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6 DISCUSSION DRAFT TO FEDERAL ACKNOWLEDGEMENT REGULATIONS

7 (25 CFR 83) FOR TRIBAL CONSULTATION MEETING

8 JULY 31, 2013

9 SOCKALEXIS ARENA

10 INDIAN ISLAND, MAINE

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14 (Transcriptionist's Note: Designation of "(inaudible)" throughout
15 transcript means that speaker could not be heard due to lack of utilizing
16 microphones or the speaker's comment(s) were not understood.)

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3 The Tribal Consultation regarding draft revisions to Federal
4 Acknowledgement Regulations (25 CFR 83) for the Department of the Interior,
5 Bureau of Indian Affairs, was held at Sockalexis Arena, Indian Island, Maine, on
6 Wednesday morning, July 31, 2013, and was called to order at 9:05 o'clock,
7 a.m., by Deputy Assistant Secretary – Indian Affairs Larry Roberts.

8 DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS LARRY
9 ROBERTS: Okay, we're going to go ahead and get started here this morning.
10 And we're going to get started this morning with the chairman providing a few
11 opening remarks.

12 PENOBSCOT TRIBAL CHIEF KIRK FRANCIS: Thank you. Good
13 morning, everyone. I – my name is Kirk Francis. I'm Tribal Chief here at
14 Penobscot Nation.

15 And I want to take the opportunity to welcome the Department as well as
16 all of you to this Consultation on an extremely important matter, obviously.

17 So feel free to enjoy our community while you are here. You are our
18 guests and everything is open to you, even Jim who is here, one of our elder
19 Council Members, you can have him if you want. But I think that we're really
20 appreciative that you're all here.

21 And I'd like to, which is customary, to have, to open this up in the right
22 way, turn it over to Gabe Paul who is an extremely dedicated cultural person
23 here in the community and a language speaker. And he is going to offer a prayer

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3 this morning.

4 MR. GABE PAUL: Good morning. **(Native language spoken)** I'm going
5 to say a prayer this morning for all the leaders here and for the work you are
6 doing. **(Native language spoken)**

7 PENOBSCOT TRIBAL CHIEF FRANCIS: Thank you, Gabe. So, again,
8 welcome to Penobscot Nation. We have a lot of territory here and opportunities
9 if folks are hanging around. And anything we can do to help make your time a
10 little more fun, we're willing to do that.

11 We have opportunities to see the river, etc cetera. So anything we can
12 do, just let us know. And, Larry, thank you for being here. And I look forward to
13 the discussion.

14 DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS ROBERTS:
15 Okay. Good morning, everyone. Thank you all for coming to attend.

16 I think we have a relatively manageable group here this morning and so
17 what I'd like to do before we get started is just give everybody an opportunity to
18 briefly introduce themselves so we know who is all here with us this morning.

19 And for purposes of the court reporter, I think we can go off the record for
20 this point in terms of just very brief introductions as to who is here. But then we
21 do have a court reporter here and everything is being transcribed at these
22 Consultations and then the Public Meeting in the afternoon so that we have a
23 clear record of what has been said.

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3 We will put it up on the Internet so that everyone can see the comments
4 that are being made and being provided to the Department. And so we will go off
5 the record right now just to have folks introduce themselves. And we will start
6 right over here.

7 (Whereupon, each person introduced themselves and stated the tribe or
8 nation of which they were members.)

9 DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS ROBERTS:
10 Okay, thank you, everyone for those introductions. So this morning's session is
11 a Consultation with federally-recognized tribes pursuant to President Obama's
12 Executive Order on Tribal Consultation.

13 In the past tribal consultations for this particular rule we have had folks
14 from, representatives from non-federally-recognized tribes attend the morning
15 sessions.

16 And what we've done is we have asked the representatives from federally-
17 recognized tribes if they had any objection to non-federally-recognized tribes
18 being part of this morning, government-to-government consultation.

19 And I would hope that if there is any objection that everyone in the room
20 would respect that because we are complying with the President's Executive
21 Order there.

22 So, can I, if anyone objects would they just let me, let me know for the
23 record right now from the federally-recognized tribes, if there is any objection.

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3 (Whereupon, a question was asked which was inaudible.)

4 DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS ROBERTS: So
5 the question is – we’re holding the Tribal Consultation this morning, pursuant to
6 President Obama’s Executive Order on government-to-government consultation.

