THE EVERGLADES NATIONAL PARK

HEARING

BEFORE THE

SUBCOMMITTEE ON NATIONAL PARKS AND PUBLIC LANDS

OF THE

COMMITTEE ON RESOURCES
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTH CONGRESS

FIRST SESSION

ON

CONCERNING THE MICCOSUKEE TRIBE'S ONGOING NEGOTIATIONS WITH THE NATIONAL PARK SERVICE REGARDING THE SPECIAL USE PERMIT AREA

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HEARING ON: THE EVERGLADES PARK CONCERNING THE MICCOSUKEE TRIBE'S ONGOING NEGOTIATIONS WITH THE NATIONAL PARK SERVICE REGARDING THE SPECIAL USE PERMIT AREA

THURSDAY, SEPTEMBER 25, 1997

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON NATIONAL PARKS AND PUBLIC LANDS, COMMITTEE ON RESOURCES, *Washington, DC.*

The Subcommittee met, pursuant to notice, at 10:02 a.m., in room 1324, Longworth House Office Building, Hon. James V. Hansen (chairman of the Subcommittee) presiding.

Mr. HANSEN. [presiding] The Committee will come to order.

STATEMENT OF HON. JAMES V. HANSEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH

Mr. HANSEN. The Subcommittee on National Parks and Public Lands convenes its oversight hearing to consider ongoing issues between the Miccosukee tribe of Indians in the Everglades National Park. The Miccosukee tribe once occupied a reservation of approximately a 100,000 acres of land within what is now Everglades National Park. When Congress created the park, the tribe was moved north to lands they did not historically occupy. However, since 1934 and the creation of the park, the Miccosukee tribe has occupied the most northern 500 feet of the park along a five-mile stretch of the Tamiami trail.

The tribe occupies this land under a special use permit issued by the National Park Service. Unfortunately, the growth needs of the tribe and the mission of the Park Service have seemed to clash in recent years. We will hear testimony today to explore the problems that the tribe faces and will hear the concerns of the administration.

Although legislation has been introduced to basically put the special use permit in law, it is my opinion that this may not be the best policy. I am concerned that the Department is managing the Miccosukee Tribe through the Park Service. This is not an appropriate role for the Park Service and this is an issue in other places across the country. Yet, the Park Service does have the mandate to protect the resources of the park. It is my hope that the current negotiations between the two parties will end in a resolution that benefits all sides.

I look forward to the testimony and hope to have some open dialog to get to the crux of the problem and find a solution. Now, we

only have one panel today. And the panel is Mr. Edward B. Cohen, Deputy Solicitor, Department of the Interior. He'll be accompanied by Mr. Dick Ring, Superintendent of the Everglades National Park.

Also, we have the Honorable Billy Cypress, Chairman of the Miccosukee Tribe of Indians of Florida. Mr. Cypress, if you'd come up. And we have Dexter Lehtinen—I hope I'm not crucifying that—who will also be with us today.

Gentlemen, we appreciate you being here. Let me just ask this question: How much time do you need?

STATEMENT OF EDWARD B. COHEN, DEPUTY SOLICITOR, DEPARTMENT OF THE INTERIOR

Mr. COHEN. Five to 10 minutes max.

Mr. HANSEN. Five to ten. We have a rule in this House of 5 minutes, but I can see no reason that we wouldn't bend that a little bit if you just have a burning in your bosom to talk a little longer than that. I'll tell you what. We'll give you five and if you go over, don't feel bad. If you go over ten, however, we'll feel bad.

Mr. COHEN. I won't go over ten, you can be sure.

Mr. HANSEN. All right. Well, Mr. Cohen, we'll start with you, sir. The floor is yours.

Mr. COHEN. Mr. Chairman, thank you for inviting us to testify. This is actually a very timely point at which to evaluate this relationship because I think that there have been significant developments. I come to you this morning with the hope that we are going to do exactly what you asked, which is to find a resolution to the tensions that have existed between the Park Service and the Tribe over the last several years. Let me begin simply by putting this issue in context, if I may.

Mr. HANSEN. Talk loud so that we can all hear you.

Mr. COHEN. This is a map of South Florida. This is the park. This is Tamiami Trial, the northernmost border of the park area is right here, This 333 acres is occupied by the Tribe. There are four structures here through which the Army Corps of Engineers filters the bulk of the water that flows through the Shark Slew. Two of those structures are immediately adjacent to the Special Use Permit Area.

So my point for describing this is to put in context the strategic significance of this parcel of land on which the Tribe lives for the restoration program that we're undertaking.

Having said that, let me just briefly also put in context what has happened over the last 30 years. When the park was established, it was done so to protect the unique and diverse biosystem of the Everglades. The legislation also indicated that the Park Service must accommodate the interests of the Tribe that currently exists in the area to the extent that their presence does not conflict with the purposes of the park.

In order to accommodate that, in 1962 the park and the Tribe entered into the first Special Use permit. That permit allows for the use and occupancy by the Tribe in the permit area consistent with the Act of May 30, 1934, which is the Act which established the Everglades.

The permit was intended to provide for the administrative and educations facilities of the Tribe and to provide places for the

Miccosukee Indians to live, make, and sell handicrafts. It is a 50-year permit which expires in January of 2014. There have been a series of permits after that which amended the original permit, but in essence, the 50-year permit is what we now have.

Since 1962, the Tribe has constructed nearly 200 separate structures on this 333 acres of land. This includes houses, tribal, commercial, and administrative buildings such as schools, a clinic, gymnasium, and the like. The pace of development and construction, however, is significant to the relationship between the Tribe and the park. From 1963 to 1990, the Tribe built about 50 houses. Since 1990, 80 houses have been built, as well as a gymnasium, an enhanced water tower, and an expanded government center. There are currently pending over 100 additional fill permits for either new construction or expansion of existing construction. Of the 333 acres in the Special Use Permit Area, somewhere between 70 and 90 are wetlands that have been filled by the Tribe for development.

This enhanced pace of construction coincides, we believe, with the improved economic fortunes of the Tribe—and that's good—these fortunes stemming, primarily, from a Bingo operation down the road a piece. But it is this enhanced pace that has caused the park to pay greater attention to what is being done in the Special Use Permit Area.

I think that the low point in the relationship between the Tribe and the park was in the 1994–1996 period when there were lawsuits and nasty rhetoric. But in the past year, I think we've made a lot of progress. We assisted the Tribe in seeking a fair settlement with the Florida DOT. That settlement was the subject of legislation recently reported by this Committee.

We were able to agree on the construction of 30 new homes that the Tribe requested. And based on that foundation and these efforts, we have now begun a process to define a new relationship between the Tribe and the park which would acknowledge the Tribe's sovereignty, and provide a right to live within the park in perpetuity and at the same time protect the resources of the park. I look forward to discussing the parameters of what we're talking about with the Tribe as we proceed.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Cohen may be found at end of hearing.]

Mr. HANSEN. Well, thank you.

Let me point out that if you see those two white lights at the back, that means that there's a vote on. And I've got a few minutes to run over and vote. I apologize, but that's the way it works around here. And so I intend to come right back and I'll just run back and forth and if you'll all be patient for just a few moments, I'd appreciate. We'll stand in recess for a moment.

[Recess.]

Mr. HANSEN. The committee will come to order. We actually had two votes and so I apologize for keeping you waiting.

We've now been joined by the ranking member of the Committee, Mr. Faleomavaega of the great area—where are you from, anyway?—American Samoa, and he went to BYU and that's a constant struggle between Mr. Faleomavaega and myself. We all went to the University of Utah. So we'll turn the time to you.

STATEMENT OF THE HONORABLE ENI F. H. FALEOMAVAEGA, A DELEGATE TO CONGRESS FROM AMERICAN SAMOA

Mr. FALEOMAVAEGA. Mr. Chairman, I understand that there is litigation underway between the Miccosukee Tribe and the National Park Service regarding the construction of certain additional homes within the Special Use Permit Area that the Miccosukee can occupy. I would prefer that we not get into matters that are presently under litigation. That would be more appropriate once the case is resolved. However, I understand that our witnesses are prepared to speak on the broader, more general question of the overall Special Use Permit, and not focus solely on the pending litigation.

I am encouraged that the Tribe and the Park Service have kept a dialog going and they are neighbors and I hope and expect will remain as such for the foreseeable future. I appreciate the presence of our witnesses today and I look forward to their testimony. Mr. Chairman, I do apologize for my being a little late this morning. There's nothing like being jet lagged after being in the air for some 16 hours and I don't know whether I'm going or coming. But I appreciate the patience of our friends coming in this morning to testify. I look forward to their testimonies.

Mr. HANSEN. My good friend here has a long way to go when he goes home, as you can well understand.

We've already had Mr. Cohen, the Deputy Solicitor. He has given his opening remarks.

Mr. FALEOMAVAEGA. Will he remain here while we hear from the other witnesses, Mr. Chairman? Or Mr. Cohen?

Mr. COHEN. I'm sorry. I didn't hear the question.

Mr. FALEOMAVAEGA. You're not leaving right after your testimony?

Mr. COHEN. Oh, no. I'm not going anywhere.

Mr. FALEOMAVAEGA. Thank you.

Mr. HANSEN. Now we're honored to have with us Billy Cypress, Chairman of the Tribe. Mr. Cypress, we'll turn the time to you, sir. If you'd like to pull that mike over, we'd appreciate it.

STATEMENT OF HON. BILLY CYPRESS, CHAIRMAN, THE MICCOSUKEE TRIBE OF INDIANS OF FLORIDA

Mr. CYPRESS. Thank you, Chairman Hansen and members. I'd like to say thank you for giving the time to at least come and testify before you. A hearing—what we're here for is pretty much self-governance, self-determination of how we make our living, where we live, and how our future with growth.

Up to now, it's been pretty much two standards. one side can say, "We don't do this; we don't want this," but you see plans; you see development; you see development before. And the gentleman that I would like at least to refer and answer quickly before I go on—that this matter is in court, but the Federal judge himself has said that, "I hope it can be resolved here." He's been sitting on it for a long time, but he's referring to see if this happens here; maybe he can dismiss it.

So it's almost like being in a merry-go-round. You can only hop from one horse to another. I'm hoping that this would resolve our problems, so that way the Federal judge can see and dismiss it. But he's been sitting on it for, like I say, going on quite a while.

And his remarks was that, "I hope these can be worked out." And he says that this is a problem of, would you say, Indian people in the United States in itself.

And what we're looking at is this: the United States and Indian people have a clear understanding, and that through Congress, the intent and the enactment says that Indian people living there—it's the agencies that we have a problem with. That's reading, interpreting, and every person that could be a superintendent, any solicitor in the future could interpret different.

So what we're here, and I'm hoping that being before this committee will look and, how would you say, clarify the enactment and because—and one point, that our Tribe was told that we really don't have any growth. Now, where do you start putting growth? Because the future of our children depends on our forefathers, such as myself here. So this is why that I hope the gentlemen will take a second look—because it's the Federal Court deferring to this committee here back to Congress. So, you know, with it—I, you know, am kind of honored that you have taken on a busy schedule and have one panel for us today.

But the problem that we're having is that Tribe is expected to uphold the law while other people don't. And I'm referring to the park and its interpretation, and as I say this, we follow our traditional law and try to uphold the European law at the same time. This is why we established Indian court that has two judges—one to interpret what we call contemporary law, which is the European law, while traditional is looked on. So we have representation of an Indian judge and a contemporary judge. And this is the kind of thing that we work with.

So, but, you know, to be told that we could not have growth, we could not follow our tradition and traditional law, and traditional—but under this Secretary of Interior accepting a 1962 Tribal Constitution, that's pretty much what we're saying. There is, I would say, a flagrant violation of Indian law, as well as congressional law, under the Secretary. This is why we're here before you today.

Forgive me for being blunt, but I think that we've been through court; we've been everywhere else. So now we understand this is the proper place to come, because Congress is the one that made the language, and we want that, what we call, clarifying the enactment. So that way, it would be better for the park people and ourselves.

