

S. 195, S. 382 AND S. 1322

HEARING
BEFORE THE
COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
ONE HUNDRED EIGHTEENTH CONGRESS
FIRST SESSION

—————
MAY 3, 2023
—————

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CONTENTS

	Page
Hearing held on May 3, 2023	1
Statement of Senator Cantwell	2
Statement of Senator Murkowski	1
Statement of Senator Peters	3
Statement of Senator Schatz	1

WITNESSES

Blaker, Hon. Doreen, President, Keweenaw Bay Indian Community	7
Prepared statement	9
Bryan, Hon. Annette M., Councilwoman, Puyallup Tribe	11
Prepared statement of Hon. Sylvia Miller, Vice-Chairwoman, Puyallup Tribe of Indians	13
Newland, Hon. Bryan, Assistant Secretary, Indian Affairs, U.S. Department of the Interior	4
Prepared statement	5

APPENDIX

Letters submitted for the record	20–25
Response to written questions submitted by Hon. Brian Schatz to Hon. Bryan Newland	25
United South and Eastern Tribes Sovereignty Protection Fund, prepared statement	19

S. 195, S. 382 AND S. 1322

WEDNESDAY, MAY 3, 2023

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

The Committee met, pursuant to notice, at 2:39 p.m. in room 628, Dirksen Senate Office Building, Hon. Brian Schatz, Chairman of the Committee, presiding.

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

The CHAIRMAN. Good afternoon. During today's legislative hearing, we will consider three bills: S. 195, the Keweenaw Bay Indian Community Land Claim Settlement Act of 2023; S. 382, the Puyallup Tribe of Indians Land Into Trust Confirmation Act of 2023; S. 1322, Unlocking Native Lands and Opportunities for Commerce and Key Economic Development Act of 2023.

S. 195, introduced by Senators Peters and Stabenow, would acknowledge the uncompensated taking by the Federal Government of Keweenaw Bay Indian Community lands, provide compensation for the taking of those lands, and extinguish all Keweenaw Bay Indian Community claims to those lands.

S. 382, introduced by Senators Cantwell and Murray, would transfer three parcels of land totaling approximately 17.3 acres and currently owned in fee simple by the Puyallup Tribe into trust for the benefit of the tribe.

Lastly, Senator Murkowski and I introduced S. 1322, the UNLOCKED Act, which would amend the long-term leasing act to authorize all federally recognized tribes to issue leases of up to 99 years and expand the tribal HEARTH Act authority to rights-of-way.

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

I will recognize the Vice Chair, and then the former Chair, Senator Cantwell.

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

Senator MURKOWSKI. Mr. Chairman, thank you, and thank you for the hearing on three important bills. You have outlined all three of them, S. 195, S. 382 and S. 1322.

I will limit my comments to the bill that you and I have introduced, the UNLOCKED Act. The UNLOCKED Act amends the Long-Term Leasing Act of 1955 to authorize leases of up to 99 years.

In today's economy, the 50-year maximum lease term really doesn't work to obtain necessary financing to build out infrastructure projects. It also makes little sense for Congress to consider separate, standalone legislation for every tribe for this purpose. We have actually done that now some 60 times already. It is time-consuming and quite honestly, it is a waste of tribal resources.

Lease terms, however, are not the only barrier to economic development. Tribes have also seen projects get bogged down in red tape at BIA over rights-of-way approvals, which are commonly needed to utilize natural resources for these projects.

So our bill would address this barrier too, by authorizing a self-determination process similar to the model used in the HEARTH Act for tribal leasing regulations.

I think this is a good bill. I am proud to be able to sponsor it with you, Mr. Chairman, and look forward to seeing it enacted so that tribes can take full advantage of the opportunities that we have included in the Bipartisan Infrastructure Act, as well as the Inflation Reduction Act.

I am glad to have the witnesses before the Committee as well.

The CHAIRMAN. Thank you very much.

I will now recognize Senator Cantwell to introduce one of the panelists.

**STATEMENT OF HON. MARIA CANTWELL,
U.S. SENATOR FROM WASHINGTON**

Senator CANTWELL. Thank you, Mr. Chairman. I want to thank you and Vice Chair Murkowski for holding this important hearing. I want to thank the witnesses for being here today.

And I do want to introduce Puyallup Tribal Council Member Annette Bryan, who will be testifying on the legislation before us today. I would also like to thank another Council Member from the Puyallup Tribe, Council Member Rideout, for being here as well.

Council Member Bryan has served the Puyallup Tribe throughout her career. She was first elected to the Puyallup Tribal Council in 2016, and prior to that, Council Member Bryan worked on behalf of the tribes at the Environmental Protection Agency, for a decade served as the Executive Director of the Puyallup National Housing Authority, and has appeared before this Committee.

Council Member Bryan is an important leader for the Puyallup Tribe and for the region. I can't thank her enough for participating in today's hearing about an important economic opportunity for the Puyallup Tribe in our region.

I have introduced S. 382, the Puyallup Tribe Indian Lands Into Trust Confirmation Act, which would take over 17 acres of land currently owned by the Puyallup Tribe into trust. As Council Member Bryan will talk about, this is a necessary step in restoring parts of the tribe's ancestral homeland along Commencement Bay in Washington.

Importantly, S. 382 will allow the tribe to pursue economic development and job creation opportunities for the tribe and the sur-

rounding community in Pierce County. I am proud to have worked with the Puyallup Tribe, Senator Murray, Representative Kilmer, Representative Strickland, and others in the introduction of this bill.

I look forward to working with the Committee here and our colleagues and to getting this legislation passed.

Thank you again, Mr. Chairman, for having S. 382 before us today and for the Council Member's testimony. Thank you.

The CHAIRMAN. Thank you very much, Senator Cantwell.

Senator CANTWELL. And I should say, if I am not here in person, I will be asking Secretary Newland for a position on this legislation. Thank you.

The CHAIRMAN. Thank you very much, Senator Cantwell.

We are pleased to have a guest of the Committee, and a friend of all of ours, Gary Peters, Senator Gary Peters from Michigan to introduce his guest.

**STATEMENT OF HON. GARY PETERS,
U.S. SENATOR FROM MICHIGAN**

Senator PETERS. Thank you, Mr. Chairman, and Vice Chair Murkowski, for holding this hearing and for considering S. 195, the Keweenaw Bay Indian Community Land Claims Settlement Act of 2023.

I am happy to be here today to introduce a fellow Michigander, President Doreen Blaker, of the Keweenaw Bay Indian Community. President Blaker has served on the tribal council for over 14 years and has been a strong proponent of preserving the tribe's culture, lands, and natural resources.

She is joined in today's hearing by two of her council members, Tribal Assistant Secretary R.D. Curtis, behind her, and Councilman Rodney Loonsfoot. Welcome, gentlemen, welcome to the Committee.

It has certainly been a real honor to work with the Keweenaw Bay Indian Community on this effort to settle these claims. The tribe has worked diligently and in good faith with me and with the rest of the Michigan congressional delegation, as well as the State of Michigan, their local neighbors and others to find a resolution to this issue.

The result of my bill, S. 195, the Keweenaw Bay Indian Community Land Claims Settlement Act, this bipartisan, bicameral and long overdue legislation will address these longstanding claims of the Keweenaw Indian Community while clearing title of current landowners in the community. The legislation would right a historical wrong by authorizing Federal funds through the U.S. Department of Interior that could be used by KBIC for governmental services, economic development, natural resources protection and land acquisition.

Senator Stabenow serves as an original cosponsor of the bill here in the Senate, and Congressman Jack Bergman has introduced identical legislation in the House.

I also want to take an opportunity to briefly recognize and thank my friend, and a fellow Michigander as well, Assistant Secretary Bryan Newland. I introduced Bryan before this Committee at his

nomination hearing, and he has admirably served our Nation's tribal communities in the time since.

I have worked with KBIC and Assistant Secretary Newland and his team over many years to develop this legislation. I certainly thank you for all of your help, Assistant Secretary Newland. It is good to see you again.

I appreciate the Committee's time and attention to this very important bill. Thank you again for holding this hearing.

The CHAIRMAN. Thank you very much.

In addition to the two distinguished panelists, we also have Assistant Secretary of Indian Affairs for the Department of Interior, the Honorable Bryan Newland.

Are there any other members wishing to make an opening statement? Hearing none, I want to remind our witnesses that your full written testimony will be made a part of the hearing record. Please confine your remarks to five minutes or less.

Assistant Secretary Newland, please proceed with your testimony.

STATEMENT OF HON. BRYAN NEWLAND, ASSISTANT SECRETARY, INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Mr. NEWLAND. Thank you, Mr. Chairman, and Madam Vice Chair, and members of the Committee. I often take third billing in my own house, so I appreciate the chance to do so here before the Committee.

I serve as the Assistant Secretary for Indian Affairs and I appreciate the opportunity to present the Department's views on S. 195, the Keweenaw Band Indian Community Land Claims Settlement Act, S. 382, the Puyallup Tribe of Indians Land Into Trust Confirmation Act, and the UNLOCKED Act, Unlocking Native Lands and Opportunities for Commerce and Key Economic Developments.

