power
10 outage. And, actually, I'm on my cell phone, so...
11 ELDRED LESANSEE: What group do you represent?
12 DESIREE DUNAN: Tlingit and Haida.
13 LEE FRAZIER: Then you've heard this before.
14 EVA HUNT: Eva from Maniilaq.
15 PAUL ROEHL: Eva Jane.
16 ELDRED LESANSEE: Welcome. I'm glad you're
17 able to join us.
18 We're on page -- did you get a copy of the
19 presentation?
20 EVA HUNT: Yeah.
21 ELDRED LESANSEE: We're on page four.
22 LEE FRAZIER: Six.
23 ELDRED LESANSEE: Six. I'm sorry.
24 LEE FRAZIER: Slide six.
25 ELDRED LESANSEE: Slide six, yeah. But page

1 four on the handout.

2 LEE FRAZIER: Yeah. And we were just going

3 over controlling statute for determining what -- the

4 controlling statute for determining what the

5 allocation -- what an allocation should be. And just to

6 reiterate, OST interprets this statute to mean that a

7 share is what the Secretary otherwise would have

8 expended providing direct services to the now

9 contracting or compacting tribe for that program. And

10 that share should not be less than what the Secretary

11 otherwise would have spent providing direct service for

12 that program.

13 And there's a couple of regs now -- we're out

14 of statutes and into the regs -- that have some impact

15 here. One of them -- we're on slide seven -- is

16 25 CFR 1000.94.

17 "BIA residual funds are the funds necessary to

18 carry out BIA residual functions. BIA residual

19 functions are those functions that only BIA

20 employees" -- and OST employees -- "could perform if all

21 tribes were to assume responsibilities for all BIA

22 programs that the Act permits."

23 And I'm sure some of you are familiar with the

24 term "residual." You know what that means. If you

25 don't, it's the money that the department holds back to

1 perform that function. It's those things -- it holds
2 back those moneys to perform what are called inherently
3 federal functions or inherently governmental functions.
4 That's what the residual is.
5 For OAS a few years ago, that residual was
6 determined to be 20 percent so that -- for the Alaska
7 Region when Alaska Region is given its regional
8 allocation, 20 percent is withheld from that allocation
9 to perform the inherently federal functions.
10 And just to be clear about what that's not --
11 because sometimes it's confusing. Maybe not so
12 confusing for Alaska because you don't really have that
13 many direct service tribes. Do you have any direct
14 service tribes?
15 GLENDA MILLER: As far as the realty and the
16 appraisal program?
17 LEE FRAZIER: Right.
18 GLENDA MILLER: Yes. BIA provides, Fairbanks
19 agency, and the regional office do provide direct
20 services.
21 LEE FRAZIER: If -- to go back to what the reg
22 says, residual functions are those functions that only
23 BIA could perform if all tribes were to assume the
24 responsibilities.
25 So we're basically talking about three slices

1 of money: There's the residual, which is 20 percent;
2 there's the money that's given out to the 638 tribes for
3 compacts; there's another slice of money that the
4 department spends directly but it's spent providing
5 direct services to tribes, and that money is not the
6 residual. The residual is the money that's held back to
7 perform inherently federal functions, inherently
8 governmental functions. It's the money that would be
9 held back even if every tribe were compacting out the
10 program.
11 So is that clear? There's kind of three
12 slices of the pie.
13 Moving on to the next reg that has some impact
14 here, 25 CFR Section 1000.95, quoting from the
15 regulation:
16 "Residual information will consist of residual
17 functions performed by the BIA, a brief
18 justification" -- this has been edited.
19 ELDRED LESANSEE: No, it hasn't.
20 LEE FRAZIER: Oh, it hasn't? Okay.
21 "-- a brief justification why the function is
22 not compactable, and the estimated funding level for
23 each residual function. Each regional office and the
24 central office will compile a single document for
25 distribution each year that contains all the residual

1 information of that respective office."
2 This is a regulation that we basically have
3 not been in compliance with for the past few years and
4 we intend to come into compliance starting with next
5 year. And, actually, in the reg it says the date. By
6 March 1st of every year we will begin giving out to all
7 the tribes in probably a "Dear Tribal Leader" letter a
8 listing of what the residual is, what the government is
9 holding back performing those residual functions, what
10 those functions consist of, and a brief justification of
11 why that function is not compactible. In other words,
12 why that is deemed an inherently federal function.
13 ELDRED LESANSEE: And like Lee mentioned,
14 we're on slide number eight talking about Residual.
15 The current residual for the appraisal program
16 is 20 percent and that was established by policy. The
17 former chief appraiser of the Department of Interior
18 established it by policy of 20 percent. The current --
19 the new programs that are negotiated use the 20 percent
20 to establish the residual amounts.
21 What's in the future? OST will need to ensure
22 that the residual is sufficient to fund those activities
23 which by law must be carried out by federal officials.
24 As Lee mentioned, they're the inherent federal functions
25 or the government functions. And at this point, they

1 identify functions for the appraisal program since we're
2 specifically discussing the appraisal tribal shares.
3 It's review and approval.
4 Appraisal Process. This is a very simplistic
5 presentation of the appraisal process. But within that
6 it demonstrates where the activities are that -- the
7 commercial activities versus the inherent federal
8 functions.
9 As you guys all know here that the appraisal
10 process starts with an appraisal request. And that's
11 submitted by BIA or tribal entity or contractor for the
12 tribal program. And then the appraisal report is
13 that -- that's where the commercial activity is. That's
14 the appraisal preparation function.
15 And then the appraisal report is review and
16 approval. That's the IFF for the inherent federal
17 function. And that's where the residual -- residual
18 funds this activity. And then our process ends with we
19 transmit the product to the client.
20 And, Glenda, you have a comment?
21 GLENDA MILLER: I was just going to say that
22 because people are looking at faxed copies they might
23 not be able to read the bottom level. Under the
24 appraisal request it says subject to approval by BIA
25 line official.

1 ELDRED LESANSEE: Yes.
2 GLENDA MILLER: And then under appraisal
3 report, review and approval, it says funded by residual.
4 ELDRED LESANSEE: Yes.
5 GLENDA MILLER: And then transmit product to
6 client; of course that's the end of the process.
7 ELDRED LESANSEE: Right. Thank you.
8 LEE FRAZIER: I just want to add to it. Go
9 back to that. The reason that we kind of had that
10 pipeline up there is to demonstrate that, you know, this
11 is a pipeline and you don't get your end product until
12 you hit every step. And I think not just in appraisals
13 but in all BIA programs there's usually a tug of war
14 between tribes and the federal government about how big
15 the residual should be. And not surprisingly the tribes
16 want the residual to be smaller. Usually the government
17 wants it to be bigger.
18 One thing to bear in mind, though, that third
19 box, the appraisal review and approval, which is an
20 inherently federal function, because this is a pipeline,
21 if you squeeze that thing too small, you're going to get
22 fewer products at the end. So that's one of our
23 considerations we have to bear in mind is that on the
24 one hand we have the balance. It has to be truly an
25 inherently federal function. We can't be artificially

1 inflating that, but we don't want to shrink it so small
2 that reviews can't be completed in a timely way because
3 that ultimately ends up hurting tribes because they
4 won't be getting the products out on the other end.
5 TOM HOSETH: Question. Tom. Is that residual
6 adequate now for Alaska?
7 ELDRED LESANSEE: There's been a lot of
8 discussion on that residual amount. I mean -- well,
9 especially -- particularly when we talk about 1995.
10 We're not quite sure. They may have been done by --
11 through justification, through negotiations and so forth
12 because that was the -- tended to be the process was
13 open discussion. But now with the tribes that are -- I
14 don't know if anybody -- any tribes here in Alaska
15 recently came on board after 1995 -- or after 2002,
16 actually? Do you know of any tribes that have come on
17 board?
18 LEE FRAZIER: I don't know of any Alaska
19 tribes. I mean, there were some tribes that asked us
20 for -- that basically inquired about the program. I
21 think Bristol Bay was one of them. But I don't think we
22 added anyone since 2002.
23 ELDRED LESANSEE: So if that's the case maybe
24 in Alaska all the tribes were probably -- you know,
25 entered the program with the old process instead of the

1 20 percent, you know, policy that was recently
2 established.
3 LEE FRAZIER: Yeah, it was -- I mean, I
4 think -- well, you guys probably know this better than I
5 do. My understanding of the residual that was
6 negotiated back in '95, it was not percentage. It was a
7 flat amount.
8 GLENDA MILLER: Yes.
9 LEE FRAZIER: And what was it? $180,000?
10 GLENDA MILLER: It wasn't $180,000 because the
11 appraisal budget was quite a bit lower than it is now.
12 I think it was -- was it less than $100,000, Jenness?
13 It was basically to fund one position.
14 JENNESS BURNS: I believe it was. There was
15 just one position at that time.
16 GLENDA MILLER: Right.
17 LEE FRAZIER: It was tiny. And I think
18 over -- as the years went by, that residual that had
19 been negotiated became practically unsustainable because
20 you just could not perform those functions with that
21 minuscule amount of money.
22 Going now to the next slide, slide 10. And
23 now we're going to begin looking at the different ways
24 that -- the different methods of allocating the formula
25 or calculating the formula.