Thank you.

[The statement of Mr. Cypress may be found at end of hearing.]

Mr. HANSEN. Thank you. We appreciate your testimony.

We've been joined by our colleague from Florida, Diaz-Balart, and Lincoln, if you want to take a few minutes, we'll turn to you, sir.

STATEMENT OF HON. LINCOLN DIAZ-BALART, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. DIAZ-BALART. Thank you. Thank you so much Mr. Chairman, distinguished members. I am here in support of bill H.R. 190 introduced by Mr. Hastings of Florida, And would simply like the subcommittee to know of our support for this legislation in South Florida. It is our belief that it is an important piece of legislation in

that it seeks to clarify what we believe are important rights of the Miccosukee Tribe and would ask the subcommittee, Mr. Chairman, for its consideration of this legislation. I wanted to come by and simply, on the record, put down my strong support for this legislation.

Mr. HANSEN. Well, thank you very much. We appreciate your presence. If you'd like to join us on the diaz, we know you're very busy, but whatever——

Mr. DIAZ-BALART. Thank you very much, Mr. Chairman, for the offer. You know how the schedules are here. Thank you very much.

Mr. HANSEN. I understand.

Mr. Lehtinen, I hope I'm not crucifying your last name.

STATEMENT OF DEXTER LEHTINEN, ATTORNEY, VARGAS AND REINER

Mr. LEHTINEN. Lehtinen. Lehtinen is good. Actually Lehtinen is much closer to the true pronunciation, but we never use it.

Mr. HANSEN. Well, I will turn the time to you, sir.

Mr. LEHTINEN. Thank you, Mr. Chairman. I also want to thank Congressman Diaz-Balart and Congressman Hastings, the prime sponsor is in Afghanistan on some conference on security in Europe and he did submit a statement for the record that I believe you have. And also, Congressman Meek signed a statement as well and is a co-sponsor of the bill. So we really have a bipartisan support, Meek and Hastings on the Democratic side, and Diaz-Balart and Miller is on the Republican side. So we thank them.

Let me just say briefly that when—1935 when the hundred thousand acre Monroe Indian Reservation was abolished, the Miccosukees were living throughout South Florida. The reservation was abolished in anticipation of creating Everglades National Park and legally we think this amounts to a taking. The Roosevelt administration visited the Miccosukees along the trail, those who were willing to speak with the government, and promised that they would not be removed—Harold Ickes, then-Secretary of the Interior. The floor discussion in Congress reflected this and the floor discussion's very important because the Congressional Record has Congressmen saying, "by passing this bill, we are placing them in a home and in a position to live where they should live. We believe they should remain there. They will be permitted to remain relatively undisturbed in their country and in their homes." And that's from the Congressional Record explanation of the bill.

Throughout the fifties, the Tribe sought an organizational system and a land-base within the park to protect their self-government and were recognized under Reorganization Act in 1962, but had existed, of course, for centuries, but took that form in 1962 and the United States allocated this 500-wide, 5-mile strip along the north edge of the park where a road already existed, utilities already existed, and said in the permit that they could build in that area. The BIA representative was Reginald Miller and I think it's important to see what he says.

He said that Interior and BIA, and these are quotes, "worked with the idea of finding a land-base in the park in order to build houses, have a school, a place for some medical attention, a community facility, business enterprises, and such things as a normal

community might want," end quote. Miller went on to say, quote, "this was identified as the Tamiami Indian Reservation." And I might say that's the way the park carried it on its own tourist maps until about 1990. He says it was the Tribe's traditional homeland and he says as the BIA representative that it was a permanent site.

Now the BIA built a permanent administration center and the Tribe built, as Mr. Cohen has properly pointed out, what you see in Tab 1, schools, a hundred houses, a police station, a medical center, senior center, and so forth. And all of the time the Tribe has complied with environmental protection laws, like the Clean Water Act, section 404, dredge and fill permits. They've applied in their own name, and each time the court has found no environmental damage to the park or any adjoining landowner.

But, nonetheless, tension in the 1990's developed when it became apparent that the Park Service position was that the presence of an Indian Tribe, and I think, as you said in your opening statement, Mr. Chairman, that this is an issue perhaps nationwide, and even with the way the park views its ownership and control of parks even vis-a-vis tourists and other non-Indian users of the parks, but they came to view that the Tribe's mere presence was inconsistent with the park.

So after 2 years of asking for approval under the permit to build some houses, which under the permit is supposed to be a 60-day period, the park has 60 days to review plans, which we think is just a comment period, not an absolute veto, but they've turned it into an absolute veto. So after waiting for 2 years, the Tribe went directly to the Corps of Engineers for the 404 dredge and fill permit, when the park said the Tribe does not have a sufficient landed interest to be an applicant for a dredge and fill. This was after decades of the Corps directly dealing with the Tribe.

After some litigation, which we won't go into, the court took the position that the Tribe did have a sufficient landed interest, found no environmental damage to the park or anyone else, and issued the dredge and fill permit for the 65 houses, but the park still said no, using the permit as an absolute veto.

So what the Tribe wants, really, is a reaffirmation of what it believes Congress intended. The key elements would be, first, the right to govern themselves as they see fit, that is, self-government as though that area were an Indian reservation.

Secondly, the right to develop the area as the permit said, houses, other things in the 333 acres, as long as the activities have no harm to the outside environment, adjacent landowners, including no harm to the park. And that oversight of this would be by normal enforcement mechanisms—the Clean Water Act, the Corps of Engineers fining them for violations, the Attorney General can sue them for violations, but not special enforcement by the park or a veto by the park. And that these rights be in perpetuity. Actually, the rights in the 1917 Monroe Reservation were in perpetuity, but in perpetuity in that law only meant 18 years, but we'd like "in perpetuity" again, anyway.

The Miccosukee Tribe will guarantee and will accept these mandates in writing in law to adhere to strict anti-pollution mandates, to adhere to a provision of no harm to the Everglades restoration

or the park. And for that matter, height limitations, no gaming, and no commercial aviation.

I want to repeat, even with limited time, that they will accept in law that the Corps of Engineers shall not issue a permit unless it finds no harm to restoration, hydro-period, water quality, and so forth.

Mr. Cohen is right that the enhanced pace of construction comes because of the Tribe's ability to now fund this construction. But none of this construction is outside of the permit area, none of this construction has ever been found to be harmful to the park, and while I appreciate their concerns about hydro-periods and restoration, we believe they simply have nothing to do with this. These houses are along a road, the white man or non-Indian built, since the 1962 permit, the Tribe's always agreed that flow ways and everything else will be maintained and we have the good fortune of using the park—or the U.S. government's own water quality expert to testify that there is no water quality damage.

So what I see, Mr. Chairman, is a government that allows this construction in Everglades National Park. It's in the Tab 2, this is the park's own brochure, or the commercial concessionaire's brochure that points out within the park, down at the most sensitive area in the interchange between the Florida Bay and the land, which you took testimony on in 1993, this subcommittee did, in Key Largo, that's a park development. That's within the park. And we don't say that the 100-room hotel for tourists, the numerous cabins, the restaurant, the marina, and the park housing, and you'll in the tads and you'll see that employee housing is right on the sand, right overlooking the water, we don't say the employee housing violates the Park Act. But they actually have said that they're not sure they can allow the Tribe to build housing because the Park Organic Act that creates the Park Service requires the Park Service to preserve parks in their natural state, so that housing might be inconsistent. But I see that they say that at the same time they build what you see behind tab 2 within their own park, and perhaps appropriately build it.

So interestingly enough, we see that the Tribe is asking for nothing more than we think they already have. After all, the 1934 Congressional Record said they'll be allowed to stay there undisturbed. The BIA representative said it was in perpetuity to build houses within the area. The Department of the Interior and the Federal courts have already declared it legally to be Indian country, as a legal proposition. If you commit a crime there, you get treated having committed a crime in Indian country.

The Florida Department of Transportation, I might point out, and this isn't definitive, but that sign that the Florida Department puts on Tamiami Trail doesn't say "Entering Miccosukee Permit Area"—they think it's an Indian reservation—"Entering Miccosukee Indian Reservation." Likewise, the park called it the Tamiami Indian Reservation until 1987 when they changed it to "cultural area." And also the maps you'll see in tab 4, in conclusion, these are maps—excuse me, tab 5, this is the Board of Regents official State of Florida map.

Governor Chiles has the introduction to this saying this is a great document and the State of Florida map says Miccosukee In-

dian Reservation for the permit area, and the State of Florida discussion of Indians in its atlas says that this 333 area is an Indian reservation. And the 1997 Gazetteer for Florida says this little strip is an Indian reservation.

So what they seek, really, is just what most of us have been seeking: freedom from governmental interference, from bureaucrats telling them what's good for them; freedom to develop their own community as long as they don't harm their adjoining neighbors, as long as they have no environmental impact, as long as they don't hurt the park outside their boundaries; freedom to control their own lives with no harm to anybody else. In short, just freedom under equal law.

Thank you, Mr. Chairman, and I and, of course, the other members are happy to answer any questions.

[The statement of Mr. Lehtinen may be found at end of hearing.]

Mr. HANSEN. Thank you very much. We appreciate your testimony.

The gentleman from American Samoa, Mr. Faleomavaega.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman. I'd like to dialog with Mr. Cohen in terms of what exactly are the concerns of the National Park Service. In my reading your statement, Mr. Cohen, I get the impression that the Miccosukee Tribe's inability to meet the standards appointed to what a national park should be. Is this—you mention something about a downstream effect of the development going on now with the Tribe. Can you elaborate a little further on that?

Mr. COHEN. Sure. One could spend, actually, a fairly long time responding to that question. I'll try to be succinct. First of all, I'd point out that this development in Flamingo that Mr. Lehtinen noted was built in the late 1950's, early 1960's and preceded NEPA. To the extent that there is construction going on now, it is to repair damage down by Hurricane Andrew and it is being done in a far more environmentally sensitive manner than what was done when it was originally built. For example, the water tower was replaced with a lower tower. It's at tree level, rather than high above it. So I'm not sure what relevance the Flamingo site has. It certainly is not something the Park Service would build today.

In answer to your question, Congressman, the principal concern here is not development per se in a Special Use Permit Area. The Park Service recognizes the need and right of the Tribe to develop their land. What we are concerned about is the following: that the U.S. Government, in partnership with the State of Florida and others, is about to embark on a multi-billion dollar effort to renovate the ecosystem in that area. We are concerned about the quality, the quantity, the timing, and the distribution of water in that area.

That's not to say that development on the Special Use Permit Area is inconsistent with that, but without wanting to tread too deeply into the litigation——

Mr. FALEOMAVAEGA. Mr. Cohen, could I interrupt, basically? You said that the Federal Government is now doing a comprehensive work study relationship with the State of Florida, but I've never heard you mention the Tribe included. And I wonder if—I get the sense that the Tribe is the third priority, rather than on an equal partner, or an equal level, or a sense of equity that when the Fed-

eral Government is in the process of expending a multi-billion dollar project in the Everglades, that the Tribes, not just the Miccosukee—I suspect even the Seminole Tribe is probably involved in this. Am I correct? Or are they outside of the Everglades park system? Is the Miccosukee Tribe the only Tribe involved in this?

Mr. COHEN. No, the Seminoles are——

Mr. FALEOMAVAEGA. OK. So my question to you, Mr. Cohen, do I get the impression that it's only the Federal Government and the state government that are primarily pursuing this ecosystem concern? Are the Tribes excluded in the process?

Mr. COHEN. No, I believe I said that it was the Federal Government, the State of Florida, and others, and you are correct, I should specifically have mentioned the Tribe. And in fact, it is ironic that there is this ongoing tension between the Tribe and the government because if you were to list the ten players most concerned about the ecosystem of this area, certainly the Tribe and the National Park Service would be in your top ten. So your point is well taken.