S. 195 would settle the Keweenaw Bay Indian Community's claims to certain lands within the exterior boundaries of the L'Anse Indian Reservation in Michigan. The community was wrongfully dispossessed of lands reserved in the 1842 and 1854 treaties of La Pointe, and those lands were later conveyed to the State of Michigan.

S. 195 authorizes the appropriation of \$33.9 million to the Secretary of the Interior to transfer to the tribe as compensation for the loss of those lands. The tribe may use the funds for any lawful purpose but cannot use those funds to acquire lands for gaming.

The bill would also extinguish the tribe's claims to those lands and clear the title of current landowners of the tribe's claims. The Department supports this legislation.

S. 382 directs the transfer of approximately 17 acres of fee land to the Puyallup Tribe in Pierce County, Washington, to be taken into trust for the tribe's benefit. These lands will be part of the tribe's reservation and will not be eligible for Class II or Class III gaming.

S. 382 also stipulates that the Federal Government is not liable for any environmental contamination that occurred on the lands prior to the date they are taken into trust. Environmental assessments conducted by the tribe identified legacy pollution on those

lands, and our fee to trust process at the department would likely require remediation that would be prohibitively expensive for the tribe. That is why the department advised the tribe to pursue Congressional action to transfer these lands into trust.

S. 382 would prevent a long and costly remediation process, and ensure that the lands are restored to the tribe. We support this bill also.

The UNLOCKED Act would amend the Long-Term Leasing Act. The Long-Term Leasing Act provides authority for tribes to enter into surface leases for up to 50 years. This maximum term often limits the ability of tribes to engage in long-term planning and economic development.

Over the years, as the Vice Chair noted, Congress has amended this act to permit individual tribes to enter into leases for longer than 50 years. Each addition has required separate legislation, which is time consuming and resource draining for tribes.

The UNLOCKED Act makes three significant amendments to the Long-Term Leasing act. It increases the maximum lease term for tribes up to 99 years. It clarifies that the Long-Term Leasing Act authorizes leases for certain purposes, and they can include the necessary utilization of natural resources. And it would authorize tribes to approve rights-of-way without further approval of the Secretary of the Interior, if a tribe's rights-of-way approval process is consistent with the department's leasing regulations or if a tribe has regulations approved by the Secretary under that section.

The UNLOCKED Act will build upon the success of the HEARTH Act, which restored tribes' ability to control the leasing of their own lands. The department welcomes this Congressional action to enhance tribal sovereignty and self-determination, and we support the UNLOCKED Act. We are ready to provide any technical assistance to the Committee that you may request.

Mr. Chairman and Madam Vice Chair, I appreciate the chance to testify today on these bills, and look forward to answering any questions you may have.

[The prepared statement of Mr. Newland follows:]

Chairman Schatz, Vice Chairman Murkowski, and members of the Committee. My name is Bryan Newland, and I am the Assistant Secretary for Indian Affairs at the U.S. Department of the Interior (Department).

Thank you for the opportunity to present the Department's view on S. 195, Keweenaw Bay Indian Community Land Claim Settlement Act of 2023, S. 382, Puyallup Tribe of Indians Land into Trust Confirmation Act of 2023, and S. _____, Unlocking Native Lands and Opportunities for Commerce and Key Economic Developments Act of 2023.

S. 195, Keweenaw Bay Indian Community Land Claim Settlement Act of 2023

S. 195 would settle the Keweenaw Bay Indian Community's (KBIC) claims to certain lands within the exterior boundaries of the L'Anse Indian Reservation in Michigan. Specifically, the bill authorizes the Secretary of the Interior (Secretary) to provide monetary compensation to the KBIC for certain lands while extinguishing any claims by the KBIC to those lands to provide title certainty to current owners. The bill's findings and purpose sections provide key details on the claims by the KBIC and process by which the lands were transferred.

As detailed in the finding section of S. 195, the KBIC was wrongfully dispossessed of lands reserved in the 1842 Treaty of La Pointe and 1854 Treaty of La Pointe that were subsequently conveyed to the State of Michigan under the Swamp Land Act of 1850 and the Canal Land Act of 1852. The KBIC lost 2,743 acres of land under the Swamp Land Act and between 1,333.25 to 2,720 acres of land under the Canal Land Act. The loss of this land has negatively impacted the ability of KBIC to exer-

cise cultural, religious, and subsistence rights on the land as well as prevented economic growth.

S. 195 authorizes the appropriation of \$33.9 million to the Secretary to transfer to the KBIC as compensation for the loss of the lands under the Swamp Land Act of 1850 and the Canal Land Act of 1852. The funds may be used by the KBIC for any lawful purpose including governmental services, economic development, natural resources protection, and land acquisition, but restricts the funds from being used to acquire land for gaming purposes.

The bill reflects the Department's understanding that the KBIC does not wish to reassert authority over the lands. S. 195 specifies that when the KBIC receives the monetary compensation, all claims by the KBIC to the lands lost under the Swamp Land Act of 1850 and the Canal Land Act of 1852 are extinguished and the title of current owners of those lands are cleared of all preexisting rights held by the KBIC or any KBIC members.

The Department applauds the Tribe's cooperative approach toward a meaningful resolution to their claims and supports S. 195.

S. 382, Puyallup Tribe of Indians Land into Trust Confirmation Act of 2023

S. 382 directs the transfer of approximately 17.264 acres of Puyallup Tribe fee lands in Pierce County, Washington to be taken into trust for the Tribe's benefit. The lands will be part of the Puyallup Reservation and will not be eligible for Class II or III gaming under the Indian Gaming Regulatory Act. Importantly, S. 382 stipulates that the federal government is not liable for any environmental contamination that occurred on the lands prior to the date that land is taken into trust.

Environmental assessments conducted by the Puyallup Tribe identified potential soil and ground water contamination from petroleum products, fuels, and wood preservatives that may have been used at the historical mill on the lands. The environmental assessment also identified undocumented fill and potentially "refuse fill", and potential arsenic and metals contamination in the soil possibly associated with the Tacoma Smelter Plume. An additional environmental assessment by the Puyallup Tribe identified gasoline and diesel-range hydrocarbons, various metals, and polycyclic aromatic hydrocarbon contamination in the fill materials, as well as diesel-range hydrocarbons and naphthalene in the groundwater on the lands.

The Department has previously advised the Puyallup Tribe that congressional action to transfer the Pierce County tribal fee lands into trust is a better option than the Department's fee-to-trust land acquisition process due to legacy pollution identified in the environmental assessments. The anticipated remediation plan on the lands would be cost-prohibitive for the Puyallup Tribe.

S. 382 would prevent a long and costly remediation process and ensure that the lands are restored to the Puyallup Tribe as they continue to rebuild and develop their homelands. The Department supports S. 382.

S. _____, Unlocking Native Lands and Opportunities for Commerce and Key Economic Developments Act of 2023 (UNLOCKED Act)

Since the enactment of the Non-Intercourse Act of June 30, 1834, and predecessor statutes, land transactions with Indian Tribes were prohibited unless specifically authorized by Congress. The Act of August 9, 1955, or the Long-Term Leasing Act (LTLA) provides the authority for Indian Tribes to enter into surface leases with third parties with the approval of the Secretary of the Interior (Secretary). The LTLA limits lease agreement to 25-year terms with an option to renew for an additional 25 years.

Indian Tribes engage in a diverse array of activities to facilitate economic development, and many have required lease agreements for terms longer than 50 years on their lands. Authorizing Indian Tribes to lease their trust lands for terms longer than the 50-year maximum requires Congress to amend the LTLA to add Tribes' names to it. Since its enactment in 1955, Congress has added 60 Indian Tribes to the LTLA for this purpose. Each addition has required separate legislation, which is time consuming and resource draining for Tribes.

The UNLOCKED Act amends the LTLA to authorize leases of up to 99 years and provides clarity by creating subsections to emphasize that the LTLA authorizes leases for certain purposes, and that a lease for such purposes can include the necessary utilization of natural resources. The UNLOCKED Act also would authorize Indian Tribes to approve rights-of-way without further approval from the Secretary if the Indian Tribe's rights-of-way approval process is consistent with the approval process for Tribal leasing regulations under 25 U.S.C. § 415(h) or the Tribe has regulations approved by the Secretary under that section, a similar model to the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012

(HEARTH Act). Lastly, the UNLOCKED Act makes technical corrections to ensure references specify that the authorities are those of the Secretary of the Interior.

The Department welcomes Congressional action to amend the LTLA to authorize leases up to 99 years and authorize additional Tribal self-determination in the administration of rights-of-way. The HEARTH Act, which authorized a self-determination process for Tribal land leases was a significant step forward to restoring Tribes' ability to control and lease their land and the UNLOCKED Act will build upon the success of the HEARTH Act. So far, 82 Tribes have adopted and regulate the leasing of their Tribal trust lands pursuant to the HEARTH Act. The implementation of the HEARTH Act has been a success, and a great help to Indian Tribes in facilitating economic development.