1 One of the ideas that we've talked about --
2 and this is the method that's used -- I think
3 Northwestern uses a purely workload-based formula.
4 Other regions, I think Oklahoma now uses -- there's a
5 half and half.
6 ELDRED LESANSEE: Eastern Oklahoma.
7 LEE FRAZIER: Eastern Oklahoma is a half and
8 half. We'll just basically walk through. And I
9 apologize, there's some math involved here. But it's
10 actually not as difficult as it sounds.
11 What you do to calculate a workload-based
12 share is you take -- as we did before, you take the
13 regional budget and you subtract residual. So if it's a
14 20 percent residual and you've got a regional budget of,
15 say, $1 million, then you take away your 200,000-dollar
16 residual, you're left with an available regional budget
17 of about $800,000.
18 Then to get the workload-based part of that,
19 you take an average tribal workload and you divide it by
20 an average regional workload. And what we mean by
21 average depends. You could have a three-year average,
22 you could have a five-year average, you could have a
23 seven-year average. The more years you have in that
24 average, the smoother your demand curve is going to be.
25 The smaller it is, it's going to get spiky.

1 So if you had -- you know, one year you have
2 20 appraisal requests, the next year you have three, the
3 next year you have 10, it's going to be very spiky.
4 Whereas if you have a larger number of years, it's going
5 to be a smoother demand curve, so that's one of the
6 considerations that we have to consider is how many
7 years do we want to build into that average.
8 So you just take an average tribal workload
9 over a number of years, you divide that by the number
10 of -- by the average regional workload and you're going
11 to come up with a percentage. You multiply that
12 percentage by the available regional budget and that
13 will be the tribal share.
14 ELDRED LESANSEE: The limitations with this
15 formula is that if it's applied and there's tribes in
16 the region that don't have a very active appraisal
17 program, they might have zero as their amount each year,
18 the average will be zero, so what do you start with?
19 You may not be able to enter it into the program. So
20 that's a limitation if you just look at it purely just
21 as workload-based.
22 LEE FRAZIER: Right. And to add one more
23 thing to this, if you see the one bullet on there, OST
24 intends for this formula to be dynamic. Right now the
25 formula is static. The share you have -- very likely

1 the share you get right now is the share that you -- was
2 calculated for you in 1995.
3 Now, I think's there's a handful of tribes in
4 Alaska that got a bit of a bump -- I think maybe
5 Kawerak, a few others -- because there was an
6 adjustment, but that's kind of an odd case.
7 Going forward, we would like to make this
8 formula dynamic; that is, we would like every year to
9 revisit the averages, revisit the workload, and say --
10 this is on the assumption that we'd be using the
11 workload-based formula.
12 If we were to use a workload-based formula we
13 would go back every year and say what was your appraisal
14 workload last year and we'll calculate a new average.
15 What was the region's workload. And so every year it
16 would be recalculated.
17 The good news from the tribe's perspective
18 probably is that that number then would be multiplied by
19 the new regional budget. So if there's a regional
20 budget increase, you're very likely -- unless your
21 demand has decreased relative to your region, every year
22 you're likely to get a share increase.
23 ELDRED LESANSEE: And a gentleman from
24 Kawerak, I can't remember --
25 LEE FRAZIER: Troy Walsen.

1 ELDRED LESANSEE: He mentioned, and it was a
2 good point as far as this workload-based formula and I
3 think it needs to be presented here, is that because
4 it's dynamic each year and your workload fluctuates and
5 the formula is adjusted to the fluctuations, the
6 instability in it. If you have a staff person on board,
7 what do you do because your budget is going to go down?
8 It's going to be hard to maintain that employee. So the
9 dynamic could also work against you, too, as well. So I
10 think that's one point that he brought up. So how do
11 you flatten that out so that you have some stability.
12 LEE FRAZIER: Well, one way you can flatten it
13 out of course is to increase the number of years that
14 you include in the average. I think the difficulty we
15 may have -- we may have a practical limit on how far we
16 can reach back. I don't know if we have seven years of
17 good data to calculate an average. We might.
18 And, again, we're not trying to do this just
19 for Alaska. We're trying to do this across Indian
20 Country. So we've got 12 regions that we have to
21 consider. Do we have seven years of good data for all
22 of Indian Country? And if not, do we have five good
23 years? Well, maybe we start out with five and build it
24 to seven.
25 But again, one of the things to consider, it

1 is important, I think, from a budget planning
2 perspective, that you have some predictability, so you'd
3 want that to be pretty smooth. On the other hand, if
4 you're from a region where you're expecting over the
5 next three years, your appraisal needs to really go up,
6 you want that curve to be responsive.
7 And if you're averaging it out over seven
8 years instead of, say, three years, it's not going to be
9 responsive at all. It's going to be -- you know, it's
10 like a moving average on the stock market. The more
11 years you include on it, you know, it doesn't go up very
12 fast, it doesn't go down very fast. So those are just
13 some considerations.
14 GLENDA MILLER: This is Glenda. One of the
15 things that we discussed in Portland also is that it's
16 difficult to account for the appraisals that weren't
17 requested. For instance, Kawerak has an appraisal
18 budget. And so they know that's how much money they can
19 spend on their appraisal program and maybe that will,
20 you know, allow them to purchase four appraisals or six
21 appraisals or whatever that number is. But how many
22 requests for appraisal would they have processed if they
23 had an unlimited budget or a more reasonable budget, so
24 that was another question that we had talked about in
25 Portland.

1 Because I know for instance -- I know -- and
2 Desiree can certainly speak for herself. She's on the
3 phone -- that that's something that Tlingit and Haida
4 has -- well, everybody has to budget. I know that there
5 are some programs, some tribal realty service providers,
6 that supplement their appraisal program with realty
7 money. So you know, they are going to be able to
8 demonstrate maybe a more true need, so for what that's
9 worth.
10 LEE FRAZIER: Yeah. And that kind of -- go
11 ahead, Tom.
12 TOM HOSETH: The other thing, my concern, if
13 you go back seven years, what we're experiencing in our
14 area there's increasing because, you know, people are
15 getting more educated in what they can do and older
16 people are passing away, the younger people are more
17 aggressive. They want to do stuff with the property.
18 We have a lot more trespassing that's going on. People
19 are aware of their property rights. So I see it as in
20 the future it's going to increase. But if you go back
21 seven years, to me, it's going to give a false
22 representation of what's needed.
23 And the other thing is that we've been working
24 for many, many years for people to get title to their
25 property and we still have a large number of allotments

1 that haven't even been certified yet. Until you account
2 for those as part of -- when they get certified, you
3 know, the amount of time that will happen will increase.
4 I just wanted to raise that point.
5 LEE FRAZIER: No, I mean, these are all
6 considerations and they have been raised before. And a
7 big one, one that we're going to have to think about and
8 we're going to have to get your input and we're all
9 going to have to think about together, is what you mean
10 by demand. What exactly are you measuring? Are you
11 measuring just the request I've submitted, are you
12 measuring what has actually been completed, and then the
13 kind of -- the thing I guess that's being brought up now
14 that Glenda brought up, well, the demand that I'm
15 submitting to you is kind of a false demand. It's a
16 demand that I've already kind of artificially truncated
17 because I know there won't be the money there. I might
18 have a real demand of 16 but I'm going to give you eight
19 because I know that's all the money I have. So is that
20 really the demand?
21 ELDRED LESANSEE: So you might have
22 anticipated demand and actual demand -- actual activity.
23 TOM HOSETH: Well, that's what creates the
24 backlog, just what you said. That's why we have a
25 backlog. It keeps building up and gets worse and worse.

1 We need to plan for it now to say, look, we're
2 anticipating these -- these requests came in. These are
3 real needs. These people don't put requests in just to
4 put a request in.
5 LEE FRAZIER: I suspect that by the time we
6 get to the end of this what we'll end up with is some
7 maybe rather complex way of measuring demand. But,
8 again, I mean, we're just kind of at the idea exploring
9 stage. We're trying -- this is good because we are
10 bringing to life all the complexities that's involved in
11 this process. And we don't have any good answers yet.
12 I think we've got some directions we might go, but we
13 need to think about -- we need to think about these
14 issues.
15 And, again, we're just illustrating the math.
16 I suspect that everybody kind of knows how this works,
17 but we'll go through it. We're on slide number 11. And
18 this is just a hypothetical workload-based method --
19 workload-based allocation for a tiny region of three
20 tribes. And this would be in the assumption of a
21 three-year average. Again, we haven't decided on
22 three-year averages. This is just for illustrative
23 purposes.
24 You see Tribe A there. They've got a pretty
25 steady demand across three years. They have 35

1 appraisals; 30 appraisals; 31 appraisals.

2 Tribe B, you can see, their demand is ramping

3 up. In FY 2005 they had none, then in 2006 they had

4 two, and in 2007 they had 10.

5 Tribe C, their demand is ramping down -- it's

6 going down; 20, 10, six.

7 The way we calculate this tribal share on --

8 using a three-year average, you've got a regional budget

9 of $100,000. You take away your 20,000-dollar residual.

10 You have an available regional budget of $80,000.

11 Then we look at the regional average workload.

12 And what we did, we ended up with all those numbers. We

13 divided it by three. We got a regional average of 48.