Mr. FALEOMAVAEGA. OK.

Mr. COHEN. The point that I further wanted to make, however, was that what the Park Service has asked for a comprehensive land-use plan for the area from the Tribe. And the Tribe has failed to produce it in a manner that responds to the planning needs of the Department, and in fact——

Mr. FALEOMAVAEGA. Does the Tribe have resources to come out with the expectations of the National Park Service.

Mr. COHEN. We offered to pay for that.

Mr. FALEOMAVAEGA. Oh, did you?

Mr. COHEN. Yes, sir.

Mr. FALEOMAVAEGA. Proceed.

Mr. COHEN. The point is that while there are currently pending over a 100 fill permits, we believe the permits should not be approved on an ad hoc basis. This is an area that is sensitive and strategically located. Given what our task is before us, the Park Service believes it would be more effective if we had a comprehensive land-use plan.

We also made the point, incidentally, that if there was a comprehensive land-use plan, that every other application that was consistent with the plan would then be approved in a very quick manner. There wouldn't be an extended discussion about how it fits in. Because we would know how it fits in. Had the Tribe developed the land use plan, I think we would not have had the problems.

Now, having said all of this, let me make one additional point. Congressman Faleomavaega, you weren't here during my testimony. I believe we've turned the corner with the Tribe. In the last year, we've had several instances where we successfully have worked with the Tribe to achieve mutual objectives and we've built on that. We are now in the process of developing a proposal to submit to this Committee to redefine the relationship, to provide that the Tribe can live in the Special Use Permit Area in perpetuity and to define the standards under which their development would occur.

I'm very optimistic that we can be successful in this effort. So, while I think it's not inappropriate to talk about the past, I hope we don't lose sight of what I think is very significant progress we're making for the future.

Mr. FALEOMAVAEGA. Did—and there's just one or two—I have a few more questions in my mind—is there currently a comprehensive plan being made between the Federal Government and the State of Florida on a time or benchmark in terms of—because we're expecting, as you've said earlier, Mr. Cohen, this is a multi-billion dollar investment on the part of the Federal Government to work in conjunction closely with the State of Florida. Has this also already been made with the State of Florida? In other words, are we looking at a 5-year plan, a 10-year master plan for this multi-billion dollar ecosystem planned out?

Mr. COHEN. Congressman, if I could defer the question——

Mr. FALEOMAVAEGA. Please.

Mr. COHEN. [continuing] to the Park Superintendent.

Mr. FALEOMAVAEGA. Yes, just give us an idea. Are we now having something in place to say that 10 years from now this is where we're going to be in the Everglades. And in the process, my question is, are the Indian Tribes included in that 10-year benchmark or whatever the master plan that is being made?

Mr. RING. Sir, there's an Ecosystem Task Force that has been working for several years that initially was made up of Federal members, but has been expanded to include the Tribes and the regional and state and local government representatives. It initially has looked at all of the different activities that were being independently pursued by different agencies and has brought them together and coordinated them into a coherent program, and that represents about $2 billion worth of capital investment that's intended to be spent over the next 15–17 years.

In addition to that, there are several significant additional planning efforts that are going on under the aegis of this task force that relate to a comprehensive review of the water management system, which——

Mr. FALEOMAVAEGA. I just want to make sure that the Indian Tribes are included in the process, that's my——

Mr. RING. Absolutely.

Mr. FALEOMAVAEGA. Alright. My next question—I have not had a chance to study thoroughly the provisions of HR–190, but I wanted to know what the National Park Service position is on Mr. Hastings' proposed legislation.

Mr. COHEN. Well, the administration actually was not asked for a position on the legislation, but let me say this. I don't think it's necessary. I think that the work that we're doing with the Tribe will lead to success. Now there's a third party here who will have to be a part of this as well. And that would be the State of Florida. There is a provision in the grant of the lands from the State of Florida that encompass Everglades National Park that says that if the land were ever to be used for a purpose other than a park purpose, that land would revert back to the State of Florida. So clearly, this land is not now and cannot be a reservation, because it would automatically have reverted to the State of Florida.

We are hopeful, at the appropriate point, when we feel that we're making some good progress with the Tribe, we would want to bring the state into those discussions, as well.

Mr. FALEOMAVAEGA. All right. Mr. Cypress, welcome. I just want a quick question, Mr. Chairman, if it's all right.

Your opinion on the comments that Mr. Cohen has just given—do you feel satisfied with the efforts made on the part of the National Park Service? They are sincerely trying to find a mutual agreement here, and I notice that you're—very much wanted to build houses, with the concerns of the ecosystem and the environmental, and I wanted to know if the effort being made by the Tribe is in conformance with environmental laws as far as building or constructing housing?

Mr. CYPRESS. Yes, there are about three areas that I think I can speak on that would probably be on the opposite with the Park's explanation. Let me go back where it says that we did not submit a comprehensive plan. We did so and it took them more than two-and-a-half years to answer. Then, finally, a hurricane came and that became an explanation to everything that could not be answered.

Then, when we applied directly after letting them know that we waited more than ample time, that we're going to go directly to the court—and we did. And at that time the court asked for what we call an "accommodating period." And that's when the park says that they can't do that.

So, if we can get the permit from the Corps of Engineers, they are the people who are charged with protecting the environment, overseeing the environmental laws, and if they felt that our designs and plans meet that criteria, we do meet those environmental laws.

Secondly, we're in the stage now of developing where Congress has said that Indian Tribes would be treated as states to set their water standards. Right now we're exceeding the State of Florida and hopefully with our water standards that we will help clean the park. Right now they're accepting the pollution that's coming through and that's acceptable, and yet they're worried about us polluting any more. So it's the other way around. That's No. 2.

And second, while in demonstration and talking on—of the earlier statement of Cohen, not this go-around, but before—said that he had worked with us by doing something with the Department of Transportation. That is only after we find some material that was telling the Department of Transportation not to do that. Because giving Indian people more land—what FDOT was going to do through the State of Florida, saying that if he gives Indians more land that makes him more—more permanent and it was not good for the park. And this is where they wanted—where the Secretary would take it. Then, at his discretion, he could call it what he wanted.

Mr. FALEOMAVAEGA. How many members in your Tribe?

Mr. CYPRESS. We have 403.

Mr. FALEOMAVAEGA. And the total acres that the Tribe and the Federal Government have agreed for you to settle in the Everglades?

Mr. CYPRESS. Three hundred thirty-three.

Mr. FALEOMAVAEGA. Three hundred thirty-three acres? Or 333——

Mr. CYPRESS. Right, and at one time it was a 100,000 acres.

Mr. FALEOMAVAEGA. What happened to the 100,000 acres?

Mr. CYPRESS. They termed it national park and almost evicted us. And we moved to the northern portion of the park and that's where we stayed and said we're not going to move anymore, because that legislation putting from the state reservation, the coming apart, that Florida knew that they were devising a home there, but still making it into a park where Indian people would continue to live there.

Mr. FALEOMAVAEGA. Mr. Cypress, within the Everglades, what is the traditional boundaries or what was rightfully the Miccosukee land base?

Mr. CYPRESS. Oh, gee whiz. That's a good question because that's the dispute we have most of the time, because under European system, they put survey markers and highways and say we're——

Mr. FALEOMAVAEGA. But obviously it's more—it was more than a 100,000 acres.

Mr. CYPRESS. At one time it was 2.5 million acres.

Mr. FALEOMAVAEGA. All right, that's what I wanted to know.

Mr. CYPRESS. This is by President Polk of Executive Order. And I forget the year.

Mr. FALEOMAVAEGA. So from 2 million acres, 100,00 acres, now you're told to live only in 333 acres?

Mr. CYPRESS. Right. And then the National Park is over a million acres, so you can even be less than one——

Mr. FALEOMAVAEGA. So suggesting that maybe the park can be even a little more generous by giving you 100,000 acres to live in. Will that cause a population explosion, Mr. Cohen, in the Everglades?

Mr. COHEN. Let me just add that the Tribe also has a 75,000-acre reservation north of the park.

Mr. FALEOMAVAEGA. How many miles is that from where they're living?

Mr. COHEN. I'm sorry?

Mr. FALEOMAVAEGA. How many miles is that from where they're living?

Mr. COHEN. I think it's a 1-hour drive. But I think it's fewer miles by virtue of the road configuration. They also have rights in Big Cypress, which is immediately adjacent, for carrying on traditional activities, including——

Mr. FALEOMAVAEGA. How many acres in Big Cypress?

Mr. COHEN. Pardon?

Mr. FALEOMAVAEGA. How many acres in Big Cypress?

Mr. RING. Sir, there are approximately 700,000–750,000 acres in Big Cypress and there are provisions in the Big Cypress legislation to provide for the Tribe's use of traditional areas, as well as a right of preference for new commercial services.

Mr. FALEOMAVAEGA. So what does that mean? Within the 700,000 acres are the Miccosukee given any specific—they can use the 700,000 acres for traditional, cultural means?

Mr. RING. As I said, the provision is for the use of traditional sites that were used within—by the Tribe and by both Seminole and Miccosukee Indians.

Mr. FALEOMAVAEGA. Mr. Cypress, can you comment on that?

Mr. CYPRESS. Yes, sure I can. If we can get this problem resolved, we will get into Big Cypress Preserve because it's even more clearer than the 1934 Act and this is the seventies we're having a tough time with. It says we would have building homes for subsistence, our traditional homeland and hunting. And we also were entitled to first refusal. You know, there's developments going on, businesses going on; we have not received any notice telling us that this is going to go on, "What's your thoughts on how can you submit a proposal to us?"

So this is what our complaint to the Preserve people—that we are having a problem with parks in general, not only the Everglades National Park, but the Big Cypress Preserve.

Mr. FALEOMAVAEGA. So even at Big Cypress, does the Miccosukee have a say for the developments that's going on in the National Park Service, Mr. Cohen?

I'm sorry, Mr. Chairman, I think I've taken too much of the time already, but I do have several questions. I will pursue this definitely in the coming weeks. I just wanted to clarify, Mr. Chairman and Mr. Cohen, you say that the 700,000 acres in Big Cypress—and I see a map here before me—that the Miccosukee Tribe does have certain rights to that 700,000 acres and I'm not clear on it.

Mr. COHEN. Mr. Chairman, if we may, let us submit for the record an explanation of what the rights are in Big Cypress——

Mr. FALEOMAVAEGA. Please.

Mr. COHEN. [continuing] precise rights are of the Tribe——

Mr. FALEOMAVAEGA. I would appreciate it.

Mr. COHEN. [continuing] with regard to that area, as well as other areas around it.

Mr. FALEOMAVAEGA. And I would also like to submit for the record, if you could submit for the record, what kind of development, concessionaires, business people, hotels, or whatever is being built in the Big Cypress, if any, in the process. Is that alright? And I would like to ask Mr. Cypress to submit your opinions on the Big Cypress, as well.

Mr. CYPRESS. Yes.

[The information referred to follows:]

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman. I'm sorry to take——

Mr. HANSEN. No, no. That's fine.

Mr. Cohen, I'm missing something here. What's the big deal? We're talking 500 feet? We won't we just give it to them and get it over with? Take it out of the park. You could do that with simple—I would think you could do that administratively. If not, we could do it in our omnibus land swap bill we put through here every year. Why is—and I'm not trying to be unkind to the Interior Department—why is it such a big deal to the Interior Department?

Mr. COHEN. Mr. Chairman, please recall that in the beginning I pointed out that the 333 acres is a five-mile strip of land precisely where the water flows. Two of the four structures through which the water flows are immediately adjacent to this land. Three hun-

dred and thirty-three acres are not that much. It just happens to be where these 333 acres are.

The other reason why we couldn't do this administratively is we don't have the authority to, but second, if the land is used for a purpose other than park purposes, it will automatically revert to the State of Florida.

Mr. HANSEN. Well, what if the structures you're referring to in the legislation just protected that; would that bother you?