The Department supports the UNLOCKED Act to authorize any Indian Tribe to lease lands for up to 99 years and Tribal self-determination in the administration of rights-of-ways. These changes would facilitate economic development opportunities and truly unlock potential in Indian Country, and the Department stands ready to provide any requested technical assistance on this bill.

Conclusion

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

The CHAIRMAN. Thank you very much, Mr. Newland.
Ms. Blaker, please proceed with your testimony.

STATEMENT OF HON. DOREEN BLAKER, PRESIDENT, KEWEENAW BAY INDIAN COMMUNITY

Ms. BLAKER. Good afternoon, Chairman Schatz, Vice Chair Murkowski, and members of the Committee. My name is Doreen Blaker, and I have the honor of serving as the president of the Keweenaw Bay Indian Community.

Thank you for the opportunity to provide testimony on S. 195, the Keweenaw Bay Indian Community Land Claims Settlement Act. This bipartisan bill will compensate our tribe for the unlawful taking of our treaty-protected reservation lands and confirm title for the current landowners. This bill is a testament to how working in the spirit of collaboration can lead to positive results.

Today, the Keweenaw Bay Indian Community is located on the L'Anse Indian Reservation in Baraga County on the shores of Lake Superior. In the mid-1800s, the western frontier continued to expand and the Federal Government took a great interest in the mineral resources of the Upper Peninsula. This led the United States to enter into the 1842 and 1854 Treaties of La Pointe with our ancestors. The 1842 Treaty addressed mineral rights and provided for the cession of lands west and south of Lake Superior.

However, the terms of the 1842 Treaty specifically reserved our rights to continue to occupy, hunt, fish, and gather in our homelands within the ceded territory. In the 1854 Treaty, we ceded additional lands in Michigan and Wisconsin in return for the recognition of a permanent reservation, the L'Anse Indian Reservation.

Unfortunately, the promises made to our people in these treaties were not kept. Despite the protections of the 1842 and 1854 treaties, our reservation lands were unlawfully seized and transferred to the State of Michigan through the 1850 Swamp Land Act and the 1852 Canal Land Act. Shortly after signing the 1854 Treaty, the State of Michigan began demanding that the Federal Government transfer title to wetlands within our reservation, based on the Swamp Land Act.

For many years, the Federal Government flatly rejected Michigan's contentions and the United States General Land Office refused to transfer title. The Interior Department informed Michigan that a submission of a swamp lands list did not obligate the U.S. to transfer these lands because they were already reserved for our people. The Supreme Court confirmed this in 1906.

However, the GAO transferred 2,000 acres of reservation swamp lands to the State of Michigan between 1893 and 1937. These transfers violated both Federal law and the creation of our reservation through the 1854 Treaty. The community has never been compensated for this unlawful taking.

Further, through the Canal Land Act, the community was dispossessed of more than 1,300 acres of the L'Anse Indian Reservation. The Canal Land Act was intended to help finance the construction of the Saulte Ste. Marie Canal. The United States had granted Michigan the right to select 750,000 acres of Federal land within the State to defer the cost of construction within the canal. The State identified and selected more than 1,300 acres within our reservation.

Without explanation, the Secretary of Interior approved Michigan's land selection within the L'Anse Reservation, even though those lands were already set aside by the 1854 Treaty. Our tribal council sought to advance these claims, and the justice our tribe is due, through non-adversarial means so that we can maintain harmony with our neighbors. The community presented our claims to the Interior Department, showing that the taking of our reservation lands violated the Fifth Amendment to the Constitution.

In December of 2021, the Interior Department stated, "We have carefully reviewed pertinent documents, including the tribe's expert reports, and have determined that the tribe's claims to the swamp lands and the canal lands have merit."

To resolve these longstanding claims, the tribe has been working closely with our neighbor communities, the State of Michigan, the Interior Department, and our Congressional delegation. Our efforts resulted in the Keweenaw Bay Land Claims Settlement Act, which ensures our neighbors are not harmed, the community is made whole, and harmony amongst our collective communities is preserved.

This bipartisan bill is supported by our neighbors, Baraga County, the Village of Baraga, the Village of L'Anse, as well as the Governor of Michigan.

In closing, the tribe would like to express our upmost gratitude to Senator Peters, Senator Stabenow, and Congressman Bergman for introducing the KBIC Settlement Act. Enactment of the KBIC Settlement Act will mean that KBIC is finally compensated for the taking of our lands, our neighbors will gain clear title to their lands, and the State and Federal Government would right an historical wrong.

Miigwech, thanks again for holding this hearing. I would be happy to answer any questions.

[The prepared statement of Ms. Blaker follows:]

PREPARED STATEMENT OF HON. DOREEN BLAKER, PRESIDENT, KEWEENAW BAY
INDIAN COMMUNITY

Introduction

Chairman Schatz, Vice Chair Murkowski, and honorable Members of the Senate Committee on Indian Affairs, my name is Doreen Blaker and I have the honor of serving as President of the Keweenaw Bay Indian Community (“Community”, “KBIC”, or “Tribe”). Thank you for the opportunity to provide testimony on S. 195, the Keweenaw Bay Indian Community Land Claim Settlement Act (“KBIC Settlement Act”), which would provide compensation to the Community for the taking of land by the United States inside the exterior boundaries of our L’Anse Indian Reservation. This land was guaranteed to the Community as a permanent home under a treaty signed in 1854 without just compensation. The takings were facilitated by two federal statutes and achieved by the federal government’s lack of protection of these treaty-protected lands.

The Keweenaw Bay Indian Community is located on the L’Anse Indian Reservation, in Baraga County, Michigan on the shores of Lake Superior’s Keweenaw Peninsula. The L’Anse Reservation is the oldest and largest reservation within the state of Michigan. Our ancestors dwelt, hunted, fished, and gathered for hundreds of years in the forests, lakes, and wetlands near the Keweenaw Bay in the Upper Peninsula of Michigan.

Treaties

The expansion of the western frontier and the federal government’s growing interest in the mineral resources of the south shore of Lake Superior led the United States to approach our ancestors and convince them to sign the 1842 Treaty of LaPointe (7 Stat. 591) (“1842 Treaty”) and the 1854 Treaty of LaPointe (10 Stat. 1109) (“1854 Treaty”). The main goal of these treaties, from the perspective of the federal government, was the cession of our people’s lands for the expansion of the United States. In return the treaties guaranteed our Tribal Nation certain Constitutionally protected rights including usufructuary rights to the ceded territory, and the right to all of the lands within the exterior boundaries of the L’Anse Indian Reservation.

1842 Treaty

The 1842 Treaty addressed mineral rights and provided for the cession of lands west and south of Lake Superior, including those in the Keweenaw Bay area. However, the terms of the 1842 Treaty were specific and unequivocal regarding our ancestors’ rights to continue to occupy, hunt, fish, and gather in our homelands located within the ceded territory, including the Keweenaw Bay area.

1854 Treaty

The 1854 Treaty provided that the signatory bands would transfer extensive and valuable land claims in Michigan and Wisconsin in exchange for permanent reservations in their ancestral homelands. In addition, it described the L’Anse Reservation, which was reserved for KBIC, by its exterior boundaries. Both the United States and the Community understood that all land within these boundaries was reserved for the sole use of our people. Article 11 of the 1854 Treaty expressly provided that “the Indians shall not be required to remove from the homes hereby set apart for them.” This was an incredibly important promise to my people. As ethnohistorians James McClurken and Heather Howard confirmed through their research, my ancestors understood the establishment of the L’Anse Reservation as recognition of their existing claims to use and occupancy within the Keweenaw Bay area, and assurance that they would never have to remove or be removed from their reservations. See “Canal Lands on the L’Anse Reservation and Chippewa Use and Occupancy of the Keweenaw Bay Region” authored by James McClurken, Ph.D. and Heather Howa Howard, Ph.D., at p. 218. Article VI, Clause 2 of the United States Constitution recognizes that treaties are the “supreme law of the land.” Therefore, the Community has rights to the L’Anse Indian Reservation that are both recognized and protected by the United States Constitution.

Broken Promises

Unfortunately, the promises made through these treaties were not kept and in the latter half of the 19th Century and early in the 20th Century, various lands within the boundaries of the L’Anse Indian Reservation were wrongfully transferred from the United States to the State of Michigan (“State”) through the Act of September 28, 1850 (“Swamp Land Act”) (9 Stat. 519, chapter 84) and the Act of August 26, 1852 (10 Stat. 35, chapter 92) (“Canal Land Act”). These takings took place under

these two statutes but the actual transfer of lands spanned more than three-quarters of a century.

Swamp Land Act

In 1850, Congress enacted Swamp Land Act, which authorized the State of Arkansas and other States, including the State of Michigan, to “construct the necessary levees and drains, to reclaim” certain unsold “swamp and overflowed lands, made unfit thereby for cultivation.” Shortly after the signing of the 1854 Treaty, the State of Michigan began demanding that the federal government issue it patents to wetlands within the L’Anse Reservation on grounds that the Swamp Lands Act granted such lands to the State. For many years, the federal government flatly rejected Michigan’s contentions and the United States General Land Office (“GLO”) refused to issue patents to Michigan.