14 Then you look at Tribe A. Tribe A has a

15 three-year average of 32. You take 32, divide it by 48,

16 and you get 66.67 percent, basically two-thirds.

17 66 percent. You multiply that 66 percent by the

18 available regional budget, which is $80,000. You get a

19 tribal share of $53,336.

20 Does everybody -- is everybody following the

21 math on that or does anybody have any questions about

22 how we did that?

23 The same with Tribe B. Their three-year

24 average was only four. And you take the four, divide it

25 by 48, 8.33 percent, multiply that by $80,000, you get

1 about $6600.

2 Tribe C. They have a three-year average of

3 12, divide it by 48, 25 percent. You multiply that 25

4 percent by $80,000, you get a tribal share of $20,000.

5 Now, Tribe B and Tribe C, if you look at them,

6 they're a good example of Tribe B saying, hey, let's go

7 with the one-year average because then my demand is 10,

8 not four. Whereas Tribe C, they'd probably say, you

9 know what, I think a seven-year average would be better.

10 Because if their demand is going down, they want -- they

11 want that applied to the average.

12 So you can see that different tribes might

13 have different desires for how long they want this

14 average to be. And somehow we have to come up with an

15 average that works for the entire state -- entire

16 region, basically.

17 ELDRED LESANSEE: On the next slide, on slide

18 12, what it really demonstrates -- it's the same math.

19 You have the same hypothetical regional budget and you

20 have the 20 percent and then you have available funding

21 of $80,000. And your regional average is pretty close

22 to the same. I mean, the first slide -- the first

23 example has a regional average of 48. And then in this

24 one you've got 45 because there's not a whole difference

25 in the first example to the second. But where the

1 differences are, that Tribe B, their average went up and
2 Tribe C's average went down.
3 And you can see the differences in the
4 allocations. For Tribe A they originally had a
5 53,000-dollar tribal share. And in this second example
6 it's 54,000. So it's pretty close, but the difference
7 is in the amount of work each year.
8 For instance, Tribe B, their activity went up
9 from two, 10, and 10. And then Tribe C, their workload
10 is going down. And so if you look at the bottom line
11 for Tribe B and C, in the first scenario it was $6600
12 for Tribe B as a tribal share and 20,000 for Tribe C.
13 And in this case, you have 12,000 -- roughly $13,000 for
14 Tribe B and C.
15 So it shows how workload can affect your
16 tribal share by whether you're going down -- your
17 workload is going down on a three-year average or going
18 up. It affects the bottom line.
19 LEE FRAZIER: This is one very -- the math on
20 this one is very easy. You can actually just ignore all
21 those numbers about workload because this is equal
22 division. It doesn't matter what your workload is. You
23 just take the 100,000-dollar regional budget, you take
24 off the 20,000-dollar residual, you have available
25 regional budget of 80,000. You've got three tribes.

1 You divide 48 -- basically, you just divide 80,000 by
2 three. Every tribe gets $26,667.
3 So the workload is irrelevant. So the math
4 here is very straightforward. You can basically just
5 ignore all those workload numbers.
6 ELDRED LESANSEE: Even though Tribe A has the
7 most activity and Tribe B -- Tribe C, actually, their
8 activity is going down, they still get the same amount.
9 LEE FRAZIER: This is probably a good point to
10 address why we think an equal division is probably not
11 compliant with the statute, because the statute says
12 that what a tribe -- a compacting tribe should receive a
13 share that's not less than what the Secretary otherwise
14 would have spent on that tribe.
15 And like to say, for example, a tribe that had
16 no -- they had a three-year history of no appraisal
17 requests. Under an equal division, they would get the
18 same share as everyone else. Now, it's hard to argue
19 that if these were all direct service tribes the
20 Secretary would be spending that money on that tribe.
21 He wouldn't -- you know, the Secretary would not -- the
22 Secretary would be spending those funds for the tribes
23 that have the greatest appraisal need.
24 So I guess from our perspective an equal
25 division is probably not compliant with both the literal

1 meaning and the spirit of the statute, although there is
2 one region that does use an equal division.
3 ELDRED LESANSEE: Is there any questions from
4 the people on the phone? We haven't had a chance to see
5 if you have any questions. Is there anybody -- are you
6 able to follow along very well?
7 JENNESS BURNS: Are we still connected?
8 ELDRED LESANSEE: Is everybody still there?
9 SPEAKER: Yes.
10 ELDRED LESANSEE: Thank you. Feel free to
11 make any comments along the way. It might be difficult
12 to follow since you're not present at the -- in
13 attendance here. We can go back to each of these slides
14 later on at the end and we'll look at them in a closer
15 detail. But if you have any questions, feel free to
16 present them.
17 THELMA STARR: This is Thelma in Tanana.
18 ELDRED LESANSEE: Thelma?
19 THELMA STARR: Yeah, Thelma Starr. Have you
20 ever considered going -- doing like a base amount, you
21 know, so you're in compliance with the statute and then
22 go into like either the workload-based program funding?
23 LEE FRAZIER: Yeah, that is one way of -- that
24 would essentially be a -- what we call a hybrid
25 division. We have looked at -- that is one of the

1 things we have looked at is that you essentially have --
2 you say every tribe is going to get a base amount and
3 you have to decide what that would be. And then once
4 every tribe gets the base amount, then on top of that
5 you add another component, which would be either a
6 land-based division or a workload-based division, one of
7 the other forms of division.
8 But the plus side of that is it would ensure
9 that every tribe gets at least something, because you
10 don't -- even if you've had zero appraisal requests for
11 the last three years, you don't know if you might get
12 one next year. So it -- so in that case, you know,
13 that's the upside.
14 The downside for that particular way of doing
15 it, on the way that we -- as we crunched the numbers, in
16 some regions that becomes a problem because if, for
17 instance, you say we're going to have a base amount that
18 every tribe can at least perform one appraisal -- I
19 don't know what that is in this region. Some regions
20 that's like $1200 for one appraisal. Once you guarantee
21 every tribe that amount it very quickly eats up the
22 budget. So you'd have to have -- you'd probably have to
23 have -- you might end up having a base amount that's so
24 small it might not be worth it.
25 THELMA STARR: But don't you still have to

1 follow the statute to provide something to each tribe?
2 LEE FRAZIER: The statute -- actually, the
3 statute doesn't say that you have to provide something
4 to --
5 THELMA STARR: Oh, you don't have to. Okay.
6 LEE FRAZIER: No. It says that the Secretary
7 has to give the tribe what the Secretary otherwise would
8 have spent on the tribe. If the Secretary would not
9 have spent any money performing appraisals for that
10 tribe, the statute doesn't require that the tribe
11 receive anything.
12 THELMA STARR: Oh, okay. That makes sense.
13 ELDRED LESANSEE: Glenda?
14 GLENDA MILLER: This is Glenda again. I was
15 going to talk a little bit about what Lee was describing
16 as this hybrid formula. And the realty service
17 providers can maybe think about the ANILCA distribution
18 formula, which that's kind of what we did with that is a
19 certain percentage of that budget was set aside for --
20 per realty office got a certain based percentage and
21 then there was a percentage that was based on the Native
22 allotments and then there was a percentage of that that
23 was divided based on the Aguilar allotments. So there
24 is different ways that you can make it more meaningful.
25 ELDRED LESANSEE: Thank you.

1 Land-based division. We talked about this
2 earlier. It's pretty much looking at the acres and the
3 amount of -- in this case in Alaska you're working with
4 parcels. But in this hypothetical example, we've got --
5 we're working with a number of acres.
6 We have three tribes. The first tribe has
7 1,000 acres. The second tribe has 500 acres. Tribe C
8 has 100 acres. Same assumptions that you have a tribal
9 allocation of $100,000, 20 percent residual. The amount
10 of money available to the tribe is $80,000.
11 You take each of the -- the acreage for each
12 of the tribes by the total trust and restricted acreage
13 that's serviced by the region of 1600 acres, you divide
14 that into 1,000, 500, and 100 and you get your
15 percentages. And those percentages are applied to the
16 $80,000 to get you tribal share of $50,000, $25,000, and
17 $5,000.
18 And the assumption is, is that if the more --
19 Tribe A, since it's got the greatest amount of acreage,
20 they should have the greatest appraisal need. That's
21 the assumption based on this formula. And the Tribe C,
22 since they don't have very much acres, only 100 acres,
23 they should have the lowest amount of appraisal need and
24 the lowest tribal share as demonstrated there.
25 TOM HOSETH: This is Tom. But I don't think

1 that's true in Alaska. I mean, at least from our region
2 we have a smaller number of parcels compared to other
3 regions, but we have a high level of appraisal requests,
4 so the land-based doesn't work for us and that's why we
5 don't compact the services. Because if we get the money
6 we wouldn't be able to do very many appraisals.
7 LEE FRAZIER: And that's why an earlier slide
8 said one of the problems with the land-based allocation
9 formula methodology, as we see it, there doesn't seem to
10 be a very strong correlation between land-based and
11 appraisal needs. You can have a huge land base and
12 almost no appraisal requests. And you can have a
13 relatively small land base and have tons of appraisal
14 requests. So we have some problems with this strictly
15 land-based.
16 ELDRED LESANSEE: Yes. And I think --
17 LEE FRAZIER: But to reiterate, that is what
18 Alaska uses.
19 ELDRED LESANSEE: I think a good comparison to
20 that is probably Western and Navajo Region.
21 The Navajo Region is probably the third lowest
22 in number, Debbie, as far as workload?
23 DEBBIE MEISNER: Yes.
24 ELDRED LESANSEE: And they've got the biggest
25 land base. You can probably put, what, most of