Mr. COHEN. Mr. Chairman, my point again is that it doesn't matter whether this parcel of land is inside or outside the park with regard to its implications for the multi-billion dollar restoration. The ramifications on the park are without regard to the geographic boundaries. What is important is whether we can come to terms with the Tribe on how development will proceed. We think we can. Now, Chairman Cypress indicated that they had submitted a comprehensive land-use plan that we had requested. That was a site plan that they submitted and it showed the 65 houses and the administrative buildings they wanted to build. Subsequent to the submission of this so-called comprehensive land-use plan, they submitted a request for fill for 100 more houses and other development that were not on that plan. So it was not a comprehensive land-use plan.

Mr. HANSEN. Mr. Cypress, what's your objection to that?

Mr. CYPRESS. We did submit it and it was good enough for them back then and it's their part—and then they said put what you think is going to be; so we did add more. And then they said it was too much. What it said was, "Tell us what you think you're going to need in future, but what is your immediate needs now?" So we addressed immediate needs then, and said this is what we would need in the future, and they said, well, you can't do that.

Then, also, I'd like to point out that Solicitor Cohen saying that they're working with the Tribe, giving housing, and they offered to settle, that we refused, is that what they said was, that if we allow you to build—allow you, this is the thing about it, allow you to build—we'll give you 25 homes and no more development. That's like saying, well, we're going to have zero population. Now where can you impose that kind of sanction on a human being? Even if we talk about communism, other places, even they don't allow that. They at least have one child.

Mr. HANSEN. I'm missing something. It seemed that somebody said that the Tribe is willing to comply with all clean water standards, comply with the dredge and fill standards, the shooting match. Is that right? Is that a correct statement?

Mr. CYPRESS. Yes, we're willing to meet and have met the environmental laws. But we will not go and meet how our growth of our Indian race. This is where it's got to stop, where people talk about man-made laws, playing God, that's got to stop. Everybody says this is 20th century, not the 1800's, 1900's, but it still goes on today. We're still living into what we call double standards and double law. So forgive me for——

Mr. FALEOMAVAEGA. Will the chairman yield?

Mr. CYPRESS. [continuing] but this is what we're faced with. So when you hear people make presentations that this is what they

did for us and we refused, they didn't tell you what the conditions were.

Mr. HANSEN. I'm a tad confused. It seems like this isn't exactly a big deal. Why are we making it one?

Ms. CHRISTIAN-GREEN. Will the chairman yield, just to make a brief statement, because I do have to leave? And I want to apologize for coming in late and having to leave——

Mr. HANSEN. The time is yours.

Ms. CHRISTIAN-GREEN. But I just wanted to join my colleagues in hoping for a resolution that's going to be equitable and satisfactory to everyone and I'm encouraged to hear that one is coming. But whenever this committee has an issue involving a Native American Tribe, the issue of recognition of their sovereignty is also a central part of the problem. And in negotiations and discussions, I'm not always certain that the sovereignty of the Native Americans Tribe is recognize. And I know that's a concern of my ranking member, and I just wanted to voice that concern because I hear it surfacing again. And if the resolution of this is to be an equitable one, it has to be one that's based on the recognition of the sovereignty of the Miccosukee Tribe.

Thank you, Mr. Chairman, for allowing me to make that statement.

Mr. FALEOMAVAEGA. Will the chairman yield?

Mr. HANSEN. Thank you. The gentleman from American Samoa.

Mr. FALEOMAVAEGA. I just am curious, because we've got approximately 400 people that have been given this little plot of land, 333 acres, to live on. Is the National Park Service considering the fact that there's going to be more than 400 people in the next 10 years as far as the population of the Miccosukee Tribe? What happens if they are going to be needing more houses to build so that the, you know, the next generation of the Tribe is going to expand. Obviously, there's going to be more than 400 10 years from now.

You indicated earlier, Mr. Cohen, that there's 75,000 acres a little bit north of—is it outside of the Everglades Park? Is that an official designated area as a reservation of the Miccosukee Tribe? I just want to understand a little bit more.

Mr. RING. Sir, the 75,000-acre area is a reservation——

Mr. FALEOMAVAEGA. Is it livable? Or is it a swamp?

Mr. RING. Almost all the land we're talking about in the Permit Area or on the reservation is part of the wetlands system of the Everglades. To build on it and develop on it requires fill and wetlands and impact on that environment.

Mr. FALEOMAVAEGA. I noticed there are some very beautiful homes built on this 333-acre strip, but I'm curious, Mr. Cypress, can you comment on this 75,000 acres?

Mr. CYPRESS. The 75,000 that we're talking about is north of the permanent area about 25 miles and you got to go to 27N to I–75, then to our reservation 25 miles in, and this is—here's another problem. I'm glad you brought this up. Not only to get onto our land, the State of Florida, in its wisdom, being that this road was going to benefit the tribe—we have not benefited, but paid to visit our land. A dollar each way, or 75 cents each way and they said we're benefiting from it. And I said does the toll both belonged to

the Tribe? They said, no, that belongs to the Department of Transportation.

So not only we have to pay to get on our land, but then we have—the economic development when the State of Florida had it, it would give out our leases when we sued the State of Florida as trustee for us; it did everything for other people, except the Tribe, but we took it, that land, and put it into Federal as our trustee, and we're still getting the same treatment. I guess we're bad luck with people with—who become our trustees. But we sued to get that benefit, but also when the Tribe took its land of 75,000 acres, we said that we're going to go—continue with oil exploration and development. Next thing you know, the Cabinet says you can't do that. You're in violation of wetlands.

Mr. HANSEN. Will the gentleman yield?

Mr. FALEOMAVAEGA. I yield to the chairman, I'm sorry.

Mr. HANSEN. Let me thank the witnesses for being here and the very interesting and provocative testimony you've all given us. I have a vote and my friend from American Samoa doesn't have a vote, so I'm going to turn the gavel over to him.

Mr. FALEOMAVAEGA. So much for democracy, Mr. Chairman.

Mr. FALEOMAVAEGA. He'll run the show, and let me thank each and every one of you. I would like to get this thing resolved for folks, if we could. If there's a way to do it in an amicable manner, I'm all for it. I turn it over to my friend here and I'll go vote. And I won't be back, so——

Mr. FALEOMAVAEGA. [presiding] Thank you, Mr. Chairman.

At least for the record, I would like to request, Mr. Cohen, on behalf of the National Park Service, and Mr. Cypress, please, you're welcome to submit for the record any other needed information to be made part of the record as far as your position that has been taken as far as the areas that we've discussed this morning.

[The information referred to follows:]

Mr. COHEN. Congressman, let me just make one additional point——

Mr. FALEOMAVAEGA. Please.

Mr. COHEN. [continuing] about the expansion, if I may. One of the many reasons why we felt that a comprehensive land-use plan was important is that it would truly forecast future growth. I would contemplate in advance, rather than on an ad hoc, application-by-application basis, how growth would be managed in the area so that we could plan for it.

Mr. FALEOMAVAEGA. You know, under the provisions of the Federal Constitution, the Congress has been given plenary authority to deal directly with the Indian Tribes. And then, in the process, the Congress has delegated this basic authority to act as trustee on behalf of the Indian Tribes or as the lead agency, or their lead advocate in the person of the Secretary of the Interior. And I'm sorry that we don't have anybody from the Bureau of Indian Affairs here as the primary spokesman on behalf of the Indian tribes.

But I want to go back where there's some sense of history on this. Mr. Cohen, the fact that the Miccosukee tribe at one time held, as far as they know, to be their sovereign rights on the lands here that is now known as the Everglades, some two million acres of land. And I am sorry that whoever made the confederations and

now I understand that the whole Everglades is now under the authority of the State of Florida. Is this—I thought that this was under the Federal Government.

Mr. RING. Congressman, the whole remaining Everglades is much larger than the areas that are under Federal jurisdiction. So there are some that are under Federal jurisdiction like Everglades National Park, but there are significantly large areas, for instance, the water conservation areas north of the park, that are under state administration and ownership.

Mr. FALEOMAVAEGA. The point I'm making is there in the process—am I to understand that—if the Federal Government decides not to hold any more jurisdictional authority over these lands that are now called the Everglades, it reverts automatically to the State of Florida?

Mr. COHEN. The large portions of the park were donated to the Federal Government when the park was created. That donation had a reverter clause in it that said that in the event that the land is not used for park purposes in the future, it would revert to the State of Florida. Now, that's not to say that in our discussion about a settlement for a new piece of legislation to govern the relationship—it would be our hope that the State of Florida would participate in those discussions, and that they would agree to the new legislation.

Mr. FALEOMAVAEGA. Mr. Cypress, have you ever considered looking at why your two million acres was—all of a sudden disappeared?

Mr. CYPRESS. This is—I mentioned this earlier, that it's always somebody making decisions for Indian people without talking with them, letting them know, or be part of it. So the State of Florida and the park worked on this, as you hear "donation." We were right in the center of what is known as the national park today. But we were evicted from the homelands with the tribe's not having a consent to—not having any confrontation. So when it's over and done with, the sheriff evicted some of our Indian people and that's why they went to north on the Tamiami trial. Well, it is not as pristine as the park makes it where it's the water. It isn't. That was the main stream of a road from Tampa to Miami. That's why it has that name, Tamiami. So——

Mr. FALEOMAVAEGA. And at the time, neither the Federal Government, nor any of your own people could afford an attorney to prevent any evictions or any [unintelligible] whatsoever.

Mr. CYPRESS. We had no money, no voice. That is correct. And on top of that, the State of Florida went and got what you call Public Law 280 without Tribe's consent either. But a lot of these things were done—where the Tribe just wants to be left alone in its own traditional lifestyle, law, even that, sometime we have a conflict, of traditional law. But here, a lot of these things were done because the Tribe—Indian people really don't want, you know, outside contact, but just be left alone. With it, everybody was what we call land-swapping, land-dealing, and then before you know it, we had the sheriff tell us, "This is not your land. You have to move."

Mr. FALEOMAVAEGA. If I could hear correctly from Mr. Cohen's earlier testimony, it's not that you're not unwilling to allow the Miccosukee Tribe from development. Am I correct on this?

Mr. COHEN. Absolutely correct.

Mr. FALEOMAVAEGA. You just want them to conform to the comprehensive plan of the ecosystem that is being utilized both by the State of Florida and the Federal Government?

Mr. COHEN. Yes, but they are—as a participant in that restoration, I don't have any doubt that they will do that. And obviously the development also has to be consistent with the purposes of the park, as Congress articulate them in the statute that created the park.

I also believe that's quite doable. So as I say, I'm trying to focus on the future in this testimony. I think we're very close. I think that the history of the last 4 or 5 years has been quite unfortunate, but I don't think it has to or should dictate what happens in the future.

Mr. FALEOMAVAEGA. Well, but by developing the 333 acres, Mr. Cohen, where are these people going to go after this? These acres are going to be full of houses. I mean, where—does the park not mind at all if they continue to develop beyond the 333 acres?

Mr. COHEN. The purpose of the land use plan was to address that issue. I don't know what the carrying capacity, if you will, of 333 acres is. There are a fair number of open spaces there. But I'm also not an urban planner or a community planner, and absent the plan, I think it's very difficult to address that issue. The Superintendent, I think, wants to say something.

Mr. FALEOMAVAEGA. Please.

Mr. RING. Congressman, the very—one of the very fundamental issues with the problems besetting the Everglades right now is that since the turn of the century about 50 of the footprint of the Everglades has been lost to development. From all sources within South Florida. As the population has grown from less than 100,000 to six, over six million. That is projected to triple over the next 50 years. And with 50 loss in the spacial scale of the Everglades, we've lost 90–95 of the wading bird populations and there are 56 endangered species down there.

So yes, the issue of where and how future development is going to occur is a fundamentally important issue to whether or not the Everglades survives. I mean, it is a basic, underlying concern of the whole ecosystem restoration effort and of accomplishing the purposes of the preservation of the park.