The United States Department of the Interior informed Michigan that the State’s submission of a swamplands list did not obligate the United States to issue patents for such lands where the land was occupied and appropriated for the Indians. The United States Supreme Court ratified the legal rationale of this position in a 1906 decision, *Wisconsin v. Hitchcock*, 201 U.S. 202, holding that the signatory bands to the 1854 Treaty had never abandoned their physical presence or right of occupancy to the lands confirmed as their “permanent reservations” under the 1854 Treaty and this trumped any statute granting any portion of reservation lands to the states.

Unfortunately for unknown reasons, the GLO nonetheless eventually patented 2,743 acres of the Community’s land within the L’Anse Indian Reservation (“Reservation Swamp Lands”) to the State of Michigan between 1893 and 1937. These patents not only violated federal law, they subverted the established policies of the Department of the Interior and the Indian Affairs Office with respect to the creation of the L’Anse Indian Reservation through the 1854 Treaty. The right of the Community to the Reservation Swamp Lands had not been extinguished when the United States patented these treaty-protected lands to the State, nor has the Community received just compensation for the taking of these lands in violation of the Fifth Amendment of the U.S. Constitution.

Canal Land Act

The Community was also dispossessed of more than 1,300 acres of land that was reserved for the L’Anse Indian Reservation and set aside in the 1854 Treaty through a separate federal statute. In 1852, Congress enacted the Canal Land Act, to help finance the construction of the Sault Ste. Marie Canal at the Falls of the St. Mary’s River, to connect Lake Superior to Lake Huron. Pursuant to the Canal Land Act, the United States granted the State the right to select 750,000 acres of unsold public land within the State to defray the cost of construction of the Sault Ste. Marie Canal. The State identified and selected, among other land, a minimum of 1,333.25 and up to 2,720 acres within the exterior boundaries of the L’Anse Indian Reservation (“Reservation Canal Lands”).

Through carelessness, expediency, or worse, the Department of the Interior approved the State’s land selections, including the Reservation Canal Lands, after ratification of the 1854 Treaty. The Secretary noted that the approval was “subject to any valid interfering rights.” As a result, the 1854 Treaty set apart from the public domain the Reservation as of September 30, 1854, which preceded the date on which the State established legally effective title to the Reservation Canal Lands. The L’Anse Reservation lands were withdrawn from sale by the order of the President on March 7, 1855, but the title to the “canal lands” selected by Michigan, including those within the L’Anse Reservation, was transferred to the Canal Company in accordance with the orders of the Michigan Attorney General.

KBIC Land Claims & Its Approach to Resolution

The United States, through the actions of the GLO, deprived the Community of the exclusive use, occupancy, and property right to the Reservation Swamp Lands and the Reservation Canal Lands within the L’Anse Indian Reservation, without just compensation as required under the Takings Clause of the Fifth Amendment to the Constitution of the United States. The Community presented these claims to the Department of the Interior by providing a legal analysis and ethnohistorical reports supporting these claims. In December 2021, the Department of the Interior stated that “We have carefully reviewed pertinent documents, including the Tribe’s expert reports, and have determined that the Tribe’s claims to the Swamp Lands and Canal Lands have merit.”

Impact of Loss of Lands

The uncompensated loss of Reservation Swamp Lands and the Reservation Canal Lands has impacted the exercise by the Community of cultural, religious, and sub-

sistence rights on the land; caused a harmful disconnect between the Community and its land; impacted the ability of the Community to fully exercise its economy within the Reservation; and had a negative economic impact on the development of the economy of the Community.

KBIC Efforts to Resolve Claims

The Community has strengthened its efforts to resolve these longstanding land claims in the last few years. In the spirit of cooperation, we worked closely with our neighboring communities, the State of Michigan, the Department of the Interior, and our U.S. Congressional Delegation to develop the Keweenaw Bay Indian Community Land Claim Settlement Act. This bipartisan, bicameral legislation was introduced on January 31, 2023, by Senators Gary Peters and Debbie Stabenow (S.195), and the House companion bill (H.R. 650) was introduced by Representative Jack Bergman. The Community understands that our neighbors who currently hold this land have clean hands and we do not seek to disturb their ownership. However, the Community is still entitled to just compensation. The Tribal Council sought this approach because we believe in an approach to justice that restores harmony and relationships while making the aggrieved whole. The Keweenaw Bay Land Claims Settlement Act achieves this goal by ensuring that our neighbors are not harmed, the Community is made whole, and harmony amongst our collective communities is preserved.

KBIC Settlement Act

The KBIC Settlement Act acknowledges the Federal Government's uncompensated taking of the Reservation Swamp Lands and the Reservation Canal Lands and provides compensation to the Community for those takings. The legislation also resolves issues related to the title of those lands. Through the taking of our treaty-protected tribal lands, certain non-Indian individuals, entities, and local governments now occupy land within the boundaries of the Reservation. The Community believes that the ownership interests in Reservation Swamp Lands and Reservation Canal Lands were acquired in good faith by the current land owners. For this reason, our legislation extinguishes all claims by the Community to the Reservation Swamp Lands and the Reservation Canal Lands and confirms the ownership by the current landowners. Finally, the bill extinguishes all potential claims by the Community against the United States, the State, and current landowners concerning title to, use of, or occupancy of those lands.

Support for the Bill

Our neighboring communities-Baraga County, the Village of Baraga, and the Village of L'Anse-support this legislation; Michigan Governor Gretchen Whitmer expressed her strong support for the legislation; and the Department of the Interior stated that "the Tribe's claims to the Swamp Lands and Canal Lands have merit." This broad and bipartisan support is a testament to the Community's non-adversarial approach to our claims and our neighbors', elected leaders', and friends' willingness to listen and understand this history. Our Council is immensely proud of how far we have come to finally obtaining the justice that our Tribe has long sought.

Conclusion

In closing, the Keweenaw Bay Indian Community would like to express our utmost gratitude to Senator Peters and Senator Stabenow for introducing the KBIC Settlement Act in the Senate, as well as Representative Bergman for introducing companion legislation in the House. The Community also very much appreciates the Committee holding this legislative hearing on the bill. Enactment of the KBIC Settlement Act would have wide-reaching benefits. KBIC would finally be compensated for the taking of our invaluable lands and the resulting missed opportunities; our neighbors would have clear title to their lands; and the State and federal government would right a historical wrong.

The CHAIRMAN. Thank you very much.
Ms. Bryan, please proceed with your testimony.

**STATEMENT OF HON. ANNETTE M. BRYAN, COUNCILWOMAN,
PUYALLUP TRIBE**

Ms. BRYAN. Thank you. [Greeting in Native tongue.] Good afternoon. My name is Annette Bryan, and I am a councilwoman for the Puyallup Tribe of Indians. I bring you the greetings of Chairman

Bill Sterude and Vice Chairwoman Sylvia Miller, who unfortunately were not able to make it today. I also want to acknowledge my fellow councilman James Rideout who is here with me today.

First, I would like to thank Chairman Schatz and Ranking Member Murkowski for the opportunity to present this testimony. I also want to thank Senator Cantwell for her tireless work on behalf of Indian Country generally, and on S. 382 specifically. Without Senator Cantwell, we would not be here today.

The Puyallup Tribe is a signatory to the Treaty of Medicine Creek. Under this treaty, the tribe reserved a 20,000-acre reservation, which was to be a permanent homeland for my tribe.

However, the ink had barely dried on the treaty when concerted efforts were undertaken to take our tribe's lands. Over the next 50 years after the treaty, most of the land within our reservation was taken as a result of spurious acts of Congress, illegal sales of reservation lands, and outright theft.

But in 1983, the tribe's title to the bed of the Puyallup River and adjacent exposed lands, including lands within the Port of Tacoma, was confirmed by the Federal court. This decision gave rise to a historic settlement agreement between 12 parties, including the tribe, the City of Tacoma, the Port of Tacoma, the State of Washington and the Federal Government, which was enacted by Congress. The settlement act restored to the tribe nearly 1,000 acres of land, including lands within the Port of Tacoma.

Today, while the Puyallup Reservation consists of approximately 28 square miles, we have 1,252 acres of land held in trust by the United States for the tribe or our members, which is less than 8 percent of the entire reservation. We are one of the most urban reservations in the Country.

Our efforts to restore our homeland to trust is complicated by the fact that the City of Tacoma is in the location of multiple kinds of industrial activities. Thus, most of the tribe's territory is contaminated by legacy pollution, which means that while the land is now cleaned up to Federal and State standards, some measure of the contaminants can still be detected.

When our land was taken from us, it was clean. And it breaks our elders' hearts that the land has any contamination on it at all, when our ancestors fought so hard to protect and preserve these lands for future generations.

S. 382 will restore the tribe's place along Commencement Bay and will expand the tribe's presence along the Blair Waterway. We have the support of the City of Tacoma, Pierce County, the Port of Tacoma, and the State of Washington. Our plans for these lands are exciting. The property along the Blair Waterway is critical to fulfilling the promise of the Puyallup Land Settlement, which is over 30 years old now, which recognized the tribe's right to engage in foreign trade. This land is adjacent to our existing settlement act trust land that is designated a foreign trade zone.