1 Northeast United States probably and put it on top of
2 the Navajo Nation's reservation. But we have the third
3 least amount of workload there.
4 And then if you look at Western, their acreage
5 may not be as great. There's some tribes that have land
6 like in the Phoenix location, like the Salt River and
7 the Gila River, Pima-Maricopa Indian Communities. And
8 since they're along the urban areas, there's more
9 opportunities, economic opportunities, so they tend to
10 have more real estate activities and there's a direct
11 correlation to the amount of appraisals that tend to be
12 needed.
13 And plus they -- what we're seeing, too, is
14 the regions that have the highest amount of
15 fractionation is where we have the most amount of
16 activity, too, as well like the plains, whether it's the
17 Southern Plains, the Great Plains, the Rocky Mountains,
18 and the Northwest. Those areas have the highest
19 activity, it seems like.
20 So workload-based, I mean, the assumption is
21 there's a direct correlation with the amount of acreage
22 you have and the amount of appraisal needs.
23 I think Yakama is a good example of the
24 Northwest.
25 LEE FRAZIER: It is.

1 ELDRED LESANSEE: Yakama and Colville.
2 They're about the same acreage, but Yakama has got just
3 a diverse -- different types of appraisals and their
4 workload is very high versus Colville. They're more
5 isolated. They're remotely located. There's not -- the
6 population base isn't there and the activity for real
7 estate transactions and appraisal need is pretty low
8 compared to Yakama.
9 ROSE FOSDICK: Can I ask a question, please?
10 ELDRED LESANSEE: Sure.
11 LEE FRAZIER: State your name.
12 ROSE FOSDICK: Rose Fosdick from Nome. To put
13 it into perspective, what is Alaska's formula or
14 allocation process?
15 GLENDA MILLER: Yeah, the formula that was
16 negotiated in Alaska in 1995 ended up for the appraisal
17 program and for the strict realty program to be a trust
18 parcel formula. And what that is, is you took your
19 Native allotment parcels -- your certified, approved,
20 and pending Native allotment parcels -- and your
21 restricted deed town site lots and added all of those up
22 across the state and that was 100 percent. And so
23 that's -- and then you took your realty service
24 provider -- like Kawerak is the only realty service
25 provider that equals 100 percent to the regional

1 corporation. Everywhere else, it's split up a little
2 bit. But you take whatever Bering Straits' or Kawerak's
3 share percentages of the trust parcels and apply that to
4 the dollar amount that was available.
5 ROSE FOSDICK: For the state?
6 GLENDA MILLER: For the state.
7 LEE FRAZIER: For the state, yeah.
8 GLENDA MILLER: And then the first compacts
9 like Kawerak and Tlingit and Haida, you know, there was
10 a little bit different negotiation that went on because
11 they were the demonstration project -- or the
12 demonstration compact, so it was a little bit different.
13 We were just kind of figuring it out and it was supposed
14 to be a pilot project but then it ended up being that
15 the funds that were put into those compacts, they ended
16 up becoming permanent, if my memory is right.
17 LEE FRAZIER: Were the shares recalculated
18 when everybody came on board or were they --
19 GLENDA MILLER: I don't believe that they did.
20 I believe that they were able to keep their
21 negotiated -- which is why -- I think it's in here. It
22 talks about when the compacts were negotiated, that
23 that's kind of a dissimilarity. And those are
24 base-transferred into those contracts, which is pretty
25 significant, from the realty service provider's

1 perspective.

2 Does that answer your question?

3 ROSE FOSDICK: Thank you. Yeah.

4 ELDRED LESANSEE: Idea number four and slide

5 number 15 is population-based. Same assumptions as your

6 land-based formula that the more people that you have in

7 a tribe -- and these are enrolled members -- in a tribe,

8 that it will have a direct correlation to the amount of

9 appraisals that's needed. And I guess the assumption

10 is, is that there should be a lot more real estate

11 activity that would generate appraisal activity in

12 return.

13 For instance, Tribe A has got the highest

14 percentage because they have 3,000 enrolled members

15 versus Tribe C is 1500 enrolled members. They've got 23

16 percent of the pie. If you apply each of those

17 percentages to the 80,000, you get your dollar tribal

18 shares of $36,000, $24,000, $18,000.

19 And this situation may also be a good -- I

20 mean, the Navajo Nation might be an also good example.

21 Not only do they have a large land base, but they also

22 have one of the, probably, second or third highest

23 population probably. And their activity for OES as far

24 as number of appraisal requests is like the third

25 lowest. So there's other factors that go into what

1 causes -- what generates appraisal activity other than
2 just population and land.
3 Did you have a question?
4 PAUL ROEHL: This is Paul Roehl. This would
5 benefit the Association of Village Council Presidents
6 the most. They've got the most populous region in the
7 state.
8 ELDRED LESANSEE: Is there any -- do you find
9 a lot of activity, appraisal activity, coming from that
10 location?
11 PAUL ROEHL: No. I wasn't trying to go
12 anywhere. I was just making an observation.
13 ELDRED LESANSEE: Okay.
14 PAUL ROEHL: Actually, I was kind of thinking
15 about Tom's earlier comment. Bristol Bay, the Bristol
16 Bay area, they've got -- it's the region of Alaska that
17 probably has the most activity because -- this is just a
18 general statement -- people there are more progressive.
19 They're heirs now. They realize -- because there's a
20 lot of recreational activity in Bristol Bay, we're
21 seeing people that want to lease it, develop it,
22 subdivide, sell.
23 So BBNA probably has the highest appraisal
24 requests in the state that I'm aware of. Whereas in
25 Gina Douville's region, a lot of the older Yupiks are

1 still -- because of the clean living, they're still
2 alive and they believe in using their land for
3 traditional purposes, subsistence. They don't want to
4 sell. And if they do get passed along, they want their
5 kids to keep it and not sell it.
6 ELDRED LESANSEE: I think that's another
7 component that we probably haven't considered is the
8 motivations of the landowners, what they do with the
9 land. If they just want to hold on to it, they don't
10 use it, they don't sell it, there's no real estate
11 activity, and then therefore there's no need for an
12 appraisal.
13 TOM HOSETH: Well, the other thing that's
14 going on is we have some of the government agencies that
15 are pushing to acquire private land within their
16 refugees or wildernesses, so that contributes to a large
17 number of our sales is those, so...
18 LESLIE DeWILDE: What about towns, restricted
19 town sites? Is that what we're talking about in the
20 land-based? This is Leslie, Fairbanks.
21 ELDRED LESANSEE: Yes, it would be.
22 LESLIE DeWILDE: There's a lot of leasing
23 going on and we're not able to get appraisals sometimes.
24 ELDRED LESANSEE: Yeah, they will be covered
25 under -- I mean, that would -- yeah, it would have been

1 counted in the numbers.
2 LEE FRAZIER: And it is currently?
3 GLENDA MILLER: Yes.
4 LEE FRAZIER: It is currently counted in.
5 ELDRED LESANSEE: And, Jenness, you're welcome
6 to make comments anywhere along the way.
7 JENNESS BURNS: Oh, I know that. I have no
8 problem speaking up.
9 ELDRED LESANSEE: Okay. I just wanted to make
10 that clear. You might help in the discussions.
11 JENNESS BURNS: One thing that you do need to
12 keep in mind is that in Alaska we generally do not
13 appraise tribal land or corporation land. We are
14 speaking strictly about individual parcels or
15 allotments, town site lots, with the exception of three,
16 you know, small tribes that we do do some work with the
17 tribe on. But for the great majority, there's no tribal
18 work.
19 ELDRED LESANSEE: What about the type of
20 transactions? What's most common in Alaska?
21 GLENDA MILLER: Pretty much you're looking at
22 land sales, some leases. I think we're seeing more
23 leases now than we have in the past, but not anything
24 compared to what you see in the Lower 48. Mostly we've
25 got land sales, be they cash land sales or deferred

1 payment sales.

2 JENNESS BURNS: We're seeing more and more

3 rights of ways and we are seeing quite a few trespasses

4 as people are becoming more aware of their property

5 rights. We're seeing a lot of appraisals for those.

6 ELDRED LESANSEE: And I guess, what's not

7 happening and another unique situation in Alaska versus

8 the Lower 48 is the American Indian Probate Act. That's

9 turned into -- the probate sale activity is probably

10 going to increase our budget -- our appraisal activity

11 down in the Lower 48 because of that act itself and

12 we're trying to take a proactive move on that -- a

13 proactive approach on that expected workload because of

14 the probate itself.

15 And we're working with the Office of Hearing

16 Appeals and the Probate Estate Office and the Indian

17 Land Consolidation Office, too, as well to establish

18 procedures in anticipation of the huge workload, where

19 it's going to be, where the workload is going to come

20 from.