Mr. FALEOMAVAEGA. Mr. Ring, you're the Superintendent of the Everglades Park?

Mr. RING. Yes, sir, I am.

Mr. FALEOMAVAEGA. How many business concessions do we have now in the Everglades Park. As the Superintendent, how many business concessions are there now in place?

Mr. RING. As concessions we have a one-act Flamingo which is an over—which provides the marina operations store there, a restaurant and——

Mr. FALEOMAVAEGA. How much does the State of Florida gross each year out of the park system? People visiting there, paying fees and whatever that is offered there? Is there some entry fees where they visit the park?

Mr. RING. The State of Florida doesn't gross anything, the National Park Service——

Mr. FALEOMAVAEGA. How much do we gross a year on the usage of the park?

Mr. RING. There are entrance fees, there are certainly revenues collected from concessions. The impact on the regional economy of the approximately one million visitors that visit the Everglades every year has been estimated to be about $120 million dollars a year.

Mr. FALEOMAVAEGA. So the National Park Service gets about $120 million dollars for visitors using the park, am I correct?

Mr. RING. That's the impact of all of that activity on the regional economy. There are multiplier effects from one dollar being introduced into the economy being spent——

Mr. FALEOMAVAEGA. And the fact that you have one million visitors that go to the park every year.

Mr. RING. There are about one million visitors and the impact on the regional economy has been estimated to be about $120 million a year.

Mr. FALEOMAVAEGA. OK. One million visitors to the park and we're talking about 400 Indians that are trying to live in 333 acres. Mr. Lehtinen, have you had a chance to look into the historical aspects of the Miccosukee Tribe and why hasn't there been a proper litigation in terms of claiming what is rightfully theirs as far as their land ownership?

Mr. LEHTINEN. Well, Mr. Chairman, the shortest answer I can give is that when the Monroe Reservation was abolished in 1935, and the state tried to swap it for land in the north where no Miccosukees lived and where none live today and when the park's own retained expert cultural anthropologist was asked what would happen if you made the Miccosukees in the future live there, he said it would be cultural genocide and one of the worst chapters in American policy.

The Tribe has looked at that, but the—and there were some claims filed and agreements reached that allowed the tribe to use water conservation area 3-A for traditional use and access, but not build permanent homes with electricity and utilities. The reservation, the no good reservation, the one that would have amounted to a 19th century Indian removal policy if you'd have forced them up to the 75,000 acres, that's really not for practical purposes available.

Big Cypress is traditional use and access. So when they agreed in 1982 to traditional use and access and in the Big Cypress Law to the provisions they did, they thought they had the right of traditional use and access throughout Everglades Park and the right to build. The real key over here, as Mr. Cohen and Mr. Cypress indicated, the real key now is where you can build your homes, your electricity, your satellite TV dishes, and so forth. And they thought they had that guaranteed, with the testimony we've given earlier, in the permit area. And that the permit area could be expanded. Because whether it's 500 feet deep or 1,000 deep, or 1,500 deep, as Mr. Cohen said, it's really the length along the right away that matters, water flow. And compared to a million and a half land acres and more than two million if you count the water acreage of Everglades National Park, it's not significant.

So the reason the previous litigation has either not been successful or settled for the traditional use and access was that mostly the tribe wants traditional use and access to its historic lands. And they want them preserved. Now, we are in litigation over the fact that after they were given traditional use and access to Water Conservation Area 3–8, about 80,000–90,000 acres in its natural state, the state—I was the U.S. attorney who sued the state for failing to enforce its law against, not these 400 Indians, but against 400,000 industries and businesses that are killing the Everglades these people live in. And we have sued over, not the right to build a home in 3-A, but the fact that neither the Federal nor the state government will enforce the laws to keep 3-A from deteriorating and being destroyed in its natural state. So if the tribe were guaranteed its right to develop in the limited areas it needs to develop, that would amount to the land-use plan, that in this 300 or 600 or 1,000 maybe it should be, that's where you can build, put pavement, put in utilities and then their historic right to hundreds of thousands of other acres might well be preserved if—not the subject here, but I testified before this committee in 1993 in Key Largo to the fact that what the government needs to do then is protect that 100, 200, 300,000 acres from degradation, from pollution. But that's another matter and the Tribe is suing these governments to make sure that they don't let these homelands be polluted.

But the battle over development really is, to clarify this, is the right to build and there's been no claim ever, the 1962 permit says that the flow ways will be maintained. The water flows through, there's no problem there. I serve on the comprehensive—on Secretary Babbitt's, the congressionally created South Florida Ecosystem Task Force. I serve on the Governor's Commission for a Sustainable South Florida by appointment of Governor Chiles and there's no indication that anything the Miccosukees have done affect the, you know, the restoration efforts.

If I might add, on a couple of other questions that you raised, Mr. Chairman, I want to make it clear, the Miccosukees are the only people, Indian or non-Indian, who live in the Everglades. The Seminoles have an interest, as do I, a non-Indian who lives in Kendall, born and raised in South Dade, but I don't live in the Everglades, only the Miccosukees, not the Seminoles, not the water management district, nobody else, not me, lives in the Everglades. So oddly enough, they get the pollution that the Federal and state governments refuse to stop in the 650,000 businesses and homes that really pollute the Everglades and they get told they can't build their 65 houses.

Mr. FALEOMAVAEGA. Mr. Cohen, could you comment to that?

Mr. COHEN. I also hesitate to try to comment on anything Dexter says because he crams in so much in such a short period of time. Which "it" do you want me to comment on?

Mr. FALEOMAVAEGA. Just the last sentences that Mr. Lehtinen had indicated that 650,000 pollutants——

Mr. COHEN. Well, that's what we're spending multi-billions of dollars on, is to try to stop that pollution. We're not encouraging that pollution. I don't know how else to respond to that.

Mr. FALEOMAVAEGA. The Miccosukee are the ones getting it. Am I correct on that?

Mr. COHEN. So is the National Park.

Mr. FALEOMAVAEGA. OK.

Mr. COHEN. And the refuges.

Mr. FALEOMAVAEGA. OK.

Mr. COHEN. That's why we have fifty some odd endangered species. That's why the ecological carrying-power of this area has been reduced 90 percent.

Mr. FALEOMAVAEGA. You don't think the Miccosukees are as sensitive to the environment because they live there?

Mr. COHEN. I think the Miccosukees are every bit as sensitive, if not more so. That's not—Mr. Chairman, let me respond to this issue, I mean, I've been sitting here playing with whether I can respond to this because of the litigation——

Mr. FALEOMAVAEGA. No, no. You definitely——

Mr. COHEN. [continuing] because of the litigation. And there was a reason why the Park Service did not approve all 60 houses. There was a legitimate disagreement as to whether construction of those houses would in fact degrade the Everglades——

Mr. FALEOMAVAEGA. Mr. Cohen, was the disagreement based on interpretation of statutory law or was it regulation or what? How did the disagreement come about? Is it by regulation or by law that we have this serious problem?

Mr. COHEN. Congressman, those are the matters before the court.

Mr. FALEOMAVAEGA. No, no, no. I just want to know it is a disagreement on the interpretation of the law? Or is a disagreement on the interpretation of the regulations?

Mr. COHEN. The regulations are promulgated pursuant to statute, so if you violate regulations, you also violate the statute.

Mr. FALEOMAVAEGA. OK.

Mr. LEHTINEN. Might I comment, Mr. Chairman? I appreciate the informality.

Mr. FALEOMAVAEGA. Please, go ahead.

Mr. LEHTINEN. There was a comment about comprehensive land-use plans and because those are code words and some legitimacy to them, I wanted to point this out. I've been in that business for many years and comprehensive land-use plans traditionally will say "this thousand acres is residential, this 2,000 is commercial, this 5,000 is to be preserved." To say that an area, as was done in 1962, that 333 or perhaps it should be 666 or 1,000, but that a certain small area is designated for development and building is itself a comprehensive plan. The park has a million and a half acres, it says Flamingo can be this, they plan for this, they have—a lot of it is wilderness area, isn't gentlemen? Designated wilderness, true Federal wilderness area. And that this area, 300 to 1,000 acres will be development, that is a comprehensive plan. When you ask someone to show where in your 333 you're going to build and how you're going to build, that's a site plan. That is micro-management land use. That's a super-zoning office or even more than zoning. Actually, comprehensive plans will be a 2,000 acre area. And then zoning will zone areas, you know, like I live in an area that's more than 500,000 acres, it's zoned single family residential.

So comp planning would be a 10,000-acre, a 1,000-acre parcel. Or a development line, beyond which you don't develop in Dade Coun-

ty. Zoning would be 300 acres is zoned for residential and commercial. And—so that's—even zoning is below, lower than comp planning. And to go into the detail about what they're going to do with their land is truly a sight plan, micro-management, that's interference with it.

The standard, again, and I think you asked, Mr. Chairman, to reiterate—the tribe accepts that nothing it does can damage or pollute the outside. Since 1962 they've been committed not to blocking the flow ways and so forth. It's the non-Indians that built that road. They wanted the Indians out of park and they told the Indians "you've got to build along the road, because we've already built a road there and we already block the flow." Now they turn around and say, "even though there are flow ways and the Indians have done nothing to block them"—in fact, the Indians have committed even to if you made a mistake, the permit says this and we hate to point it out, but if says "if the non-Indian made a mistake and something was built where later it blocked the flow way, they actually can remove it. So these, we think, are strawmen issues, and while comprehensive planning sounds good, it's not applicable to 300 acres. And if I might just say realistically, the other problem with comp planning, those of us in the business know that they don't go to a 300 acre—that small a parcel. But even the 10,000-acre parcels they designate for this or that, you know how good they are? They're as good, until you get twelve votes on the Metro Commission or until you get seven votes on the Metro Commission. I haven't since a comp plan that isn't busted the day the special interests get—you make a comp plan today and it's changed tomorrow. It's only as good as the political power that is involved. So to transfer this idea that somehow a comp plan not applicable to 300 acres, that small a parcel, that's really micro-management, would be the appropriate methodology because it has a certain ring to other land-use planning, is inappropriate because comp planning has not worked for the non-Indians in really protecting the environment and comp planning doesn't apply even to acres—to parcels as small as 300.

Mr. FALEOMAVAEGA. Thank you, Mr. Lehtinen. Let me just ask Mr. Cohen one more time, I just wanted to clarify in my own mind. It is by Federal statute that we have given 333 acres to the Miccosukee Tribe to utilize?

Mr. COHEN. No, sir. The legislation provides that Tribe may continue to reside in the park, so long as——

Mr. FALEOMAVAEGA. Federal legislation?

Mr. COHEN. Yes.

Mr. FALEOMAVAEGA. Just like we've done to the Seminoles?

Mr. COHEN. Yes, sir. So long as it is not inconsistent with park purposes.

Mr. FALEOMAVAEGA. So long as the sun rises and every blade of grass, and all of that?

Mr. COHEN. The mechanism for doing that was a Special Use Permit which identified these 333 acres that was entered into in 1962.

Mr. FALEOMAVAEGA. So the—I'm still not clear on this. The 333 acres, who designated the 333 acres? Or which agency? The Federal Government did? The Congress did?

Mr. COHEN. The National Park Service.

Mr. FALEOMAVAEGA. The National Park Service?

Mr. COHEN. Yes, sir.

Mr. FALEOMAVAEGA. And this is by authority from the Congress to do so?

Mr. RING. No, sir. There's no specific authority that describes the permit or the 333 acres. There is a provision in the act establishing the park that defines its purposes—the purposes of the park, and then there is a clause that reads "nothing in this act shall be construed to lessen any existing rights of the Seminole Indians which are not in conflict with the purposes for which Everglades National Park is created."

Mr. FALEOMAVAEGA. Yes, I saw that in the law. And this same provision also applies to the Miccosukee Tribe?