By adding this land to the port, the tribe is well-positioned to develop a 21st century shipping terminal and become the first international tribal center in modern times.

The property along Commencement Bay will be the first Puyallup tribal trust land along these sacred waters in more than 100 years. On this property, we are planning a first of its kind, indige-

nous, internationally inspired restaurant which will introduce the food of my people to people from around the world. We are partnering with celebrated chef Roy Yamaguchi on this venture.

We are so excited, and I am sure you know where Roy's is, Mr. Chairman, we are so excited about these opportunities. But it is the restoration of these lands to tribal trust status that means the most to us. We lost so much of our land, and it is the tribal council's goal to restore as much of this land as possible in our lifetime. By doing this, we are fulfilling the hopes of our ancestors when they signed the treaty and reserved these lands for our permanent homelands.

Before I finish, I want to add my voice in support of S. 1322, the UNLOCKED Act. The Puyallup is one of 59 tribes that sought the right to extend leasing authorities. We saw this as critical to our efforts to further economic development. I thank the Chairman for your leadership on this issue.

I would also like to thank Senators Hoeven and Smith for sponsoring S. 1308 to the Committee, which I am an alternate on. It can finish our important work on the PROGRESS Act.

Finally, I want to thank you for the chance to testify, and I am happy to answer any questions you may have.

[The prepared statement of Ms. Miller follows:]

PREPARED STATEMENT OF HON. SYLVIA MILLER, VICE-CHAIRWOMAN, PUYALLUP
TRIBE OF INDIANS

Good afternoon, my name is Sylvia Miller. I am the Vice-Chairwoman of the Puyallup Tribe of Indians. I would like to thank Chairman Schatz and Ranking Member Senator Murkowski for the opportunity to present this testimony on S. 382. I would also like to thank Senator Cantwell for her tireless work on behalf of Indian country generally and on S. 382 specifically.

The Puyallup Tribe is a federally recognized Tribe located in Pierce County, Washington along the shores of Commencement Bay, a large inlet of Puget Sound. The Tribe is a signatory to the Treaty of Medicine Creek, Dec. 26, 1854, 10 Stat. 1132. Under this Treaty, the Tribe reserved the lands for its Reservation, which was established by two subsequent Executive Orders. Exec. Order Jan. 20, 1857; and Exec. Order Sept. 6, 1873. Pursuant to the Treaty, the Puyallup Tribe secured its approximately 20,000-acre Reservation, which was to be a permanent homeland for our Tribe and its people. However, the ink had barely dried on the Treaty and the Executive Orders when concerted efforts were undertaken to take the Tribe's lands. Over the next fifty years after the Treaty, most of the land within our Reservation was taken as a result of spurious Acts of Congress, illegal sales of reservation land, and outright theft. See H.R. Rep. No. 101-57, at 3 (1989).

Despite these land takings, in 1983, the Tribe's title to the bed of the Puyallup River and adjacent exposed lands, including lands within the Port of Tacoma, was confirmed by the federal court. *Puyallup Tribe v. Port of Tacoma*, 717 F.2d 1251 (9th Cir. 1983). This decision gave rise to an historic Settlement Agreement between twelve parties including the Tribe, the City of Tacoma, the Port of Tacoma, the State of Washington, and the Federal Government, which was enacted by Congress. *Puyallup Tribe of Indians Settlement Act of 1989*, Pub. L. 101-41 (1989). The Settlement Act restored to the Tribe nearly 1,000 acres of land, including lands within the Port of Tacoma. Today, the Puyallup Reservation consists of approximately 28 square miles in Pierce County, Washington, and includes parts of six cities including the cities of Tacoma, Fife, Puyallup, and Milton. Unfortunately, only 1,252.7 acres of the Tribe's Reservation land is held in federal trust by the United States for the Tribe and its members.

Thus, the recent history of the Puyallup Tribe is in large measure a history of a people struggling to overcome the adverse effects of the loss of most of our lands. Having suffered for generations from the loss of lands caused by the federal government, the Tribe's top priority is restoring our homelands, in particular land that is along Commencement Bay and the Blair Waterway.

Our efforts to restore our homeland to trust is complicated by the fact that the City of Tacoma was the location of multiple kinds of industrial activities, including timber mills and a copper smelter, that took place throughout the 20th Century. Thus, most of the Tribe's territory is contaminated by legacy pollution, which means that while the land is now cleaned up to federal and state standards, there remains some measure of the contaminants that can still be detected. I would like to include for the record of this hearing letter on this issue from Assistant Secretary Newland to Chairman Sterud. This is one reason why this legislation is needed as it will allow us to begin to heal the wounds of the 19th century and have our land fully protected by trust status.

S. 382 concerns approximately 17.2 acres of land that will restore the Tribe's place along Commencement Bay, as well as expand the Tribe's presence along the Blair Waterway. The Tribe's acquisition of these lands was historic. But restoring these lands to federally protected trust status will be monumental. It will help correct some of the many wrongs that the United States inflicted on the Puyallup Tribe. This legislation is supported by the City of Tacoma, the Port of Tacoma, Pierce County, and the State of Washington. The Tribe has worked to build relationships with these stakeholders. I would like to include these letters in the record of this hearing.

Our plans for these lands are exciting. The property along the Blair Waterway is a critical component of fulfilling the promise of the Puyallup Land Settlement, which recognized the Tribe's right to engage in foreign trade. These lands are adjacent to our existing Settlement Act trust land which is designated a Foreign Trade Zone. By adding these lands in the Port, the Tribe is well positioned to develop a 21st century shipping terminal that will help address the backlog facing our Nation's ports. The placing of this land into trust will make this land the first international tribal trade center in modern times.

The property along Commencement Bay will be the first Puyallup Trust land along these sacred waters in more than 100 years. On this property we are planning a first of its kind Northwest Indigenous/internationally inspired restaurant, which will introduce the food of my people to people from around the world. Celebrated Chef Roy Yamaguchi is our partner in this exciting venture. We are also proud to be working with key stakeholders, including Kenmore Air, to bring a seaplane terminal to these lands. This will be the first seaplane terminal in the south Puget Sound. This terminal will further open the beautiful Puget Sound to visitors from around the country and around the world.

We are so excited about these opportunities, but it is the restoration of these lands to Tribal trust status that means the most to us. We lost so much of our land. It is the Tribal Council's primary goal to restore as much as we can in our lifetime. By doing this, we are fulfilling the hopes of our ancestors when they signed the Treaty that reserved these lands as our permanent homelands.

I again want to thank the Committee and the Washington State Senators for your tireless work on behalf of the Puyallup Tribe and all of Indian country. I am happy to answer any questions that you might have.

The CHAIRMAN. Thank you very much. Roy Yamaguchi makes delicious food.

Assistant Secretary Newland, you testified that the Department supports S. 1322 and these are important fixes. Would increasing the \$2 million cap on the department's land acquisition fund further assist tribes to unlock their economic potential?

Mr. NEWLAND. Thank you, Mr. Chairman. Yes, it would. That is one of the reasons that the President sought an increase in that cap to \$12 million in the Fiscal Year 2024 budget request. But anything that helps to expand tribal land base, we believe, would help promote tribal economic development.

The CHAIRMAN. Secretary Newland, as a former tribal leader, you have a unique perspective on how S. 1322 would work in real life. Can you give me an example of how important expanded leasing and right-of-way authority is to Indian Country?

Mr. NEWLAND. I know you appreciate brevity, so I will try to leave it to one example, Mr. Chairman. I think back to a time when we were working on a housing development in our commu-

nity, when I was tribal president. We had to get multiple rights-of-way for different utilities and a roadway to move that development forward. It was an agonizing process.

Had we had the opportunity to have tribal control over that process, we could have achieved that approval much more quickly.

The CHAIRMAN. Thank you.

President Blaker, you testified that S. 195 will right a historic wrong for your tribe and address the uncompensated taking of your land. Can you share how important this bill is to clarify the cloud on the title for current landowners?

Ms. BLAKER. Chairman Schatz, we have done our best to work with the local units of government, so that property owners wouldn't have to worry about that, that working government to government will take care of this problem. So I think when the bill gets passed, the cloud will be lifted.

The CHAIRMAN. Thank you very much.

Vice Chair Murkowski?

Senator MURKOWSKI. Thank you, Mr. Chairman.

This is a question to you, Assistant Secretary Newland, and it regards S. 382. It is my understanding from what we just heard from Councilwoman Bryan that the lands that would be taken into trust under the bill have met State and Federal environmental cleanup standards. Is that your understanding?

Mr. NEWLAND. Based on the tribe's report to us, yes, that is our understanding.

Senator MURKOWSKI. As you probably know, we are dealing with extensive contaminated lands issues in the State of Alaska. I asked for some numbers this morning, there are 4,952 contaminated land sites in the State; 1,179 of those are ANCSA lands. So a full 24 percent of the contaminated lands that are on the list for cleanup, we are working with the EPA, we had the EPA Administrator before the Appropriations Committee this morning. They are working well with us.