21 LEE FRAZIER: Yeah. And of course Alaska's

22 class is excluded from AIPRA, but in the future they may

23 not be.

24 ELDRED LESANSEE: Right.

25 GLENDA MILLER: True, Alaska is excluded from

1 most of the provisions of AIPRA, but the other thing
2 that because Alaska is excluded, what that means is that
3 the State of Alaska laws of succession apply and so that
4 requires an appraisal at some point in order to figure
5 out what the fraction is for people that -- you know,
6 when a decedent dies that's married without a will and
7 has children and so on and so forth because what's
8 happening now is probate judges -- Regina, the one
9 probate judge, is issuing decisions that does not
10 identify the actual fraction. And so that's left to the
11 realty folks sometime down the road when it's going to
12 be even more complicated to figure out what the fraction
13 is that the children or the surviving spouse have
14 inherited.
15 So that's something to keep in mind that even
16 though Alaska is excluded from AIPRA, we still have
17 needs.
18 LEE FRAZIER: And it's perfectly possible,
19 too, that at some point Congress decides that -- you
20 know, Alaska is like a few generations behind, but, you
21 know, the same reclamation dynamic at some point will
22 occur --
23 GLENDA MILLER: It is occurring.
24 LEE FRAZIER: It is occurring, so AIPRA could
25 be amended to grandfather essentially Alaska.

1 GLENDA MILLER: Or Alaska could come up with
2 its own --
3 LEE FRAZIER: Its own, yeah. Something like
4 AIPRA.
5 ELDRED LESANSEE: Does any of the
6 consortiums -- or I guess because there's not a -- well,
7 I'm not sure. But I'll just say that the other
8 component that's in the Lower 48 that might be different
9 than in Alaska is that the tribes have their own land
10 consolidation programs, too, as well that's approved by
11 BIA outside of the Indian Land Consolidation Act. But
12 that's not present here. And that also generates work,
13 too, in some cases.
14 TOM HOSETH: I have one more question. You
15 know, the regional budget where Alaska gets their share,
16 is there a consideration for the high cost to do
17 appraisals compared to other areas?
18 ELDRED LESANSEE: Yes. That came up in the
19 Rapid City -- that question came up in the Rapid City
20 consultation. As a matter of fact, it came from the
21 regional supervisor appraiser in Rapid City.
22 And it's built into the overall regional
23 budget, the allocation. The cost of doing work should
24 reflect the allocation. And I think that's shown, I
25 mean, like in, for instance, Portland -- not Portland,

1 but Sacramento.
2 Will Armstrong in Sacramento does 100 percent
3 contracting. And his region covers like Palm Springs
4 and some of the other high-valued locations and so
5 forth. And his budget, even though he had one person in
6 his shop, was equivalent to Navajo and Southwest, who
7 have staff. But the work -- his cost of contracting is
8 high and that's built into his budget, yeah.
9 So overall -- and I think this coming year
10 it's going to be -- it's probably going to be more
11 reflective. I mean, that consideration is going to be
12 taken into consideration because I'm having the regional
13 appraisers more involved in the budget plan this coming
14 year and they will provide justification as to how many
15 people they need based on the amount of workload, the
16 complexity, and the cost of doing business.
17 LEE FRAZIER: Are there any big disparities
18 within Alaska? When we say the regional budget captures
19 that, that sort of makes the assumption that any
20 particular region is relatively uniform in its cost.
21 But, I mean, is it significantly more expensive to do an
22 appraisal in Nome as opposed to Anchorage as opposed to
23 Juneau?
24 TOM HOSETH: Well, yeah. You have real high
25 cost of travel is the biggest factor. So you might do

1 an appraisal somewhere else for $1,000, but you come out
2 to Bristol Bay or other areas it's going to be $4,000.
3 So you have a lot of differences as far as location.
4 And a lot of times I think it's not planned for when
5 they find out that --
6 LEE FRAZIER: And that might be something we
7 need to look at within regions, are there subregions
8 that there are some significant disparities in the cost.
9 TOM HOSETH: As soon as you start flying down
10 the chain, it gets real expensive.
11 GLENDA MILLER: Well, yeah. And when you got
12 the appraisers flying out of Anchorage or flying out of
13 somewhere -- I mean, if you live in Bethel or you're out
14 in Barrow then you know that you're adding at least the
15 cost of a plane ticket on to the appraisal contract.
16 ELDRED LESANSEE: So that might be a factor
17 that's not, you know, considered in the Lower 48 that
18 should be considered in the tribal allocation formula
19 for Alaska --
20 JENNESS BURNS: I agree.
21 ELDRED LESANSEE: -- is the cost.
22 JENNESS BURNS: I agree totally.
23 ELDRED LESANSEE: The cost of doing business.
24 I mean, we're at a place where it's an open
25 dialogue. We're gathering ideas. And this is an

1 opportunity for the Alaska Region to present unique
2 issues such as this, that, you know, we can carry
3 forward because not every region is the same.
4 ERIC LARSEN: I have something, and it may not
5 affect cost, but --
6 ELDRED LESANSEE: Excuse me, could you
7 identify yourself for --
8 ERIC LARSEN: Yes. This is Eric Larsen with
9 Kawerak.
10 ELDRED LESANSEE: Thank you.
11 ERIC LARSEN: In our region, we only have a
12 handful of appraisers that will actually come out to
13 that area because some of our appraisals are remote.
14 They may be harder to do than the Anchorage ones where
15 they may have an easier time picking them up and
16 cranking them out. And so when we do have this handful
17 of appraisers that will work with us, their cost may be
18 a little higher than another region where they have a
19 lot of appraisers to pick from.
20 PAUL ROEHL: Supply and demand.
21 JENNESS BURNS: This is Jenness with the --
22 the regional appraiser. Essentially we have a pool of
23 maybe a half a dozen appraisers who regularly work
24 remote properties. And most of those don't always work
25 with us every year. So we do -- that limited number of

1 availability of fee appraisers does make a big
2 difference in the cost because they know they can charge
3 more if they're the only game in town.
4 ELDRED LESANSEE: We see that in the Lower 48,
5 too, as well. For some reservations that are isolated,
6 yeah, there's a limited amount of appraisers and they
7 control, they monopolize that price.
8 LEE FRAZIER: Then it might make sense that
9 something we can look is like within a region, you know,
10 have a two-part pool where -- you know, the remote and
11 non-remote pool that for some regions -- and maybe you
12 need a three-part pool, I don't know. But if it's just
13 a region-wide problem and the region is relatively
14 uniform, then you solve that problem just by having a
15 larger regional budget. But if you have disparities
16 within the region, then you may have to have something a
17 little more complicated.
18 PAUL ROEHL: Eldred, this is Paul Roehl. To
19 illustrate what Tom was talking about, you know, the
20 high cost of travel, to give an example, last year we
21 sent two of my specialists down to Unalaska, which is
22 down the chain, and their airfare alone was almost
23 $5,000. You know, it's in-state, but it's supply and
24 demand. There's only one carrier. Airfare is -- yeah,
25 and that was last year before the oil spike.

1 ELDRED LESANSEE: Timing is probably very
2 essential, too, as well.
3 PAUL ROEHL: Yeah.
4 ELDRED LESANSEE: The beginning of the season
5 versus the end.
6 PAUL ROEHL: Yeah.
7 JENNESS BURNS: And speaking of the season --
8 this is Jenness Burns, again, regional appraiser.
9 Speaking of the season, in addition to having
10 the shortage of fee appraisers that the different tribes
11 could use if they didn't have their own staff appraiser,
12 we also do have a very short field season here. So
13 those appraisers are trying to fit in the great majority
14 of their inspections during essentially about a three-
15 to three-and-a-half-month period.
16 LEE FRAZIER: Now, like around Juneau, is that
17 an issue? Is there a field season?
18 JENNESS BURNS: Not in the city of Juneau, but
19 if there are remote allotments, there very much can be.
20 Because in the wintertime you get -- it can get a little
21 challenging to get in and out of the town. And you
22 can't get to the remote parcels because there's so much
23 snow. It can be very dangerous. And you don't see an
24 awful lot if it's covered with snow. So, yes, even down
25 there.

1 The lower temperate parts of Alaska do have a
2 longer field season. Of course, obviously, the more
3 snow you have or the further north you go, the shorter
4 the field season.
5 ELDRED LESANSEE: Let's go to the more
6 complicated formula, idea number five.
7 LEE FRAZIER: This is the hybrid formula. And
8 what we mean by hybrid, it just means instead of using
9 one component, you use a mixture of components. You can
10 use two, three, four. I think the most we've seen in
11 one region, it had five separate components that they
12 used to come up with the tribal share.
13 And by the way, all these ideas that we've
14 presented, we're not pulling them out of the air. All
15 of them are used either alone or in combination in some
16 region in Indian Country. So what we have here is a
17 hypothetical hybrid formula using three weighted
18 components; land, population, and workload.
19 And if you have a faxed copy, this may be a
20 little tough to read. But under land in parentheses, it
21 says 0.25. Under population it also says 0.25. And
22 under workload it says 0.5. Those are the weights that
23 have been attached to those components. And 0.25 plus
24 0.25 plus 0.5 equals one. So those weights add up to
25 100 percent.