7 And that Executive Order applies to federally-recognized tribes. So we,
8 the Department, are working within that framework of that Executive Order.

9 There are a number of representatives from non-federally-recognized
10 tribes here this morning. And the question is whether representatives from
11 federally-recognized tribes have any objection to them participating in this
12 morning discussion.

13 (Whereupon, no objections were raised.)

14 DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS ROBERTS:
15 Okay, so I have, I heard no objection so – sure.

16 MASHPEE WAMPANOAG VICE CHAIRWOMAN JESSIE LITTLE DOE
17 BAIRD: I’m Jessie Little Doe Baird. I’d like to state for the record that I have no
18 – Jessie Little Doe Baird, Mashpee-Wampanoag Tribe, Vice Chairwoman – no
19 issue at all with anybody being in this meeting.

20 But I am not in the position to say that someone who is here is or is not a
21 tribe if they are not federally-recognized. I think that the Department makes that
22 assumption which I would not.

23 DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS ROBERTS:

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3 Okay. Okay, let me phrase it a different way, then, and that is, is there any
4 objection to – we’ve all introduced everyone here within the room. Is there any
5 objection to the participation of the folks in the room today?

6 (Whereupon, no objections were raised.)

7 DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS ROBERTS:

8 Okay. Thank you. Okay, so my name is Larry Roberts. I am a member of the
9 Oneida Nation of Wisconsin and am principal Deputy Assistant Secretary for
10 Indian Affairs.

11 I started with the Department in September of last year. And I am going to
12 have – some of you may have heard at either the other consultations or at our
13 meeting with NCAI within the Department as part of this process in looking at the
14 Federal acknowledgement regulations we convened an internal work group
15 within the Department of the Interior to develop options for this Discussion Draft
16 for improving the federal acknowledgement process.

17 And a couple of members of those teams, that team is with me today.
18 And I am going to have them introduce themselves.

19 MS. KAITLYN “KATIE” CHINN, OFFICE OF THE SOLICITOR, DIVISION
20 OF INDIAN AFFAIRS: My name is Katie Chinn. I’m a citizen of the Wyandotte
21 Nation of Oklahoma, and I work for the Department in the Office of the Solicitor,
22 Division of Indian Affairs.

23 MS. ELIZABETH “LIZ” APPEL, OFFICE OF REGULATORY AFFAIRS –

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3 INDIAN AFFAIRS: Good morning, everyone. My name is Liz Appel. I am with
4 the Office of Regulatory Affairs and Collaborative Action and we report to the
5 Assistant Secretary for Indian Affairs.

6 DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS ROBERTS:
7 Okay. So we have a PowerPoint that we are going to run through briefly. It
8 takes roughly 20 minutes.

9 But before we get started I wanted to just provide an opportunity for any
10 tribal leaders if they wanted to make any opening statements for the record.
11 And, again, for the court reporter please state your name and tribe.

12 NARRAGANSETT TRIBAL MEMBER HIAWATHA BROWN: Greetings,
13 again. Hiawatha Brown, Narragansett Tribe. This has been a process that
14 Indian country has worked very diligent on, both for our protection and our
15 support, support from all of us.

16 The distinction between federal and non-federal, that's not an issue with
17 many, with many Indian people. That's somebody else's issue. So we can
18 dispel that and move forward and do what we have to do in protection of our
19 people and our reservation, you know, people on our home reservations.

20 The only request that I have is that all the information in the previous
21 consultations, are we going to get a chance to see the comments? Is there a
22 printout for that or is it going to be posted on the board?

23 DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS ROBERTS: So

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3 those, those consultations are being transcribed and as soon as we get them
4 from the court reporter we will put them right up on the BIA Website so that
5 everyone can see them.

6 NARRAGANSETT TRIBAL MEMBER BROWN: Today?

7 DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS ROBERTS: It
8 probably won't be today. It usually – for the court reporters it usually takes a
9 week to two weeks for them to do that.

10 MASHPEE WAMPANOAG CHAIRMAN CEDRIC CROMWELL:
11 Kuweeqahsun. Good morning. Cedric Cromwell, Chairman of the Mashpee-
12 Wampanoag Tribe. I'd like to acknowledge this Administration, Deputy Secretary
13 Larry Roberts and Assistant Secretary Kevin Washburn.

14 Under this Administration we are really seeing ground-breaking efforts to
15 really improve that government-to-government relationship.