But the fact of the matter is we literally had to beg an agency to step forward, because the Department of Interior just would not, they would not agree to be the lead agency. They would sit at the table, but they would not take the lead on this.

It is a real sore spot with me. Because in an effort to complete the obligation, to honor the trust to our Native peoples for fulfillment of their land claims, we convey lands that are tainted, that are soiled, that are polluted, that are contaminated. It is an affront, it really is.

So to hear you say, Councilwoman Bryan, that it is such a tragedy that when these lands were taken from you, they were clean. Now you are getting them, we are figuring out a way to make this work.

But it is an injustice. It really is. I am very bothered by what our Federal agencies have allowed over the years when it comes to the transfer of many of these lands to Native people under lands settlement acts.

So I am just going to ask you generally, does the department have any concerns with transferring known contaminated lands into trust understanding that there is still trace contaminants, legacy pollution is what we call it, still being detected on these lands?

Mr. NEWLAND. Thank you, Madam Vice Chair.

With respect to this bill, we believe based on our conversations with the tribe and their determination that this is in their best interest that this transfer of these lands into trust for the tribe would be in their best interest.

Senator MURKOWSKI. Maybe I should direct this to you, Councilwoman Bryan, is it in your best interest, because you simply can't afford to pay the remediation costs?

Ms. BRYAN. Thank you for the question.

One of the reasons this matters so much to us is that you can have developers up and down the waterfront buy a piece of property and develop it in the state it is in now. Because we put the land into trust, and it requires this phase two, and there are legacy contaminants there, legacy pollution, we are unable to do that.

So putting the land into trust will allow us to develop it, just like any other developer would be able to do. The Port of Tacoma and the Tacoma tide flats are heavily industrialized. They have been for years. I too think it is an atrocity, what the government has allowed to happen over the years.

There has been a lot of cleanup. We had three Superfund sites right there in the Commencement Bay area. Our lands are very contaminated, and there is a lot of legacy pollution that I am told, in my lifetime, with the best available control technologies, we will never be able to clean.

But we are where we are. We have an opportunity here to put this land into trust that we have already purchased. Our land was stripped from us. We are having to pay the highest price for it, and now we are unable to put it into trust because of this legacy pollution.

Senator MURKOWSKI. We want to get to a viable solution for the Puyallup Tribe. So whether it is your shipping terminal or what you want to do with a great restaurant, we want to be able to facilitate that.

Last question for you, Assistant Secretary Newland. Can you share a little bit about the backlog at BIA on rights-of-way applications and why it is so important under this UNLOCKED Act to allow for a tribal self-determination process for the rights-of-way approvals?

Mr. NEWLAND. Thank you, Madam Vice Chair. I don't have data at my fingertips at the hearing today when it comes to the backlog of rights-of-way, but this has long been a sore spot for tribes across Indian Country, how long it takes to get rights-of-way approved. The department has adopted new regulations in the last decade in an attempt to speed that up.

But I think we all believe that when tribes are making the decisions about how their lands get used and control the timelines that it moves faster and it is more efficient and ultimately works better for the tribe.

Senator MURKOWSKI. Got it.

Thank you, Mr. Chairman. I don't have further questions of the witnesses, but I thank them, and hopefully we will be able to move these bills relatively expediently.

The CHAIRMAN. Thank you very much, Vice Chair.

If there are no more questions for our witnesses, members may also submit follow-up written questions for the record. The hearing record will remain open for two weeks.

I want to thank all the witnesses for their time and their testimony. This hearing is adjourned.

[Whereupon, at 3:09 p.m., the hearing was adjourned].

A P P E N D I X

PREPARED STATEMENT OF THE UNITED SOUTH AND EASTERN TRIBES SOVEREIGNTY PROTECTION FUND

The United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is pleased to provide the Senate Committee on Indian Affairs (SCIA) with the following testimony for the record of the May 3, 2023 Legislative Hearing on S. 1322, the UNLOCKED Act. We appreciate SCIA's consideration of this bill and its focus on addressing issues pertaining to land use and management by Tribal Nations. Tribal Nations are political, sovereign entities whose status stems from the inherent sovereignty we have as self-governing peoples that pre-dates the founding of the United States. For the federal government to fully support Tribal Nation sovereignty and self-determination, Congress must remove legal barriers that hinder, or outright obstruct, our inherent sovereign authorities to manage and develop our lands in ways that would best serve our Nations and citizens.

USET SPF supports passage of S. 1322, which would amend existing regulations at 25 USC 415(a) to empower Tribal Nations to lease trust lands for a period of up to 99 years. S. 1322 would also expand rights-of-way authorizations for all purposes across Tribal Lands by amending the Helping Expedite and Advance Responsible Tribal Home Ownership (HEARTH) Act to empower Tribal Nations to develop regulations for rights-of-way authorizations. USET SPF maintains that Congress must enact legislation that empowers Tribal Nations to manage and utilize our lands as we deem appropriate and the current statutory limitations to leasing Tribal Lands are proven barriers to attracting and pursuing economic development initiatives on our lands. Furthermore, empowering Tribal Nations to execute rights-of-way authorizations across our lands will streamline the approval and deployment processes of infrastructure projects. These actions are necessary for Tribal Nations to continue pursuing efforts in Nation rebuilding and the revitalization of our Tribal economies.

USET Sovereignty Protection Fund (USET SPF) is a non-profit, inter-tribal organization advocating on behalf of thirty-three (33) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico.¹ USET SPF is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

Support for Passage of S. 1322, The UNLOCKED Act

Under the 1834 Non-Intercourse Act, Tribal Nations are prohibited, unless explicitly authorized by an Act of Congress, to engage in transactions of lands held in trust by the federal government. In 1955, Congress enacted the Long-Term Leasing Act (LTLA) to authorize Tribal Nations to enter into surface leases, with the approval of the Secretary of the Interior, for a period of 25 years with the option to renew such leases for an additional 25 years. The LTLA was amended in 2012 by the Helping Expedite and Advance Responsible Tribal Home Ownership (HEARTH) Act, which empowered Tribal Nations to negotiate and enter into surface leases once

¹ USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Catawba Indian Nation (SC), Cayuga Nation (NY), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe-Eastern Division (VA), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mi'kmaq Nation (ME), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Monacan Indian Nation (VA), Nansemond Indian Nation (VA), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Rappahannock Tribe (VA), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), Upper Mattaponi Indian Tribe (VA) and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

their HEARTH Act regulations were approved by the Secretary of the Interior. This process streamlines Tribal Nation lease transactions as well as empowers Tribal Nations to exercise self-determination in developing and implementing our own leasing and land use priorities. According to the Department of the Interior, 82 Tribal Nations have adopted their own HEARTH Act regulations to lease trust lands. However, the limitations of the LTLA's 25-year leasing authority have limited Tribal Nation abilities to attract capital and business entities to enter into these lease agreements. Today, lease authority of up to 99 years is often required for long term commercial leases and some financing contracts from banking institutions.

Additionally, S. 1322 expands Tribal Nation authority under the HEARTH Act to authorize rights-of-way approvals across Tribal Lands once Tribal Nation regulations are approved by the Secretary of the Interior. Empowering Tribal Nations with regard to rights-of-way permitting will streamline infrastructure project approval and deployment processes and ensure projects are not delayed while waiting for approval of rights-of-way applications at the Department of the Interior. More importantly, it improves the promotion and recognition of Tribal Nation sovereignty and self-determination in our homelands. This authority will become extremely beneficial to Tribal Nations in working with federal and non-federal entities for the deployment of infrastructure projects funded by the American Rescue Plan Act and the Infrastructure Investment and Jobs Act.

USET SPF fully supports passage of S. 1322 to authorize Tribal Nation authority to conduct leases of trust lands for a period of up to 99 years. This will end the practice of Tribal Nations requiring approval by an Act of Congress to offer and enter into long term leases for periods beyond the current 25-year leasing threshold authorized by the LTLA. Enactment of S. 1322 will support Tribal Nation efforts to rebuild our economies by expediting Tribal economic development plans on trust lands, as well as other initiatives Tribal Nations may pursue for the general welfare of our communities and citizens. It will also ensure that all Tribal Nations can negotiate effectively to execute these long-term leases and compete with non-Tribal landholders near our jurisdictional boundaries. Furthermore, S. 1322 will recognize Tribal Nation authority to approve rights-of-way permits across our lands to expedite the deployment of critical infrastructure needed for economic development, housing, broadband, electricity, and water and wastewater services.