1 And essentially all that means is that in this
2 hypothetical we've decided that the land component is
3 worth a quarter of the weight, population is worth a
4 quarter of the weight, and workload is worth half the
5 weight.
6 So we'll just walk you through the math here
7 again. The way you would calculate this is that you
8 look at Tribe A. And this goes back to previous slides.
9 But if you remember Tribe A, they had 62.5 percent of
10 the land base. If you take that 62.5 and you multiply
11 it times the weight, which is 0.25, you get 0.1563,
12 which of course is also a percentage but we don't have a
13 percentage sign in front of it, so it's 15.63 percent.
14 Then you take Tribe A's population. Their
15 population was 46 percent. Again, you multiply the 46
16 percent by the weight that's been attached to that
17 component, which is 0.25. 46.15 times 0.25 equals
18 0.1154.
19 Then you take the workload component. Tribe A
20 had 66.67 percent of the workload. You multiply that by
21 half, or 0.5, and you end up with 0.3334.
22 Then you take each one of those and add them
23 together. And what I mean is the ones to the right. So
24 in Tribe A you add 0.1563, add it to 0.1154, add it to
25 0.3334, you end up with a total weight of 0.6050, which

1 is of course 60.5 percent.

2 And the same way with the other method. You

3 multiply that total weight or that total percentage by

4 the available budget. Tribe A, their weight is 0.6050,

5 or 60.5 percent, times $80,000. Their tribal share

6 would be $48,398.

7 Is the math of that confusing to anyone or do

8 you want us to walk through it again or is that pretty

9 clear?

10 ELDRED LESANSEE: One thing that I think is to

11 consider is how the weights are determined. You have

12 100 percent, but it's not necessarily arbitrary. It's

13 based on observations, historical trends, what causes

14 the most appraisal activity. And in this case workload

15 is the heaviest, 50 percent of the weight.

16 In the Southwest Region why it was developed

17 and applied in the Southwest Region is that we have a

18 variation in the -- I guess the composition or

19 characteristics or the status of each of the tribes.

20 For instance, on one extreme you have a small little

21 tribe like the Picuris Pueblo. The population is small,

22 the land base is very small, and the workload activity

23 is very small as well. But then you look at the

24 Southern Ute Indian Tribe. Although their population is

25 fairly small, their land base is big and the activity is

1 very high. And they have mostly allotments, too, as
2 well.
3 So our idea was you have at least something
4 for the small tribes. You know, they've got land,
5 they've got population, and maybe some workload. And in
6 the Southwest Region we have the -- as Lee mentioned,
7 the five components. We have equal share,
8 population-based, land, appraisal workload, and realty
9 workload all in the same formula. And to try and
10 consider what factors may potentially, you know, affect
11 the amount of activity or appraisal need.
12 LEE FRAZIER: Now, of course, in the Southwest
13 they ended up having to reject one of the components
14 because they didn't have enough data in the realty --
15 was it realty?
16 ELDRED LESANSEE: Yeah, it was realty. We had
17 a difficult time. And that's the complexity of this
18 formula is gathering the statistics for each of the
19 components. We had population. The statistics that
20 come out from -- we gathered that from the records, what
21 was recorded as currently trust and restricted status
22 lands. And when we negotiated with the tribe, the tribe
23 had a different number.
24 The same way with the -- statistics were that
25 the -- they have a national statistic that the BIA also

1 carries -- I think it's Social Services -- for tribal
2 enrolled members that are eligible to receive services.
3 That national report didn't always, you know, match up
4 with the tribal enrollment numbers.
5 So there was a -- and then like you mentioned,
6 the workload was the hardest one. I mean, as far as to
7 gather, I think one of the hardest ones. We had
8 difficulty -- I mean, especially when you have work
9 coming in from different programs like the BIA and then
10 the tribal-run programs. I mean, they get into -- just
11 gathering the statistics for realty was difficult, so we
12 had to eliminate that or not use that. So we only had
13 four components.
14 GLENDA MILLER: And even -- this is Glenda.
15 Like even the appraisal workload component, how do
16 you -- what is that? You know, is that the number of
17 appraisal requests received in a given year?
18 ELDRED LESANSEE: Uh-huh.
19 GLENDA MILLER: Is it the number of appraisal
20 reports completed in a given year?
21 LEE FRAZIER: Yeah.
22 GLENDA MILLER: Do you subtract out the ones
23 that were canceled? You would think that that would be
24 one of the easier ones to come up with. But when you
25 start delving into it, it's probably not as simple.

1 LEE FRAZIER: And, again, just to make it
2 clear, this is a hypothetical one --
3 GLENDA MILLER: Sure.
4 LEE FRAZIER: -- so the weights here are
5 arbitrary. I mean, the 0.25, 0.25, 0.5, I mean, that
6 could be -- you could attach equal weight to all of them
7 and say it's 0.33 on each one of them. Or you could say
8 one is 0.1. And if we actually did it this way, it
9 wouldn't be arbitrary.
10 But I'm just saying this is just to show you
11 that if you had different components, they wouldn't have
12 to be weighted the same. You could decide, you know,
13 workload is so important. I want it to be 80 percent.
14 And so workload would be 0.8 and the other two could be
15 0.1 or something like that.
16 LYNDA NASHALOOK: I was just going to say,
17 does this hybrid formula have the potential for being
18 noncompliant with the statute because --
19 LEE FRAZIER: It could because -- I mean,
20 you've -- and you run into that with -- if you use the
21 method that someone was suggesting, could we give a base
22 amount to -- essentially, giving a base amount to
23 everyone is a hybrid formula. You're just -- you know,
24 imagine you take out the land and population columns and
25 put equal division as one of those. Say we're going to

1 make equal division be 0.25 and we're going to make
2 workload be 0.75. So you're giving -- you're
3 essentially giving a base, everybody gets something, but
4 the tribes that actually have the workload are going to
5 get the lion's share but at least somebody gets
6 something.
7 Well, you go back and look at the statute and
8 the statute says you were supposed to give to the tribe
9 what the Secretary otherwise would have spent on them.
10 And now you've worked out the methodology where you're
11 giving some money to tribes that if they were direct
12 service tribes, they wouldn't be getting any money. So
13 it may not be -- that method may not be compliant with
14 the statute.
15 GLENDA MILLER: But the statute is difficult
16 in itself because the statue assumes that you know what
17 is going to happen in a given year. I mean, if you've
18 got history behind you, you could say, yeah, BBNA, you
19 know, we get -- I'm pulling a figure from the air -- 200
20 appraisal requests a year from BBNA and then all of a
21 sudden things plummet or things rise. Whatever the
22 secretary would have spent on the program if all of the
23 appraisal programs were within OST and there were no
24 contracts or compacts, then it's just very reactive.
25 And so you know what you -- you have a budget and you

1 spend it, basically.

2 LEE FRAZIER: But the statute is not -- it's
3 not a wonderfully constructed statute. I mean, it does
4 sort of presuppose that the Secretary can see into the
5 future and is going to know -- and it's also unclear
6 what is the time frame for that calculation. Do you
7 mean this year? What I will spend on them this year?
8 Do you mean what I will spend on them for the next 3,000
9 years?

10 And like in the actual example of what
11 happened is the Secretary calculated it for one time,
12 what do I think I spent on them last year, what do I
13 think I am going to spend on them -- I'm going to assume
14 next year is going to be a lot like last year. So they
15 calculated it one time and there's your share. And, oh,
16 by the way, there's nothing in the statute that says it
17 should be done. That's just something that we've looked
18 at and said we feel like it's in the spirit of 638 that
19 tribes should share in budget increases. But there's
20 really nothing in the statute that says once that share
21 is calculated -- well, that could be argued. It's not
22 clear.

23 ELDRED LESANSEE: I guess how this could
24 comply with the statute is that in the negotiations
25 process that tribes participate, there was three

1 different angles, I guess you would say: the federal
2 side, the federal interest; the tribal programs -- the
3 tribes that are participating in the program; and your
4 direct service tribes. They're all in the room
5 negotiating the residual amount and even the components,
6 too, the weighted components, what had the highest
7 weight.
8 And then they'd have a discussion. Of course
9 the small tribes might have more -- you know, with the
10 lowest population might have a -- might want to put more
11 of the weight on land. They have a lot larger land
12 base. And then you might have the tribes that are
13 participating wanting to -- participating in the 638
14 programs wanting to get the most money into the
15 programs. And those direct service tribes might say,
16 no, keep as much money with the federal government so
17 that we have the same amount of services that we've
18 always had.
19 So there was a lot of give and take in
20 negotiations. I mean, I think even though this statute
21 might be in general terms, I think negotiation is the
22 key, justification is the key. And so, yeah, I guess it
23 gives you a little more -- it gives the tribes or the
24 participants in the program some leeway, some activities
25 to voice their interests, I guess.