Mr. RING. At the time the—I believe it was, the term, "the Seminole" was used to refer to both Seminole and Miccosukee.

Mr. FALEOMAVAEGA. Is that your understanding, Mr. Cypress?

Mr. RING. They have been recognized as separate tribal entities since that time.

Mr. CYPRESS. What it is is that Miccosukee composes, makes up the Seminole, is about 75 percent or 50 percent. So what you're talking about—today there are two tribes. And before that they just labeled everyone Seminole. And Miccosukee tribe is a little bit more clearer bloodline and Seminole tribe today has two mixture blood mixed together. One-Miccosukee blood, and another one called Creek Indian from the northern Florida or Alabama. So when you get—it's like, the Creeks, pure blood of Miccosukee—in between is the mixture.

Mr. FALEOMAVAEGA. All right. I'll take that. I'll accept that.

Mr. CYPRESS. OK, this is why that most people recognize Seminoles for a long time until they find out. Now most anthropologists and everybody else now say that, gee, the real Indian people had been Miccosukee.

Mr. FALEOMAVAEGA. You don't have to talk to me about anthropologists. The next anthropologists I catch coming to my island, I'm going to shoot them.

Mr. CYPRESS. Yes, that makes two of us. But even they admit——

Mr. LEHTINEN. Mr. Chairman, might I add, Dexter Lehtinen for the record, the Tab 10 might be useful to you, Mr. delegate, because that letter, 1962 BIA transmittal letter, explains why they're doing a permit and it says that this is consistent with the intent of Congress in the 1934 act, but that was——

Mr. FALEOMAVAEGA. What I'm trying to get at, Mr. Cohen and Mr. Lehtinen, is that if there has been any real expressed statutory conveyance by the Congress, by boundaries, by acreage, whatever it is, given to the Miccosukee Tribe as their reservation. That's what I'm trying to get at. Now, apparently, from what you're telling me is that there has not been done.

Mr. COHEN. No. The answer is no.

Mr. FALEOMAVAEGA. It's by The National Park Service and the BIA regulation, based on this statute that was enacted, I believe, in 1934 originally. So there really has been no real designation of any certain number of acres per se to the Miccosukee Tribe like

we've done in the past for other Indian tribes in the country. Am I correct?

Mr. COHEN. Not by the Congress.

Mr. FALEOMAVAEGA. That's right.

Mr. COHEN. The Special Use Permit——

Mr. FALEOMAVAEGA. That's right.

Mr. COHEN. [continuing] does define the——

Mr. FALEOMAVAEGA. We've just declared the whole Everglades as The National Park Service, right? With these provisions that for the purposes of use of the Miccosukee or the Seminoles, that they do—they can live there under a special use permit issued by the National Park Service or in conjunction with the Bureau of Indian Affairs.

Mr. RING. Delegate, there is one reference that is in the Settlement Act that was approved by Congress in the early 1980's for the Miccosukees that refers to both the 75,000-acre reservation, but it also refers to the permit.

Mr. FALEOMAVAEGA. You're saying that there was a Settlement Act——

Mr. RING. Yes, there was.

Mr. FALEOMAVAEGA. [continuing] that relinquished the right of the Miccosukee to the parks by giving them 75,000 acres and then they have to pay a toll fee to go to their——

Mr. RING. There was a Settlement Act that was approved in the early 1980's that made reference—my understanding was——

Mr. FALEOMAVAEGA. And did the Miccosukee Tribe accept that as settlement, Mr. Cypress?

Mr. CYPRESS. The reason that went with it is because Congress and the park had agreed that Indian people were going to have land in the park already. And also, this agreement was for the Area 3, north of the national park. Because what was outstanding was, as I said earlier, is that the Executive Order claiming, I think it's about between 4 million and 2.5 million covering five counties to be Indian land, of Executive Order, and this is what the reduction was made. And it also did not distinguish aboriginal rights to those areas. Not only Collier, Dade, Monroe, even in the national park.

Mr. FALEOMAVAEGA. Mr. Cypress, am I correct to say that the 75 acres that have been allotted, and I assume that was part of the Settlement Act, was never part of your traditional area of living?

Mr. CYPRESS. That is correct. Except, I mean, at one point, the 75,000 acres that is there is on the borders, but then at the same area that, as I mentioned earlier, Creek, the mixture, live there and the tribes were isolated from one another and I knew some were down the road that you would be passing——

Mr. FALEOMAVAEGA. OK, but my question, Mr. Cypress, the 75,000 acres, has that all been surveyed and everything?

Mr. CYPRESS. It's been surveyed by the United States.

Mr. FALEOMAVAEGA. And conveyance forevermore it is the property of the Miccosukee Tribe forevermore?

Mr. CYPRESS. That is correct, but it's not used by the Tribe.

Mr. FALEOMAVAEGA. That's what I mean. There's not one Miccosukee living there because it's a swamp.

Mr. CYPRESS. Right.

Mr. COHEN. Actually, if I can be a lawyer for one moment.

Mr. FALEOMAVAEGA. Please.

Mr. COHEN. Title resides in the United States as a trustee of Indian reservation land. I just want to correct the record.

Mr. FALEOMAVAEGA. You know, that's what I was thinking too, Mr. Cohen. I was wondering when you were saying that if the title was to pass, it goes, in your—automatically to the State of Florida, that's what I was a little confused about.

Mr. LEHTINEN. And Mr. Chairman, on Tab 15 of the book, then entry for 1982 might clarify at some time what happened in 1982 with the Federalization of that reservation to the north where no——

Mr. FALEOMAVAEGA. Gentlemen, I apologize for being somewhat too specific perhaps. It's just trying to understand a little more the problem, but I—if I'm to understand Mr. Cohen's statement, he feels very optimistic that you will find a mutual sense of agreement of what can be done. Mr. concern, Mr. Cohen, is that it seems to me that 10 years from now, 333 acres is not going to be enough for the Miccosukee people to live on. And I think—it seems to me that that really is the bottom line. Where do you go from there if they're going to be—is there going to be a demand for more houses to be built beyond the 333 acres? And I suppose we can wait 10 years from now. I'll be dead by then, but——

Mr. COHEN. Maybe you'll have a vote in Congress by then, too.

Mr. FALEOMAVAEGA. Yes, right. Like I'm really dreaming on that, Mr. Cohen. I, as the Chairman said, can we give ourselves a little—some slack here and allow, you, Mr. Cohen and Mr. Ring, a chance to meet again with Mr. Cypress and see if we can resolve this amicably? Hopefully not without litigation, hopefully we can do it here. The other option, I was thinking, Mr. Cohen, that we will mandate by law, expressing exactly the boundaries and the number of acres that perhaps—that is needful for the Miccosukee people to declare as their rightful place to live.

Mr. COHEN. That certainly is something Congress could do. I would just simply ask that you keep in mind the reverter clause that the State of Florida has. With regard to the question of whether there's going to be an amicable settlement, I've been waiting for Mr. Lehtinen or Chairman Cypress to indicate that they, too, are optimistic. I was hoping I was going to hear that. We've certainly had some discussions that have led me to that conclusion and I know we've talked about the past a great deal. I was hoping to hear something positive from them to give some credence to my optimism.

Mr. FALEOMAVAEGA. Mr. Cypress?

Mr. CYPRESS. OK. You see, I can't compare with being a politician to an attorney. I can't compete with that, but I will say this: The items in discussion, one through certain areas, but then you get to number—you rate it down, and then one point takes all that they gave back. That's the problem. If there was room for flexibility, fine, but, you know, I've been bending back so bad that I began to see what my heels of the shoe look like now. That is the problem, and it's time, I think, the park needs to understand that there are people living there; that they are going to grow; there are going to be some deaths; there are going to be some people being born.

That's the life cycle that needs to continue, but when people tell me that you've got to find a way to control it, or we're going to control your growth in your community, that I have a problem with.

Then, on top of that, if you heard Mr. Cohen say that they are going to spend billions of dollars, I'm happy, but the problem is this: What they're holding me is that I'm being punished for what others did, and I had no control of what corporate sector does, but because of what happened, they say, well, we don't want that, so we don't want you to do that. You know, if they had done what they should have been doing, you know what, we would have a better place to live in south Florida. This is what gets my goat—as I talked about earlier, having two standards of the law.

Thank you.

Mr. LEHTINEN. I think Mr. Cohen invited us to comment, and it is true that Mr. Cohen and I have—and with Mr. Cypress' involvement, of course—reached some agreements on issues that a year or two ago, in litigation and other things, were outstanding and were a problem—actual points of the Interior, some of them, not Mr. Cohen, but others saying the tribe can be removed upon expiration; the rights are not in perpetuity. There has been substantial progress, and Mr. Cohen has played a positive role in getting the progress on those matters.

It does mean—and Ed knows this—that I have compared it sometimes to, if you're going to be shot five times and you make progress to where you're shot only once, if being shot once kills you, then the benefit of the four other shots not being there doesn't help. But if you're going to go from death to life, then reducing it, as we have, on maybe four of five, you know, 80 percent of the problems, is definitely progress. We've just got to get over some of the remaining central issues, and in that sense we certainly are optimistic.

Mr. FALEOMAVAEGA. Well, I just want to say that the chairman and I are very concerned about this, and if it means that maybe some way or somehow that we might resolve this issue by way of legislation, we're hopeful that you gentleman can resolve this even outside of litigation, but if not, we will address this issue again before another committee hearing, and maybe even have to introduce appropriate legislation to cure it.

But with that in mind, I want to thank you, gentlemen, for being here this morning. I do look forward to visiting the Miccosukee tribal reservation in the near future, if I can. I have a bunch of cousins that live in Orlando, and Disney World maybe might not be too far from where you are.

So, gentlemen, thank you for coming this morning.

The hearing is adjourned.

[Whereupon, at 12 noon, the Subcommittee adjourned subject to the call of the Chair.]

[Additional material submitted for the record follows.]

STATEMENT OF EDWARD B. COHEN, DEPUTY SOLICITOR, DEPARTMENT OF THE INTERIOR

Mr. Chairman and members of the Subcommittee, thank you for this opportunity to discuss the Department of the Interior's discussions with the Miccosukee Tribe regarding their special use permit. The Department's focus in these negotiations is to protect the natural resources of the Everglades National Park and to provide more autonomy to the Miccosukee Tribe of Indians of Florida in the use and occupancy of the special use permit lands within the Park.

In 1934, Congress authorized Everglades National Park to preserve intact a unique ecosystem found nowhere else in the world. The Park preserves a vast wetland of global significance and is the remaining finest example of South Florida's subtropical ecology. It includes sawgrass prairies, cypress swamps, tropical hardwood hammocks, mangrove forests and other fragile environments such as Florida Bay.

In recent years, the Park has been at the center of a complex and massive Federal and state effort to restore and preserve the South Florida ecosystem. This effort is spearheaded by a Federal, state, tribal and local task force. Among the objectives of that task force are: (1) managing hydrological conditions in undeveloped and restorable lands to maximize the historic water regimes and natural processes; (2) ensuring that future development is compatible with the goals of ecosystem restoration and long-term preservation; and (3) ensuring that development does not preclude restoration efforts. The Miccosukee and Seminole Tribes of Florida have actively supported these goals and participated in the current restoration effort.

The Miccosukee Tribe occupies an area within the Park pursuant to the terms of a 50-year special use permit issued to the Tribe in 1964 by the Secretary of the Interior in accordance with the Park's authority under the various laws governing the administration of the Park. The special use permit was issued "for the purpose of (providing) administrative and educational facilities and to provide places for the Miccosukee Indians to live, make and sell handicraft." It allows the Tribe to occupy approximately 333 acres in a linear strip five miles long and 500 feet wide within the northern boundary of the Park. The special use permit expressly requires National Park Service approval for the Miccosukees to construct buildings and structures or to otherwise dredge or fill on the area in a manner that will not affect the water quality or interfere with the free flow of water through or over Parklands. In interpreting this general guidance, the Park must balance development in the Miccosukee permit area with the protection and perpetuation of Park resources.