Conclusion

Congress enacted the Long-Term Leasing Act of 1955 (LTLA) to empower Tribal Nations to enter into surface leases, with the approval of the Secretary of the Interior, for a period of 25 years with the option to renew such leases for an additional 25 years. However, the current 25-year lease restriction imposed by the LTLA and the archaic federal practices of managing Tribal Lands do not support our sovereignty and self-determination. This is especially evident in the lease restrictions imposed by statutes and regulations that limit Tribal Nation authorities to effectively pursue land use planning and development for Nation rebuilding. Tribal Nations are sophisticated and focused on determining the best land use planning, development, and management activities to pursue economic development projects and other initiatives to improve the general welfare of our communities and citizens. As sovereign Tribal Nations, we are best suited to manage leasing and development activities on our lands without federal interference. The current legal barriers that have prevented or unduly prolonged Tribal Nations from executing long-term leases of Tribal Lands must finally be appropriately addressed by Congress through amendment of the LTLA. For these reasons, we fully support and encourage the swift passage of S. 1322 to empower Tribal Nations to execute long-term leases of trust lands and the authority to develop rights-of-way regulations to execute these permits across Tribal Lands to facilitate the deployment of critical infrastructures.

U.S. SENATE
May 1, 2023

Hon. Brian Schatz,
Chairman;
Hon. Lisa Murkowski,
Vice Chairman,
Senate Committee on Indian Affairs,
Washington, DC.

Dear Chairman Schatz and Vice Chairman Murkowski:

We write today to request a hearing on the Keweenaw Bay Indian Community Land Claim Settlement Act. This legislation would compensate the Keweenaw Bay

Indian Community (KBIC) for the uncompensated taking of land by the federal government. In turn, the current landowners who purchased the land in good faith will have their ownership confirmed.

The Act acknowledges the uncompensated taking of the Reservation Swamp Lands and the Reservation Canal Lands by the federal government. The taking of this land violated treaties and caused substantial harm to the Keweenaw Bay Indian Community. Through the authorization of compensation, Congress could adequately acknowledge the initial taking and extinguish any remaining claims to the land. In turn, Congress could properly address a historical wrong.

In response to this proposed legislation, the local community has supported KBIC's effort to settle its land claims. In addition, Governor Whitmer's office has coordinated with my office and KBIC to draft the text of the legislation. Finally, the Department of Interior Assistant Secretary for Indian Affairs, Bryan Newland, stated in a letter that his staff had "carefully reviewed pertinent documents, including the Tribe's expert reports, and have determined the Tribe's claims to the Swamp Lands and Canal Lands have merit." Newland recognized that KBIC did not seek to "reassert authority over the lands at issue but instead seeks to remedy its claims by working with Congress" and applauded the KBIC for that approach.

The Keweenaw Bay Indian Community Land Claim Settlement Act is an opportunity to address past harms and allow a community to heal. The enactment of this law benefits all those involved by ensuring those currently possessing the land at issue have clear title and allows the tribe to receive long overdue compensation. Therefore, we ask that the Senate Committee on Indian Affairs hold a hearing on the KBIC Land Claim Settlement Act.

Sincerely,

DEBBIE STABENOW; GARY C. PETERS, U.S. SENATORS

PORT OF TACOMA COMMISSION
January 23, 2023

Hon. Debra Haaland,
Secretary of the Interior,
U.S. Department of the Interior,
Washington, DC.

Dear Secretary Haaland:

The Port of Tacoma is writing in support of the Puyallup Tribe of Indian's request to place their last remaining parcel of real estate on the east side of the Blair Waterway into federal trust status. This action would combine two adjoining parcels that have already been placed into federal trust status and supports their efforts to utilize its property more fully on the Tacoma Tideflats. The Port of Tacoma and the Puyallup Tribe of Indians jointly own critical seaport real estate along the Blair Waterway in Tacoma's harbor and have a decades long history of cooperation that hinges around the Puyallup Land Claims Settlement of 1988.

The Puyallup Tribe is a key partner of the Port of Tacoma to deliver on economic vitality, community and workforce development and environmental restoration. Conversion of these properties into federal trust is a logical step in the process to enhancing economic development opportunities for the Tribe. The Port maintains positive discussions with the Tribe on ways to collaborate on seaport planning and operations to maximize the benefit to both parties.

The Port of Tacoma will continue its collaboration with the Puyallup Tribe of Indians as it furthers its strategic economic development goals and looks forward to having regular and ongoing communications to support our mutual interests. If you have any questions or require further information, please do not hesitate to contact the Port of Tacoma Commission President.

Sincerely,

DEANNA M. KELLER, PRESIDENT

CITY OF TACOMA

Hon. Patty Murray;
Hon. Maria Cantwell,
U.S. Senate,
Washington, DC.

Dear Senator Cantwell and Senator Murray:

It is my pleasure to write in support of the Puyallup Tribe of Indian's effort to restore the land it has purchased on Ruston Way into federal trust status.

The Puyallup Tribe is an important partner for the City. We collaborate on shared environmental, community development and economic development goals. As such, the Tribe's acquisition of these two properties and the plans to maintain the established businesses align with the City's future plans for this area.

Converting this property into federal trust status is a meaningful step to healing the wrongs of history experienced by the Tribe. The City of Tacoma supports the Tribe's effort to restore this traditional land along Commencement Bay.

Yours in Service,

HON. VICTORIA R. WOODARDS, MAYOR

STATE OF WASHINGTON

Hon. Debra Haaland,
Secretary of the Interior,
U.S. Department of the Interior,
Washington, DC.

Dear Secretary Haaland:

I write in support of the Puyallup Tribe of Indians's effort to restore the land it has purchased on Ruston Way into federal trust status.

As governor I have worked closely with tribes throughout the state as they seek to restore their traditional homelands. The Puyallup Tribe of Indians is an important governmental partner to the state, county, and city on a multitude of issues, including community development, environmental restoration, and economic development. The acquisition of these two properties and the plans to maintain the businesses in this area is just another step in the tribe's goal of restoring what was committed to under the Treaty of Medicine Creek.

I support these efforts and look forward to working in collaboration with the Puyallup Tribe of Indians.

If you have any questions or require further information, please do not hesitate to contact Craig Bill, Executive Director of the Governor's Office of Indian Affairs.

Very truly yours,

HON. JAY INSLEE, GOVERNOR

PIERCE COUNTY

Hon. Patty Murray;
Hon. Maria Cantwell,
U.S. Senate,
Washington, DC.

Dear Senator Cantwell and Senator Murray:

I write in strong support of the Puyallup Tribe's effort to place the land it has purchased on Ruston Way in Tacoma into federal trust status.

Over the last 30 years, the Puyallup Tribe has worked closely with the County on critical issues including law enforcement, economic development, community development, and environmental restoration. The Tribe's acquisition of these two properties and the plans to maintain the businesses in this area is just another step in the Puyallup Tribe's goals of developing its economic base and enhancing the wellbeing of its members.

The County supports these efforts and looks forward to working closely with the Puyallup Tribe as it furthers these goals.

Sincerely,

BRUCE F. DAMMEIER, EXECUTIVE

BUREAU OF INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR
August 15, 2022

Hon. Bill Sterud,
Chairman,
Puyallup Tribe of Indians,
Tacoma, WA.

Dear Chairman Sterud:

I am aware that the Puyallup Tribe ("Tribe") seeks to place into trust two properties on Ruston Way in Tacoma, Washington ("Properties"). The Tribe currently uses the Properties for retail use including a restaurant at 3001 Ruston Way and a vacant restaurant building located at 3017 Ruston Way. The Tribe has expressed

that it intends to continue the retail use of the Properties, including a first of its kind fine dining restaurant that will infuse tribal cuisine. I was excited to visit these properties and I look forward to the Tribe's return to Commencement Bay with these exciting ventures. For the reasons explained below, congressional action directing the Department of the Interior to place the Properties into trust may be the most viable option for the Tribe.

As you know, the Department of the Interior's land into trust acquisition regulatory process is set forth in 25 C.F.R. Part 151. Particularly, 25 C.F.R. 151.10(h) and 25 C.F.R. 151.11(a) require, in relevant part, that an applicant seeking land into trust provides information allowing the Department to comply with the Department Manual on Land Acquisition and Exchange Real Property Pre-Acquisition Assessments: Environmental Due Diligence ("602 DM 2"). 602 DM 2 applies to discretionary fee-to-trust acquisitions and states the Department's policy to minimize its exposure to potential liability and remediation costs by avoiding acquiring real property that is contaminated unless directed by Congress, court mandate, or as determined by the Secretary. Additionally, 602 DM 2 describes the Department's process for preserving defenses to liability through Environmental Site Assessments prior to acquisition.

The Tribe conducted a Phase I Environmental Site Assessment ("Phase I ESA") that identified potential soil and ground water contamination from petroleum products, fuels, and wood preservatives that may have been used at the historical mill on the property. The Phase I ESA also identified undocumented fill and potentially "refuse fill", and potential arsenic and metals contamination in the soil possibly associated with the Tacoma Smelter Plume. The Tribe conducted a Phase II Environmental Site Assessment ("Phase II ESA"). The Phase II ESA identified gasoline and diesel-range hydrocarbons, various metals, and polycyclic aromatic hydrocarbon contamination in the fill materials, as well as diesel-range hydrocarbons and naphthalene in the groundwater on the Properties.