1 TOM HOSETH: This is Tom. Do you have these
2 numbers available for us that -- broken down by tribe
3 and what percentage is -- you know, that -- so we can
4 kind of calculate what it really means to us?
5 ELDRED LESANSEE: To actually apply this to
6 the State of Alaska?
7 TOM HOSETH: Yeah. What the budget is, what's
8 BBNA's --
9 LEE FRAZIER: I assume those numbers can be --
10 I mean, they can be provided; can't they?
11 TOM HOSETH: In order for us to comment, we
12 need to know what it really means.
13 LEE FRAZIER: No, no. I understand. I mean,
14 I think every tribe is going to have to like sit down
15 and say, well, what does this method mean for me.
16 TOM HOSETH: Right.
17 LEE FRAZIER: And, you know, a tribe that
18 hasn't had a workload, they say, you know what, I really
19 like that equal division method. And a tribe that has a
20 lot of activity says I really like the workload
21 division. And I guess part of the juggling act for us
22 is to balance those and at the same time do what we can
23 to stay in compliance with what the statute means.
24 If the Alaska -- if the entire Alaska Region
25 was direct service, how would the Secretary be spending

1 this money and then how do we then allocate those funds.
2 I mean, it's tricky.
3 ELDRED LESANSEE: Yep. I think the key to
4 applying this formula, it takes a team approach.
5 Because you'll have -- BIA might have the information --
6 some of the -- a good majority, actually, if you're
7 looking at a land-based and then the population
8 statistics. We can provide the workload statistics. If
9 you have a realty component as far as workload, you'll
10 depend on realty to provide that information. So it's a
11 team effort in compiling the information.
12 But as far as gathering this information for
13 the tribes to consider whether hybrid will work for
14 Alaska, that's something that we'll have to -- the team
15 will probably have to try and gather from, like I say,
16 realty and our office. I mean, what -- I mean, if you
17 want to look at just the land and population workload,
18 we can probably do it. We can probably give you that
19 information. And the regional allocation, too, as well
20 and applying maybe the 20 percent residual. Yeah, we
21 can probably give you the numbers.
22 LEE FRAZIER: Yeah, but, I mean, obviously
23 before any tribe can sort of give some meaningful input
24 about what I think they like, you're going to have to
25 crunch those numbers yourself and say this method looks

1 good for me, this method doesn't look so good.
2 TOM HOSETH: You'll provide us with the budget
3 amount, though?
4 LEE FRAZIER: Yeah. I think some of that is
5 available online already.
6 ELDRED LESANSEE: I don't think so. Not yet.
7 Equal share would be kind of difficult because
8 I think we had a difficult time in trying to identify
9 how many tribes were here in Alaska.
10 JENNESS BURNS: 229 plus a couple of others
11 that haven't been accepted.
12 ELDRED LESANSEE: Yeah. So I think that would
13 be a little bit -- if you wanted to consider the equal
14 share, it would be one over how many tribes you have.
15 129 you said? Or 200?
16 JENNESS BURNS: 200.
17 ELDRED LESANSEE: 229, yeah.
18 DESIREE DUNAN: Hello?
19 ELDRED LESANSEE: Yes?
20 DESIREE DUNAN: This is Desiree with Tlingit
21 and Haida and I've kind of been in and out of this
22 teleconference, but I'm going to have to leave for
23 another meeting pretty soon. I just wanted to let you
24 know what -- how we have been operating our appraisals.
25 We contact appraisals and we get $4,000 a year. We

1 spend about $15,000 to $20,000 per year, is what the
2 average has been.
3 And so currently we're under an MOU with OST.
4 And there is a limitation of costs in the agreement that
5 states that if the tribe has reason to believe that the
6 total amount required for performance of this program
7 would be greater than the amount of funds awarded in the
8 AFA, the tribe shall provide reasonable notice to the
9 Secretary of Interior. If the Secretary does not take
10 such action as may be necessary to increase the amount
11 of funds awarded in the AFA, the tribe may suspend
12 performance of the appraisal services program.
13 And we haven't exercised that because that
14 wouldn't be good for our clients, but we do have
15 situations where we have to say we can't do an appraisal
16 because we don't have enough money. So I think this
17 formula will definitely help the Central Council and
18 we're looking forward to working with you to get a
19 formula that's fair.
20 LEE FRAZIER: And just to go back to what
21 Desiree is saying. That is something that is explicitly
22 stated in their MOU, but it's also in the law. A tribe
23 is not required to perform an appraisal if they are out
24 of money. All they're required to do is notify the
25 Secretary that they're out of money.

1 ELDRED LESANSEE: Thank you, Desiree.
2 DESIREE DUNAN: Thank you.
3 ELDRED LESANSEE: Anybody else? Any comments?
4 PAUL ROEHL: I just wanted to say, Eldred --
5 this is Paul. That's all I wanted to say. No, just
6 kidding.
7 Of all the alternatives, I think the hybrid
8 formula seemed to be the most fair because it has the
9 workload component. But to follow the letter of the
10 statute, it seems like you would have to do it based
11 solely on workload because that's money that you would
12 have spent, assuming there's no tribe there.
13 LEE FRAZIER: I mean, that's the hard reality.
14 The statute doesn't say anything about fair. I mean,
15 there is no fairness provision. It said you will
16 provide to the tribe -- but it says -- and that's an
17 important thing to point -- it says no less than. No
18 less than the Secretary -- I mean, so it does allow for
19 more to be given than the Secretary would. But that
20 could be an academic point. I mean, where is the money
21 going to come from.
22 And one thing, to get back to what someone
23 said, it's kind of -- it's one of the harder issues, how
24 do you measure demand. And somebody said, well -- I
25 think maybe it was Kawerak that said, we already

1 don't -- we don't provide to you -- if you're just
2 measuring our appraisal requests, that's not our true
3 demand. We're already truncating that ourselves because
4 we know we're not going to get the money, so we tell
5 you -- here's our eight requests when we could give you
6 20.
7 But I think the Secretary could respond, hey,
8 you're not doing anything different than what I would
9 do. If I was direct service, I don't have an unlimited
10 budget. I also have to look at Kawerak's demand and
11 prioritize which ones I'm going to do.
12 So I mean, I'm not saying that settles the
13 question. I'm saying that that -- that if it were not
14 in the context of 638, that would already be going on.
15 If it was a direct service contact, that sort of
16 truncating of the demand or that artificial lowering of
17 the demand would already be going on.
18 GLENDA MILLER: Well, you're looking at me
19 so -- this is Glenda. I think that what we've seen
20 happen since the appraisal program has moved to OST is
21 that maybe Kawerak share -- Tlingit and Haida's share is
22 $4,000. And what's happened is that the OST appraisal
23 budget has increased and so maybe they are not doing
24 just the couple of appraisals they could afford
25 previously, that they are doing -- they are able to meet

1 their workload where -- like right now just as an
2 example, I would assume that Bristol Bay Native
3 Association is submitting an appraisal request for every
4 appraisal that they logically believe that they need.
5 Where Kawerak is not submitting appraisal reports for
6 every true appraisal request that they've got because
7 they haven't been able to pay for it.
8 LEE FRAZIER: Okay. Now, that's a problem.
9 And if what you've got is a disparity and some tribes
10 are like I'm going to give you every -- whether you can
11 fill them or not, I'm going to send every request down
12 the pipeline that I think is legitimate and some other
13 tribe is not doing it.
14 GLENDA MILLER: Well, which they should do
15 that because they're looking out for their beneficiary.
16 They have to do that. And they have the, I guess, kind
17 of the luxury of doing it because they don't have a
18 budget, whereas Kawerak -- either the tribe has to stay
19 within whatever their allocation is or like Tlingit and
20 Haida, they take their $4,000 and they add $11,000 --
21 they add $16,000 from their realty budget or from some
22 other line item in order to -- like Desiree rightly
23 said, to meet the needs of the beneficiary.
24 LEE FRAZIER: Yeah. In that case, then we
25 probably -- I mean, to account for that disparity, what

1 you would probably need to create is a category of
2 phantom requests for 638 tribes and say here was my
3 actual request but here's the eight I could have
4 requested if there weren't budgetary considerations in
5 order for them to put them in the same demand playing
6 field as a direct service tribe.
7 TOM HOSETH: This is Tom. But you can see
8 from the realty standpoint, they put you in a difficult
9 position on which ones you choose because, you know, to
10 me an appraisal is an appraisal. No matter what the
11 transaction is it's still an appraisal that's needed.
12 And so you put yourself in a real tight situation when
13 you have to select one over another.
14 And my feeling is that I want to see that
15 someday we're at a point where we can take an appraisal
16 by the date that came in and that's what we'll do. And
17 hopefully we'll be at a point where we can take care of
18 all the appraisals. But the way it sounds to me right
19 now, we're setting ourselves up for another backlog
20 problem.
21 GLENDA MILLER: And you're talking to the
22 appraisal requests in the backlog?
23 TOM HOSETH: Right.
24 LEE FRAZIER: And we talked about some of
25 these issues, not specifically related to Alaska, but we

1 have to be careful about not setting up an inflation
2 race on demand because you're putting tribes -- on this
3 demand thing, you're putting tribes kind of in
4 competition with each other because it's a finite pie
5 and every tribe knows, hey, the higher my demand numbers
6 are, the more pie I'm going to get.
7 So there might be a temptation for some tribes
8 to pad their number in order to stay with the game. I'm
9 not -- that hasn't happened, but you would like to avoid
10 that situation. And that was one of the reasons we
11 thought it might be easier when you're counting demand
12 just to count the delivered products, because you avoid
13 putting tribes in that position.
14 But, again, I mean, that doesn't solve the
15 problem of what you're talking about where a direct
16 service tribe is giving everything -- or the demand that
17 they're reporting to the department is a truer
18 reflection of what their demand is as opposed to Kawerak
19 that's already doing some budgeting. It's a problem.
20 PAUL ROEHL: Hey, Eldred -- this is Paul. How
21 many travel organizations occur in the compact for OST
22 appraisals right now?
23 ELDRED LESANSEE: 39 nationwide.
24 PAUL ROEHL: How many in Alaska? I know BBNA
25 does.