16 And, you know, through President Obama's Executive Orders I can say as
17 a tribal leader I appreciate what you're doing. I really believe in, you know,
18 making this process better.

19 It's a very long, arduous and expensive process and resource-intensive
20 process that our tribes have had to go through.

21 And when you think about the New England tribes being part of the
22 original 13 colonies and being brought into the country and those relationships
23 and treaties moved from the 13 colonies into the United States of America, we, in

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3 fact, with those beginnings of what we call “federal acknowledgment/federal
4 jurisdiction and sovereign nations” so I’m very excited to see this process moving
5 forward and all the hard work that you’re doing and Kevin is doing. And we
6 appreciate it so thank you.

7 DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS ROBERTS:
8 Thank you.

9 SHINNECOCK NATION MEMBER LANCE GUMBS: Lance Gumbs
10 Shinnecock Nation. I just want to say – I want to echo Chairman Cromwell’s
11 comments. And I just want to say that I’m very happy to see this process moving
12 forward with some sort of change.

13 As the last tribe to go through this process, it is a process that I would
14 never want to see another tribe go through in the way that it is structured and it
15 was set up.

16 It took us 32 years to go through this process. And it was a gut-wrenching
17 process that literally tore our tribe apart from the inside out. And so I’m happy to
18 see that changes are being made. Hopefully they will be made through this
19 process.

20 And I applaud this administration, you, Larry, and everyone that has
21 worked on this and done the due diligence to try to bring this forward with new
22 changes that would be really cohesive for tribes to actually make it through this
23 process.

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3 So I just wanted to say thank you for that and we look forward to this
4 presentation.

5 DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS ROBERTS:
6 Thank you.

7 MASHPEE WAMPANOAG VICE CHAIRWOMAN BAIRD: I'd like to echo
8 their statements and thank the Department for all of their hard work on this and
9 just mention that the only concern with the time posting for the statements is that
10 if the closing date is August 16th for comment, it makes it a really tight window for
11 us to comment on people's statements.

12 DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS ROBERTS:
13 Okay. So to answer your question about timing and comments.

14 We'll talk a little bit about that in the presentation but I just wanted to
15 explain the general process of how we are moving forward and hopefully that will
16 answer in part your question about the deadline for comments on August 16th.

17 So, typically what the Department will do is it will issue a Notice of
18 Proposed Rulemaking and that will be the proposed rule that will go out in the
19 *Federal Register* and is available for public comment. And that's the way we
20 normally start our rulemaking process.

21 What we've decided to do for this rule is go out a step earlier than that and
22 issue a Discussion Draft that hasn't been published in the *Federal Register*
23 Notice, that isn't subject to the normal rulemaking process, to reach out early-on

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3 to say here are some concepts, please, public, provide us feedback – are we
4 moving in the right direction?

5 And then once we receive all those comments then we will proceed with
6 the normal rulemaking process where parties will then be provided another
7 opportunity to provide comment.

8 And we will have another round of Tribal Consultations. And we will have
9 another round of public meetings on that proposed rule. So this is almost a very
10 initial step.

11 And so we have received some comments asking that the deadline be
12 extended. The consequence of extending that deadline will be it will essentially
13 push back our rulemaking process, itself, of getting out a proposed rule. And so
14 that's something that we would have to weigh internally within the Department.

15 Okay, so this presentation is going to be the same presentation that we're
16 going to give this afternoon to the public meeting as well. And so I'm going to run
17 through this and then I would just ask that – I will only take about 15 minute-20
18 minutes.

19 If you could please hold your questions until then and then we will open up
20 the floor for questions and comments because we want to hear from all of you.
21 That's the purpose of this meeting today.

22 So very briefly there are three ways in which a tribe can be federally
23 recognized. One is through judicial court order. One is through Congress,

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3 through federal legislation. And the last is administratively by the Department of
4 the Interior.

5 We're here to talk about the Part 83 process that was the federal
6 acknowledgement process that was promulgated in 1978.

7 So prior to 1978, as many of you know, the Department looked at
8 questions of federal acknowledgement on a case-by-case basis.

9 In 1978 the Department promulgated regulations to provide a uniform
10 process. And then in 1994 we revised the process and issued an amended rule
11 that would essentially provide a track for tribes that could show unambiguous
12 federal acknowledgement, previous unambiguous federal acknowledgement.

13 In 2000, 2005 and 2008 we issued guidance to OFA petitioners and the
14 public in terms of how we were going to be acting in accordance with our
15 regulations.