Today, about 134 homes and an 18-acre tribal government complex sit in Everglades National Park. That complex includes a tribal headquarters, schools, health clinic, police station, court house, and several other structures. This modern-day community is located immediately downstream of structures that deliver the Park's water from the north. Enough clean water delivered at the right time and right place will save the Everglades. Realization of this objective has become a multi-billion dollar effort. It is for this reason that the Park has sought to carefully evaluate the scope, scale and location of the Miccosukee presence. The most recent issue—the Tribe's desire to construct 65 new homes after completing 51 new homes in 1993—led to a significant deterioration in relations between the National Park Service and the Tribe. The Tribe sued the Park in 1994 arguing that the Park should immediately permit the construction of these homes. That suit is still unresolved. The Park authorized 95 new home sites, although not in the configuration that the Tribe had requested. The Park also agreed that construction could begin on 30 houses last fall. The Tribe maintains that building in the alternative configuration would require construction of new and expensive infrastructure. Nevertheless, construction on the initial 30 homes for which there is agreement is underway.

The special use permit calls for a large amount of Park oversight. The Tribe views this as an intrusion on their sovereign authorities, creating an inherent tension between the Park and the Tribe. For the Park's part, it simply seeks to carry out obligations under the permit in order to protect Park resources.

The National Park Service proposes the replacement of the special use permit with a new legal framework which respects Tribal sovereignty, acknowledges the Tribe's desire to live in the Park in perpetuity, and which places specific obligations on the Tribe to assure that their presence is not inconsistent with our efforts to protect and restore the Everglades and Everglades National Park. We have developed the outline of a legislative proposal incorporating that framework and have transmitted it to the Tribe for review and input.

Implementing a solution involves solving a host of natural, cultural and visitor use issues. Among them, as examples, are that the Tribe would need to prevent and abate any degradation of the quality of surface water which enters the contiguous

Tribal land and any surface or ground water that is released directly or indirectly into the Park from these lands. Also, flow ways would need to be maintained for the unimpeded flow of water with no construction or fill in those areas. Attention also needs to be paid to the preservation of native plant communities and the prevention of the introduction or maintenance of exotic plants. Developmental actions should not interfere with the preservation of stable wildlife populations and native species diversity while maintaining adequate wildlife migration routes.

We approach these discussions with the Tribe with high hopes and the view that the Department and the Tribe are partners in restoring the ecological health of the Everglades. The Tribe and the Park will always be neighbor. Both recognize that development in this particularly sensitive area may generate impacts to the Park.

Downstream effects of development occur regardless of land ownership. Only by working together with common goals can we jointly protect the fragile ecosystem of the Everglades.

The Tribe has had the Department's draft of a legislative proposal for several weeks and their initial informal reactions have been promising. We are committed to reaching a solution and stand ready for further discussions.

This concludes my prepared remarks. I will be pleased to respond to any questions you may have.

STATEMENT OF BILLY CYPRESS, CHAIRMAN, MICCOSUKEE TRIBE OF INDIANS OF FLORIDA

My name is Billy Cypress. I've been the elected Chairman of the Miccosukee Tribe of Indians of Florida since 1986 and an elected Councilman since 1973.

The Miccosukee Tribe, with a 50 percent blood membership requirement (highest in Indian Country), is determined to preserve its culture, its identity, its heritage, and its way of life. The keys to achieving these goals are self-determination and strong tribal self-government within its own jurisdiction, the right to govern its people under traditional laws and traditional culture. These are oft-stated goals of Congressional Indian policy as well.

For centuries, the European arrivals and then the U.S. Government were opponents in that struggle. Even now, in the era of supposedly more enlightened Indian policies and while some Federal agencies work well with us to achieve these goals (such as the Corps of Engineers), the National Park Service works as an agent of our destruction.

Our Tribe's experiences form a pattern. First, the government pushes us to land nobody wants. Later, the government decides that the land has some value after all, so they push us to other land nobody wants. Then, the cycle repeats itself.

After several of these cycles in the nineteenth century, the twentieth century saw the Monroe Reservation of 100,000 acres set aside in the southern Everglades "in perpetuity" (the state law said). Then, within 20 years the Monroe Reservation was taken away to make Everglades National Park. We were promised then that we could stay in the Park. Congress was told then by the Park Enabling Act's sponsors that the Indians would remain in the Park. And the so-called "permits" we've had since 1962 say we can build permanent structures in an area on the north edge of the Park.

But in the 1990's, the Park Service said that when the permit "expires," they can make us move again. Our tribal members have been told by Park rangers "don't plant trees that take a long time to grow, because you're not going to stay here." Our tribal officials have been told by high level Interior officials, in conferences with our lawyers, that "we can move you out when the permit expires."

Now, as you've probably guessed, we don't accept that view. We're not going to move and I don't think the government will really make us move. After several rounds of recent lawsuits the Interior Department apparently now says we won't have to move. But what will be said tomorrow?

We have the good fortune to be able to use the U.S. government's own expert witnesses to support us. This includes their water quality experts (retained on Everglades water issues), their cultural anthropologist (hired on traditional Miccosukee issues), and their former Bureau of Indian Affairs (BIA) Indian agent (who arranged for the tribal land base in the so-called "permit" area in 1962). So I'm not surprised that Interior has backed off a little bit.

So we seem to be able to head off some of the more outrageous threats of the government when they occur, but lawsuits are cumbersome and unwieldy. And as we speak today, we still can't build the houses we need.

We can't build—

- even though we can finally afford it financially

- even though we comply with all environmental protection laws
- even though the government's own water quality expert says we pose no pollution danger
- even though the government's own permitting agency under the Clean Water Act (the Corps of Engineers) says there's no environmental harm and has issued the section 404 permit
- even though the government's own retained cultural anthropologist says that to block tribal housing amounts to "cultural genocide."

Instead of "cultural genocide," we want to protect our way of life and our culture with strong self-government and traditional values. This is consistent with the Park's purposes and long standing Congressional policy to promote tribal self-determination and tribal traditions.

The Tribe has members living in trailers who need houses; extended families living in overcrowded houses of relatives; and members living out of the community who long to live in the Miccosukee community.

Starting in 1992, the Park Service first said it needed "time" to review the Tribe's proposed plan for 65 houses along the existing road within the permit area (the permit gives the Park 30 days for the review). But after 2 years and frequent reminders without any action, we finally skipped the Park Service and applied directly to the Corps of Engineers for the proper permits.

Then the Park said the Tribe had no land rights, and told the Corps of Engineers that the Tribe couldn't apply for section 404 dredge and fill permits because the Tribe did not have a legally sufficient interest in the land on which it lived. The Corps had always accepted permit applications from the Tribe and issued permits in the Tribe's name, but the Corps suspended review at the Park's request. When the Corps observed our evidence of bad faith by the Park Service, the Corps decided to go forward despite Park objections.

After that, the Park Service said there could be a pollution problem, but the government's own water quality expert testified that Miccosukee housing creates and will create no water quality or pollution problem. So the Corps issued the section 404 permit under the Clean Water Act, finding no environmental harm from the proposed 65 new houses.

Then the Park said the Tribe can't build even with a Corps permit, without Park permission. The Park claims that the 30 day right of review in the permit is an absolute veto.

Thereafter, under court order to do a review of the Tribe's request, the Park said the Tribe could have 65 houses, but they had to be in two rows, so many tribal members have a house very close behind in their back yard. This takes new interior roads and more dredge and fill material than building along the already existing road, but the Indians are more "out of sight."

We're not asking for much. Just leave us alone and we'll leave you alone. We'll protect the environment, protect water quality, assist in Everglades restoration. We'll accept the legal, enforceable obligation to protect the environment and do no damage to the Park or other lands outside our area. And we've agreed to reasonable height restriction, no commercial gaming, and no commercial aviation to protect the character of the area.

Sometimes I think that this may be the problem. We're willing to guarantee that we won't pollute and that we won't have an adverse impact on the Everglades or Everglades restoration. I think non-Indians worries that if the Indians can accept and follow such laws, then the non-Indian man might have to accept and follow such laws too.

Of course, non-Indian governments have a lot of those laws on the books, but they sure have a hard time enforcing them. Governments say a lot of things, but talk against pollution doesn't stop the pollution.

We know, because we're the only people who live in the Everglades. We're the ones who get non-Indian pollution on our land and in our water.

We do know, for sure, that if we agree to specific anti-pollution provisions (as we are willing to do), then those laws certainly will be enforced against us. Non-Indian law may not get enforced against non-Indians, but it always gets enforced against the Indians.

But we will accept these environmental laws, including enforcement, because we want to save the Everglades. The Everglades is our mother, and she is dying. We're not the destroyers; we're not killing her. We're trying to save her.

In court, we're arguing for stronger environmental positions than the Federal Government takes and we're trying to enforce the Clean Water Act against the governments that ignore the law. Up here in Congress, we're asking for tougher laws against Everglades pollution sources. In Indian Country, we're adopting scientif-

ically-based water quality standards that the State of Florida shrinks from due to special interest pressure.

Everyone honors Marjory Stoneman Douglas, author of *River of Grass* and proponent of Everglades preservation. Ms. Douglas said, "The Indians before everyone else knew that the Everglades were being destroyed."

What can I say to my tribal members when they ask—

- We can finally afford it—Why can't we build?
- We follow environmental laws—why can't we build?
- They built employee housing, tourist hotel, restaurant in Flamingo in the Park—why can't we build?
- They built the road, put in electricity—why can't we build?
- They built Shark Valley Tower a couple of miles away—why can't we build?
- They signed a permit saying we can build—why can't we build?
- There's one million five hundred thousand acres in the Park, one hundred thousand acres were ours—why can't we build on three hundred or a thousand?
- Why won't they leave us alone?

The only answer we understand so far is, "There's law for Indians and there's law for non-Indians; it may look the same but it doesn't work the same way." It controls and gets enforced against Indians, but it doesn't control or get enforced against non-Indians or their government. We can see, for example, that the part of the permit that says that we need Park review is enforced against us. So if the Park refuses to do anything, we get nothing. But the part of the permit that says the review must be done within 60 days is just disregarded, not enforced. And the part of the permit that says we have a right to build—well, that doesn't control the non-Indian.

So non-Indian law is easy to understand, as far as we can see. It just means, "the non-Indian wins."

What I hope this Subcommittee will do, what I hope this Congress will do, is show us Miccosukee Indians that we are wrong about "non-Indian law." We hope you'll show us that Miccosukee Indians can be guaranteed rights of self-government on their small lands, without paternalistic and misguided Park Service employees telling them what's good for them, as long as Miccosukees protect the environment and don't harm anyone or any property outside our lands. We hope you'll show us that the high ideals to which this great country aspires have been achieved to the extent that there is no longer, for the Miccosukees at least, selective enforcement of the law. Miccosukees hope to see just one law—yours and mine—and that we're all equal under it together.

Thank you.

STATEMENT OF DEXTER LEHTINEN, GENERAL COUNSEL, MICCOSUKEE TRIBE OF INDIANS OF FLORIDA

As a non-Indian, I cannot speak from an Indian heart; I leave that task to Chairman Cypress. But as General Counsel for the Miccosukee Tribe, I can describe the legal background on the Tribe's position on residency within the Park boundaries and I can describe also what a lifelong resident of South Florida has seen through a non-Indians eyes.

First, let me discuss the legal background. The term "Seminole" has been applied improperly to all Florida Indians, and was misleadingly used in both state and Federal legislation until around the 1960's or so, to include the distinct Miccosukee Indians. The advent of serious consideration to establishing a national park in the Florida Everglades in the 1920's finds the Miccosukees living throughout the southern Everglades, including but not limited to the 100,000 acre state Monroe Indian Reservation in what is now Everglades National Park. The opening of Tamiami Trail (the paved road across the Everglades linking Tampa to Miami, hence the name "Ta-Miami") in 1927 and the authorization of Everglades National Park by Congress in 1934 would change the lives of Miccosukees and their culture forever.