1 ELDRED LESANSEE: Nine?
2 LEE FRAZIER: I think it's nine. When I say
3 nine, nine entities. Some of those are tribes, some of
4 those are consortiums.
5 PAUL ROEHL: But nine out of 25.
6 ELDRED LESANSEE: Nine out of 39. In Alaska.
7 Yeah. And 39 out of, what, 500-plus tribes in the
8 country?
9 GLENDA MILLER: Yeah, in Alaska, I mean,
10 that's exactly the formula that we'd like to have is the
11 Alaska appraisal budget be -- the regional budget be
12 totally tribal-based and so that Alaska would get 231
13 over 500.
14 LEE FRAZIER: Oh, equal division across the
15 country? It's on a regional basis, not a...
16 Any questions about the hybrid formula?
17 ELDRED LESANSEE: I think to answer -- I think
18 you might have asked a question about regional budget
19 allocations. We will get the number for Alaska for
20 FY '09.
21 Currently we're running -- we're operating
22 under a nationwide -- just for FYI before we go into
23 this next slide, we have approximately $8.9 million for
24 the appraisal program nationwide. In the coming year,
25 we're hoping that if Congress does approve the extra

1 $2 million we'll be working with $10 million into 2010.
2 And I don't know, has the Senate approved the
3 appropriation?
4 LEE FRAZIER: No, not that I --
5 ELDRED LESANSEE: It went through the House.
6 LEE FRAZIER: It went through the House. It
7 hasn't gone through the Senate yet.
8 GLENDA MILLER: What was '10?
9 ELDRED LESANSEE: $10 million for 2010. A
10 little bit more, a little bit of change, but that's not
11 that much. It's closer to 10 than 11.
12 LEE FRAZIER: This last slide, and I think
13 it's number 17, has to do with Title IV, compacting
14 funding sources. Most of the tribes that now compact
15 the appraisal from OST receive base funding from the
16 Office of Self Governance.
17 And that -- it's in the regs. I'm sure most
18 of you know this. But the base amounts cannot be
19 adjusted. Or they can be adjusted, but you can't sort
20 of adjust one program without adjusting everything. You
21 would have to open up the whole thing. So practically
22 we can't touch that base amount. So if you get -- if
23 you have a line item in your AFA that has your base
24 funding, we can't raise that or lower that. That's
25 basically the purview of OSG.

1 What we would do in order to handle that, if
2 we were to come up with a new formula and let's say you
3 did receive $4,000 and we determined that you should be
4 receiving $20,000 according to the new formula, we can't
5 inject that into your base. We really have no control
6 over the base and there is a regulation that controls
7 what can and cannot be added to the base, et cetera.
8 What we would do is on a year-by-year basis,
9 we would add -- because remember, we intend for this to
10 probably be dynamic -- on a year-by-year basis, we would
11 give you one-time funding to be added as a supplement to
12 your base but we can't inject it into the base.
13 THELMA STARR: This is Thelma in Tanana.
14 Would you be forwarding all this information to the
15 tribes?
16 LEE FRAZIER: What information do you mean
17 beyond the --
18 THELMA STARR: From the meeting today.
19 LEE FRAZIER: Oh, like the record?
20 THELMA STARR: Yes.
21 LEE FRAZIER: Yes, we can do that.
22 THELMA STARR: Okay. Thank you. I've got to
23 get going. I've got other things that need doing.
24 LEE FRAZIER: I think we have been posting --
25 have you been posting --

1 ELDRED LESANSEE: No. No, we don't. Not the
2 transcript, no.
3 This last slide concludes our presentation.
4 We're going to the question and answer session. But
5 before we do that, if you have any comments, if you want
6 to send it by e-mail, you can send it to Debbie Meisner.
7 Her e-mail address is listed on the presentation on the
8 back. It's debbie_meisner@ost.gov. And her phone
9 number is there and her cell number.
10 And we would like your comments by Monday,
11 August 17th so that we can carry the comments forward to
12 the next session, which would be on the 18th in
13 Albuquerque. The Federal Register identifies September
14 18th -- Friday, September 18th for all comments. And if
15 you have any comments, please provide that through
16 e-mail, letter -- however you want to do it -- fax. We
17 would like to hear from the tribes and the tribal
18 representatives. You can either -- you can also either
19 call Lee or myself. Our numbers are listed.
20 I would like to recognize the team, the OST
21 team, on this tribal shares project. Debbie Meisner is
22 here with us. Lee is here. And Frank Perniciaro is in
23 Albuquerque. He didn't join us today. And Sally
24 Hernandez, too, as well.
25 But if you've got access to either the Outlook

1 or even -- let us know. You can probably find the
2 address, too, as well. But we also -- in the near
3 future, we'll also have a web site that you can go to.
4 And I think as a matter of fact when you go to the DOI
5 web site you can go to OST and then you can probably
6 find OAS there, too, now.
7 DEBBIE MEISNER: You can.
8 ELDRED LESANSEE: And then you can get the
9 contact information that way, too, as well. And of
10 course we have the call center, too, as well.
11 Is that available for this, too, as well if
12 they want to submit the information -- I mean, the
13 questions?
14 GLENDA MILLER: I wouldn't recommend that they
15 call the call center just because all the call center
16 can do would be just to escalate it to me. So if that's
17 the case, you can just as well call me and there's
18 really not a whole lot of point in calling me.
19 ELDRED LESANSEE: So don't use the call
20 center.
21 So with that, if there's any questions that
22 you want to talk about, I mean, if you want to discuss
23 right now or present it to us, we're -- now we're moving
24 to the Q&A.
25 But Debbie's got some information on budget,

1 regional budget allocations, that she would like to
2 share.
3 DEBBIE MEISNER: So far for 2009, the 2009
4 Alaska allocation is $909,000.
5 LEE FRAZIER: With two months left?
6 DEBBIE MEISNER: Right. We did go in to
7 request an additional $155,000 but we haven't gotten
8 that.
9 PAUL ROEHL: And that's split between nine
10 Alaskan organizations?
11 ELDRED LESANSEE: No.
12 GLENDA MILLER: That's just the budget for the
13 office.
14 DEBBIE MEISNER: That's just the budget.
15 ELDRED LESANSEE: Regional budget, total
16 regional budget. And then you apply the residual to
17 that to get the amount of money available to the tribes.
18 GLENDA MILLER: But am I correct that this
19 money is -- none of this money is going out to the
20 tribes; right? This is just the budget?
21 DEBBIE MEISNER: No. I mean, we give BIA
22 money.
23 GLENDA MILLER: On top of this?
24 DEBBIE MEISNER: Out of this. Because that's
25 how -- for the compacts.

1 LEE FRAZIER: Well, not for -- not for
2 compacts. Compacts is OSG money. It's BIA money. It's
3 a separate appraisal. So basically, I mean, I think
4 everybody here -- everybody here, I think, is
5 compacting, has base funding. I think the only tribes
6 here -- Kawerak gets a tiny little fraction. I think
7 they get $5,000. And I think it's that one-time yearly
8 thing that happens. It's Kawerak and who else?
9 GLENDA MILLER: Is it TCC? It seems like it
10 might have been TCC.
11 LEE FRAZIER: TCC and maybe TNH.
12 GLENDA MILLER: And that was just based on
13 that workload --
14 LEE FRAZIER: That one-time thing that they
15 did a year ago. But we do it every year. We give them
16 a little bit more. But basically --
17 GLENDA MILLER: So that's off the table then?
18 That's not part of this?
19 LEE FRAZIER: Yeah, that would not be part of
20 this. Actually, most of the tribes here get almost -- I
21 mean, if they're 638, that money is not OST money. It's
22 OSG money.
23 DEBBIE MEISNER: But if we were to do a
24 reformulation --
25 LEE FRAZIER: Then we would transfer that

money to OSG for them to draw it down.

QUESTION AND ANSWER SESSION

ELDRED LESANSEE: Is there any questions? Anybody? How about any questions from the people that have called in? Is there anybody there still?

SPEAKER: Yeah. I don't have any questions at this time.

ELDRED LESANSEE: Well, we're going to be here in the afternoon, too. You're welcome to -- if you think of any questions or if you have any comments or recommendations, feel free to call again this afternoon at 1:30.

And I appreciate everybody coming in today to join us and to listen to what we have. And I appreciate you providing your comments. I mean, it's going to be useful as we carry forward to the next session.

SPEAKER: Thank you.

ELDRED LESANSEE: Thank you very much.

GLENDA MILLER: Thanks, everybody.

LEE FRAZIER: Thank you.

(Proceedings adjourned at 11:10 a.m.)