16 And of the 566 federally-recognized tribes today 17 have been recognized
17 through the federal acknowledgement Part 83 process. The other 549 tribes
18 have been acknowledge in a different form, essentially. But the other 549 tribes
19 have not gone through the Part 83 process.

20 So how did we – how did we get to this point? We have heard, as an
21 administration we have heard from a number of folks in the public and elsewhere
22 that the process is broken, that it takes too long, that it costs too much, that it is
23 too subjective, that the results are unpredictable, and that it is not transparent.

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3 And so in issuing this Discussion Draft and looking at issuing a rulemaking
4 here we are trying to address some of those concerns that we have heard from
5 the public about the process being broken.

6 In 2009 Secretary Salazar, secretary of the Department of the Interior,
7 testified before the Senate Committee Indian Affairs essentially stating that he
8 would examine ways to improve the process.

9 Later that year, in November of 2009, the Department again testified
10 before the Senate Committee Indian Affairs and at that testimony, at that hearing
11 the Department testified that it was looking at ways to eliminate unneeded steps
12 within the process; it was going to take a hard look at the standards, that the
13 Department was looking at how to implement clear standards, and that the
14 Department in 2009 would, anticipated issuing a proposed rule within a year and
15 then a final rule a year after that.

16 In 2010 the Department convened an internal work group to look at the
17 regulations and move forward as it had testified in 2009.

18 In 2012 the Department again testified before the Senate Committee
19 Indian Affairs and at that hearing senators asked where was the proposed rule,
20 where was the final rule, what progress had the Department made on improving
21 the federal acknowledgement process.

22 And at that hearing in 2012 the Department laid out goals in terms of how
23 it would improve the process and that would be transparency, timeliness,

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3 efficiency, flexibility, and integrity.

4 And then earlier this year Assistant Secretary Washburn and myself
5 testified before the House Natural Resources Committee, a subcommittee on
6 Indian Affairs, where we essentially laid out the process that we are going through
7 now, that we told the Committee that we had convened an internal work group,
8 they were developing options, that we hoped to put out a Discussion Draft this
9 summer, and that we would seek public comment on that and then move forward
10 with the rulemaking process.

11 So, the general directions that the Discussion Draft takes in terms of
12 improving the process is eliminating the “letter of intent”, providing a process for
13 expedited negative and positive determinations.

14 We’re attempting to clarify the criteria. We’re also asking for input from
15 the public in terms of how we could clarify the criteria further. We have some
16 processes in place in the Discussion Draft for a petitioner to withdraw a petition,
17 processes for automatic final determinations.

18 One of the things that we’re asking, seeking input on is who should issue
19 the final determination. And so in the placeholder of our Discussion Draft right
20 now we have either the assistant secretary or the Office of Hearings and
21 Appeals.

22 And then we eliminate the review of the IBIA. So I’m going to talk very
23 briefly about each one of these broader steps in this Discussion Draft.

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3 So eliminating the letter of intent, instead of – right now as the process
4 works a petitioner submits a letter of intent. It can then take some time after that
5 for a petition to actually be submitted to the Department.

6 The Discussion Draft essentially removes the letter of intent process and
7 just starts the process with when we receive a petition from the petitioner.

8 We have added in a process for expedited negative determinations and so
9 what would happen under the Discussion Draft is a petition would come into the
10 process.

11 Every petition would be reviewed under these initial three criteria: descent
12 from an historic tribe; that it's membership is not comprised of members of other
13 federally-recognized tribes; and that there is not federal legislation out there that
14 has terminated the tribe and prohibits the federal relationship.

15 If a petitioner satisfied those three criteria, they would then move to the
16 next phase of the process. If a petitioner failed any one of those three criteria,
17 the Discussion Draft, as it is set forth now, would propose issuing a negative
18 determination within six months of active review.

19 If the petitioner satisfied all those criteria then we would look to see
20 whether they satisfied criteria for expedited favorable review which is the next
21 slide.

22 What we've tried to develop is criteria for an expedited favorable review.
23 We welcome feedback on whether these are appropriate criteria, whether we

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3 should be looking at other criteria, whether these criteria are inappropriate.

4 So if a petitioner can show that they have maintained a reservation since
5 1934 to the present that is recognized by the state or if the United States has
6 held land for the group at any time since 1934 they would then go into an
7 expedited favorable finding in which case the Department would issue a
8 determination, a finding, a proposed finding within six months of beginning active
9 consideration.