The Monroe Reservation was abolished in 1935 and a new Reservation much further north was substituted, where no Miccosukee then lived and where still to this day none live. As Chairman Cypress has said many times, from the Indian viewpoint it is simply taking good land and trying to push the Indians to land nobody wants. From a legal viewpoint, its taking land without permission.

Seeking to avoid a replay of the infamous Indian removal policies of the 19th century, and knowing the Miccosukees would not move to the new Reservation anyway without force, the Roosevelt Administration visited the Miccosukees on the Trail, promising that they would be allowed to remain in the Park. Reflecting this policy, Everglades National Park Enabling Act of 1934 states that "Nothing in . . . this title shall be construed to lessen any existing rights of the Seminole [Miccosukee] Indi-

ans which are not in conflict with the purposes for which Everglades National Park is created."

Likewise, the floor discussion in Congress reflects the same policy:

> "By passing this bill we are placing them [Indians] in a home, and in a position to live there where they should live. We believe they should be in there. . . . They will be permitted to remain relatively undisturbed in their own country and in their own homes."

This seemed sensible not only from the viewpoint of protecting the rights of the Indians, but because the 1930 Report of the Secretary of the Interior on the desirability of a national park cited several factors, including "the present . . . Indian, are sufficient to give the area a national interest." A 1935 press release of the Department of the Interior states that "it is within the power of the Government and the State of Florida to salvage and re-create the Everglades, with the Indians as part of them, through meeting to a generous extent the Indians' own wishes."

After the dedication of the Park in 1947, under governmental pressure to leave the central areas of the Park, many Miccosukees moved their camps near Tamiami Trail near the northern boundary of the Park. Throughout the 1950's the Tribe sought a land base in its homelands and an organizational structure to defend its right to self-government. As a result, in 1962 the Tribe reorganized under the Indian Reorganization Act and the United States allocated an area within the Park at its northern boundary for tribal development.

The area was called the "Tamiami Reservation" and was 500 feet into the Park along a 5-mile road frontage at the northern edge of the Park. It was defined in an agreement between the Bureau of Indian Affairs (later the Tribe was substituted) and the Park Service, a so-called "permit." The Tribe had traditional use and access in the Park, but this area was to be the Tribe's land, for schools, police station, health clinic, administration, and houses. The paved road (the Park's northern boundary) was already there with utilities.

The BIA representative at the time, Reginald Miller, has testified under oath that the area was for tribal self-government, permanent (no expiration date on the first permit), and development of fixed structures. He said that Interior and BIA "worked with the idea of finding a land base in the park" in order to "build houses! have a school, a place for some medical attention, community facility, business enterprise, and such things as a normal community might want." Miller says it was "identified as the Tamiami Indian Reservation," was in the "Tribe's traditional homeland," and was "a permanent site." Miller summarized:

> ". . . [T]he government agencies assumed . . . that this was the Miccosukee homeland, and that they belonged there, that they should be there."

The Park Service's own maps, distributed to the public in tourist brochures, labelled the area "Miccosukee Indian Reservation," until 1992 (when they changed the designation to "cultural center"; while on recent Park tourist guides all reference to the Miccosukee area is dropped). The Park Service (and Federal courts) have recognized the permit area as "Indian country."

A 1962 BIA transmittal letter, explaining the permit, cited the 1934 statute and concluded:

> The implication was that Congress wanted to give every consideration to the Seminoles [Miccosukees]. This permit follows the intent of Congress.

The BIA built a permanent administration building and started facilities such as a clinic, while Dade County helped with a school. Over the ensuing years, the Tribe expanded its facilities in the Tamiami Reservation ("permit" area); by 1992 there were a gymnasium, two schools, fire department, police department, senior center, extensive offices, tribal court, health clinic and wellness center, and approximately 100 houses, as well as a tourist attraction Indian village. Outside the Park (but within 500 feet or so) on new Tamiami Trail (which had been built just north of the original Tamiami Trail) the Tribe had a restaurant, gas station, and grocery store, and private (non-tribal) restaurant and motel had been built on private land on new Tamiami Trail in the same area as well.

The Tribe complied with all laws, including environmental protection laws such as the Clean Water Act, applying for and receiving section 404 dredge and fill permits in its own name from the Corps of Engineers.

But tension developed in the l990's as the Park Service increasingly believed that the Tribe's mere presence was inconsistent with the purposes of the park. In 1994, after two years of refusing to review the Tribe's proposal for 65 houses along the road in the permit area, the Tribe went directly to the Corps of Engineers for a Clean Water Act section 404 permit. The Park Service told the Corps that the Tribe had no land interest to qualify it to even apply for a permit. But after litigation exposed the weaknesses of the Park position the Corps went ahead with its review and issued the permit, finding no adverse environmental impact.

Nonetheless, to this day the Park still says "no" to the tribal housing plan, asserting that the right of review in the permit gives them complete discretion to say no for any reason; notwithstanding the clear statements in the permit that the Tribe can build and develop the area for tribal purposes and notwithstanding the 60-day limit on the Park's review power.

So the Miccosukee Tribe wants its rights "reaffirmed" or "clarified." as we believe the Congress intended in 1934 in passing the Park Enabling Act and the government intended in 1962 in signing the permit. In the permit area or Tamiami Reservation, the key elements must encompass:

- the right to govern themselves as they see fit (self government) as though it were a reservation
- the right to develop the area as long as activities do no harm to the outside environment or adjoining landholders (including the Park)
- oversight by normal enforcement mechanisms (such as Corps of Engineers for Clean Water Act permits, Attorney General lawsuits for violations, etc.) but not special enforcement by Park Service or Park "veto"
- perpetual duration of these rights (no expiration)

The Miccosukee Tribe will guarantee (and will accept mandates of these guarantees by law) adherence to strict anti-pollution standards, and height, gaming, and aviation restrictions. Even with limited time, let me re-emphasize this point—the Tribe will accept, in law and in writing:

- no harm to Everglades restoration and no adverse environmental impact outside the tribal area (including special directions to the Corps of Engineers to ensure in all 404 dredge and fill permits that there is no adverse impact on water quality of hydroperiod, on Everglades restoration, or to the Park's environment)
- no commercial aviation and no commercial gaming
- height restrictions equal to those imposed upon itself by the Park Service within the Park itself.
- jurisdiction in Federal court for the Attorney General to bring any action against the Tribe to enforce these provisions.

What does all this means in human terms? What do I see as a non-Indian born in south Florida with 8 years service in the Florida Legislature and 4 years as United States Attorney?

I see a government that can't or won't control pollution from 650,000 houses and commercial businesses, so they want to stop 65 houses that their own experts say won't pollute. That is, if you can't or won't solve the real problems connected to big guys, then at least look like you're doing something by solving made-up connected to little guys.

I see a government that allows hotels, paved roads, employee housing, large science research buildings within the Park, taking up far more than 333 acres, but it wants to stop Indian buildings and housing on 333 acres. That is, the Park actually testified that it might not be permitted by law to allow Indian buildings because the National Park Service Organic Act requires that parks be kept in their natural state, even as they build tourist hotels, restaurants and housing for their own employees.

I see the only people who live in the Everglades (Miccosukee Indians) having their homelands destroyed by non-Indian pollution and government neglect, but their own non-polluting structures are blocked by the government. That is, those who don't pollute are held up as a straw man by an embarrassed government to cover those with who do pollute.

Interestingly enough, I see a Tribe asking for no more than what it, and most non-Indians, thought the Tribe already had. After all—

- The 1934 *Congressional Record*, referring to the Miccosukees in the newly-authorized Park, said "they will be permitted to remain relatively undisturbed in their own country in their own homes."
- The BIA representative who established the "permit" says, "This land was set aside for the Miccosukee Indians for all the things we stated, homes and things like that . . ." as a "permanent site" in the "Miccosukee's homeland."
- Both the Department of the Interior and the Federal courts have classified the area officially as "Indian Country."
- The Florida Department of Transportation has sign on Tamiami Trail that says "Entering Miccosukee Indian Reservation."
- The Park's own tourist map said "Miccosukee Indian Reservation" until 1992; and state maps today (the *Atlas of Atlas*, Florida Gazetteer, and Rand McNally Florida Road Map all say "Miccosukee Indian Reservation."

Most importantly, I see a group of Indians who want nothing more that what you and I want—

- Freedom from governmental interference, from bureaucrats telling us what's best for us, in their opinion.
- Freedom to develop their own community, as long as they follow the laws that apply equally to all as us, including environmental protection and respect for adjoining landowners.
- Freedom to control their own lives on their own land, at no harm to others.
- In short, simply freedom under law. Thank you.

STATEMENT OF HON. ALCEE L. HASTINGS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. Chairman, I appreciate the opportunity to submit this testimony to the Committee on behalf of H.R. 190, a bill which I have sponsored both in this Congress and the previous one. Mr. Chairman, and members of the Committee, let me be perfectly clear: this is a very important bill which will carry out the longstanding intent of Congress in preserving and protecting the rights of the Miccosukee Tribe of Indians of Florida. This bill was introduced in a truly bipartisan fashion, with my Florida colleagues Congresswoman Carrie Meek, and Congressmen Lincoln Diaz-Balart and Dan Miller joining me as original cosponsors.

This legislation allows for the good people of the Miccosukee Tribe to live in perpetuity in the so-called permit area of Everglades National Park. The Miccosukees have lived and worked for literally *hundreds of years* in this area. The rights of the Miccosukees are recognized by the Everglades National Park Enabling Act of 1934 and their special use permit.

In 1934, the Everglades National Park Enabling Act specifically provided that rights of the Indians were protected. Subsequently, in 1962, and 1973, the tribe was guaranteed that they could build homes, schools, clinics, and other tribal buildings in the 300-plus acres identified in their special use permit.

Unfortunately, Mr. Chairman, the Park Service now seeks to restrict Miccosukee activities on their own land—even after the tribe has complied with all applicable laws. The intent of the Congress in 1934 was to guarantee the Indians the freedom to live, work, and govern themselves as they wish in this area, not to be governed by the National Park Service. This bill will allow for Miccosukee self-government to continue and prosper.

These Indians seek nothing more than what we promised them when we passed the park bill in 1934, nothing more than was said on the floor of this House, nothing more than the Department of the Interior confirmed in the special use permit.

In 196O, Justice Hugo Black wrote, "Great nations, like great men, should keep their promise." With this bill, we keep our promise to these native Americans, to these fellow citizens of the United States.

They deserve nothing less.

Thank you, Mr. Chairman.

STATEMENT OF HON. LINCOLN DIAZ-BALART, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Dear Mr. Chairman:

As a South Florida Representative,I am concerned that the right of the Miccosukee Tribe of Indians of Florida to live in their native homelands is protected and properly understood, as previously recognized by Congress and the Department of the Interior.

In this respect, I support H.R. 190, a bill to amend the Act entitled "An Act to provide for the establishment of the Everglades National Park in the State of Florida and for other purposes," approved May 30, 1934, to clarify certain rights of the Miccosukee Tribe of Indians of Florida. This language clarifies 16 USC 410(b), part of the Everglades National Park Enabling Act of 1934, to protect the rights of the Miccosukees (as Seminoles who lived in the Park). I believe that the language is reasonable and well-founded in that it fulfills original Congressional intent and codifies rights already recognized by the Department of the Interior in previously-issued "special use permits." As was said on the floor of the House by Representative DeRouen in explaining the Park Enabling Act on May 24, 1934, the Congress seeks simply to ensure that "... we are placing them in a home, and in a position to live, there where they should live," and that "... they will be permitted to live ... in their own country and in their own homes."

I believe that the most effective way to clarify these rights would be to support H.R. 190, introduced by my colleague Mr. Hastings. I appreciate your consideration of this legislation in the Subcommittee on National Parks and Public Lands.