If the Tribe were to apply to place the Properties into trust through the regulatory process at 25 C.F.R. Part 151, the Department may require a remediation plan prior to acquisition to minimize its exposure to liability, consistent with 602 DM 2. I understand that a remediation plan for the Properties is cost prohibitive for the Tribe. However, should Congress direct the Department to place the Properties into trust through legislation, the Department could accept the land into trust without requiring a remediation plan.

The Department understands the legacy contamination is a result of industrial development in the Tribe's homelands in the City of Tacoma that has greatly impacted the Tribe's efforts to restore its homeland. Given the cost implications that may arise for the Tribe through the regulatory process, congressional action to take the Tribe's Properties into trust may be the most viable option for the Tribe to restore these lands as a part of the Reservation.

Sincerely,

BRYAN MERCIER, NORTHWEST REGIONAL DIRECTOR

KICKAPOO TRADITIONAL TRIBE OF TEXAS
May 18, 2023

Hon. Brian Schatz,
 Chairman;
 Hon. Lisa Murkowski,
 Vice Chairman,
 Senate Committee on Indian Affairs,
 Washington, DC.

Chairman Schatz and Vice Chairman Murkowski,

On behalf of the Kickapoo Traditional Tribe of Texas ("KTTT" or "Tribe"), I write to express the Tribe's support for S. 1322, the Unlocking Native Lands and Opportunities for Commerce and Key Economic Developments Act of 2023 ("UNLOCKED Act"). This important legislation will help expedite desperately needed housing, governmental, and economic development projects throughout Indian Country by empowering tribal nations to assert decision-making authority over their lands.

The UNLOCKED Act would recognize the ability of tribal nations to administer approval of rights-of-way in a fashion similar to the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 ("HEARTH Act") treatment of leases. Pub. L. 112-151. The HEARTH Act allows tribal nations that wish to assert control over certain leasing authority on their land to do so provided that the Secretary of the Interior approves the tribal nation's leasing code. The Tribe utilized the HEARTH Act's authority to submit its Business Leasing Code to the Depart-

ment of the Interior, which was approved on September 4, 2020. The Tribe's ability to negotiate and execute business leases, and therefore advance economic development on its reservation, was significantly improved after the approval of its Business Leasing Code.

The Tribe has frequently encountered extremely long wait times for the Bureau of Indian Affairs' (BIA) approval of rights-of-way on its lands. These applications are generally mundane, noncomplicated, and uncontroversial applications for utility rights-of-way to support housing, governmental, and economic development projects. The delays cause profound burdens on tribal staff as they struggle to complete projects and on KTTT citizens as they are forced to wait for desperately needed housing projects.

The UNLOCKED Act would free tribal nations from the burden of seeking the BIA's approval for rights-of-way by allowing each tribal nation with an approved rights-of-way code to administer and approve their own rights-of-way. This will free up precious resources, expedite development, and further empower tribal nations on their own lands. The UNLOCKED Act is a fine example of tribal self-determination policies that the federal government should be advancing.

The KTTT offers its support for the UNLOCKED Act and thanks both Chairman Schatz and Vice Chairman Murkowski for introducing this legislation.

Sincerely,

HON. JUAN GARZA, JR., CHAIRMAN

STATE OF MICHIGAN
May 3, 2023

Hon. Brian Schatz,
Chairman;
Hon. Lisa Murkowski,
Vice Chairman,
Senate Committee on Indian Affairs,
Washington, DC.

Dear Chairman Schatz and Vice Chairman Murkowski,

I am pleased to add my voice to those who have expressed support for S. 195, the Keweenaw Bay Indian Community Land Claim Settlement Act of 2023.

As the Governor of the State of Michigan, I engage closely with the leaders of the twelve federally recognized Anishinaabe tribes that also call this place home, including the leaders of the Keweenaw Bay Indian Community. Tribal leaders have taught me that Debwewin and Gwekwaadziwin—truth and honesty—are central to Anishinaabe culture and ethics.

Today, the Keweenaw Bay Indian Community brings both of those teachings to Congress and requests Congressional action. The Community asks that the federal government first speak truth to itself by recognizing the injustice caused when it gave to others the lands inside of the L'Anse Indian Reservation that it had solemnly promised "to set apart and withhold from sale" for the Community's ancestors in Article 2 of the Treaty of LaPointe, 10 Stats. 1109 (Sept. 30, 1854). The Community also asks the federal government to be honest, speaking truth out loud in a meaningful way, by passing legislation that shines a light on these historical wrongs and provides compensation for these takings. I hope these teachings from the Anishinaabe can help you guide your Committee's consideration of S. 195. This legislation provides an opportunity for the federal government to do the right thing and consider action to address uncompensated takings from Tribes.

Sincerely,

HON. GRETCHEN WHITMER, GOVERNOR

UTE INDIAN TRIBE
June 20, 2023

Hon. Brian Schatz,
Chairman;
Hon. Lisa Murkowski,
Vice Chairman,
Senate Committee on Indian Affairs,
Washington, DC.

Dear Chairman Schatz and Vice Chairman Murkowski:

The Ute Indian Tribe appreciates your efforts to advance tribal economic development through S. 1322, the Unlocking Native Lands and Opportunities for Commerce

and Key Economic Developments Act of 2023 (UNLOCKED Act). Unfortunately, the UNLOCKED Act does not address restrictions on tribal leasing that could be used by the Secretary of the Interior or state and local governments to undermine tribal planning and economic development. The UNLOCKED Act should be revised to remove these restrictions from the law. With this change, the UNLOCKED Act will provide greater benefits and certainty for tribal economic development.

The Tribe respectfully requests that the UNLOCKED Act be revised prior to markup or during markup to remove five restrictions that could be used by the Secretary, state, or local governments to limit tribal economic development. Removing these restrictions may be even more important than providing 99-year leasing authority. These restrictions limit tribal sovereign authority, are contrary to tribal self-determination, and impose another layer of review that limits and causes uncertainty for tribal economic development efforts.

These five restrictions are currently included in 25 U.S.C. § 415(a) and should be removed by the UNLOCKED Act. Most of these restrictions that the Secretary is required to consider cater to state and local governments rather than promote tribal sovereignty and economic development. The five restrictions the Secretary must take into consideration are:

- (A) the relationship between the use of the leased lands and the use of neighboring land;
- (B) the height, quality, and safety of any structures or other facilities to be constructed on the leased land;
- (C) the availability of police and fire protection and other services on the leased land;
- (D) the availability of judicial forums for all criminal and civil causes of action arising on the leased land; and
- (E) the effects on the environment of the uses to which the leased lands will be subject.

These restrictions on tribal sovereignty and self-determination have no place in modern federal Indian law. Each of these decisions should be left to tribal governments to determine—not the Secretary.

Many of these restrictions are particularly concerning because they require the Secretary to take into consideration surrounding lands and activities under the jurisdiction of state and local governments. In fact, any opponent of tribal economic development could use these restrictions in the law to object to proposed tribal economic development. The Secretary should not be required to consider the concerns of state and local governments, surrounding lands, or individual complaints. The Federal government has a trust and treaty obligation to Indian tribes, not state or local governments.

Even worse, three of the factors that the Secretary must consider are directly related to federal funding levels and federal programs. The Secretary and the Federal government are primarily responsible for the availability of police, fire, and judicial forums on Indian reservations. Yet, it is well documented that the Secretary and the Federal government are failing in each of these areas. Police, fire, and judicial forums have been chronically underfunded and programs are not efficiently run by the Federal government and the Secretary. Tribal economic development cannot be subject to the failings of the Federal government and the Secretary.

Finally, the UNLOCKED Act should also clarify the third option for tribes to obtain approval of rights-of-way that allows a tribe to use its approval process that “substantially complies with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (HEARTH Act). As it is currently written, it is unclear how the Department of the Interior will determine when a process “substantially complies” with the HEARTH Act. This is not a typical standard used in the law and this provision should be clarified.

Thank you for your consideration. We look forward to working with you to reform and streamline the permitting process for economic development on Indian lands.

JULIUS T. MURRAY III, BUSINESS COMMITTEE CHAIRMAN

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BRIAN SCHATZ TO
HON. BRYAN NEWLAND

Question 1. The Department testified in favor of S. 1322, which would extend the current lease term of Indian lands under the Long Term Leasing Act from a maximum of 50 to 99 years. Under the Helping Expedite and Advance Responsible Tribal Home Ownership (HEARTH) Act, business leases are limited to a term of 25

years with the potential to renew for up to two additional terms, which may not exceed 25 years. Would longer term HEARTH Act leases help Tribal economic development, and if so, would the Department also support legislation to extend the lease duration to 99 years?

Answer. The HEARTH Act promotes Tribal self-determination by making a voluntary, alternative land-leasing process available to federally-recognized Tribes through the Department of the Interior (Department). Tribes engage in a diverse array of activities to facilitate economic development, and many require lease agreements longer than the maximum 50 years. If Congress amends the Long-Term Leasing Act to authorize any Indian Tribe to lease lands for up 99 years, amending the HEARTH Act accordingly would be keeping with the goals of Tribal economic self-sufficiency and self-determination. The Department looks forward to continue working with the Committee to help remove barriers to Tribal economic development.