10 And if the petitioner either didn't assert that they satisfied one of those two
11 criteria or if the Department found that they didn't satisfy one of those two criteria
12 we would then go into the normal process and take a full evaluation of the
13 petition.

14 So other improvements that the Discussion Draft has put forward is
15 eliminating Criteria A which is recognition of the petitioner as an Indian entity by
16 the outside community, so from 1900 to the present.

17 One of the thoughts there is that if we eliminate that criteria, if a petitioner
18 satisfies all the other criteria but there is not an external identity out there writing
19 about them every 10-15 years, does that mean that they're not a tribe just
20 because an external entity wasn't writing about it?

21 With regard to Criteria B and C, community and political authority, we
22 have adjusted the timeframe from time of first non-Indian contact to 1934.

23 And one of the reasons that we picked 1934 is because that is the time

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3 period when the United States changed its federal policy towards Indian tribes
4 from one of allotment and assimilation to promoting tribal self-determination.

5 In terms of Criteria E, descent from an historical tribe, we haven't made
6 any changes to that criteria itself but what we have done is provided – right now
7 what the Department relies upon primarily is genealogy materials.

8 And this would, this proposed change would allow expert conclusions from
9 historians and anthropologists to be used as evidence of descent from an
10 historical tribe.

11 And then you will see throughout the Discussion Draft we have various
12 placeholders, literally two X's, where we're asking for input on what numbers
13 should be used for more objective criteria.

14 The Discussion Draft also would provide that a petitioner may withdraw a
15 petition at any time before the proposed finding is published.

16 OFA would cease consideration but essentially if the petitioner withdrew
17 their petition before a proposed finding was published they would lose their,
18 essentially their place in line.

19 As many of you know, OFA generally processes petitions in a first-in first-
20 out basis and so if someone withdrew their petition before a proposed finding
21 they would not, they would not regain their initial priority number.

22 We have a provision in the Discussion Draft that would provide for
23 automatic final determinations. If the proposed finding is positive and there is no

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3 arguments or evidence in opposition from either a federally-recognized tribe
4 within the state or by the state or local governments that proposed favorable
5 finding would automatically go final.

6 And that is something that I understand from the Office of Federal
7 Acknowledgement that they do in practice so early-on there were some
8 petitioners who received no comments in opposition to their petitions and they
9 just automatically went final.

10 Okay, one of the things that we're looking for input on is who should issue
11 the final determination for the Department. Right now the Assistant Secretary for
12 Indian Affairs issues both the proposed finding and the final determination.

13 The Discussion Draft sets forth a process where OFA would prepare a
14 proposed finding, the assistant secretary would issue that proposed finding. That
15 would not change. The current process would essentially remain the same for a
16 proposed finding.

17 But then once the proposed finding is issued the Discussion Draft provides
18 an option for the process then to shift to the Office of Hearings and Appeals.

19 And what would happen, at least what the Discussion Draft contemplates,
20 is that within the Office of Hearings and Appeals – and we're not talking about
21 the Interior Board of Indian Appeals. We're talking about a different section
22 within the Office of Hearings and Appeals.

23 And that section within the Office of Hearings and Appeals staffed by

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3 administrative law judges. Those administrative law judges may have little to no
4 background in Indian law but they are independent within the Department.

5 And at that point the proposed rule could go before them. And they would
6 be then looking at the, any comments in opposition and basically looking at the
7 materials and issuing a final determination.

8 So that is something that we're seeking comment on, you know, which
9 process is more appropriate. Should the assistant secretary be making the
10 determination for the Department? Should the Office of Hearings and Appeals
11 make the final determination?

12 I know that there has been legislation in the congresses essentially
13 proposing to create an independent commission for federal acknowledgement.

14 So this is, this is somewhat akin to that but it's within the Department and
15 so it's still the Office of Hearings and Appeals that would be issuing the final
16 determination under this proposed Discussion Draft.

17 Okay, the Discussion Draft also eliminates the Interior Board of Indian
18 Appeals review. To the best of my knowledge this is the only decision that the
19 assistant secretary currently makes that is subject to review by the Interior Board
20 of Indian Appeals.

21 Instead, all challenges, whether it is a challenge to a final determination
22 that is favorable or negative, they would, all challenges would then go directly to
23 federal court.

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3 We have received a number of questions about how the new rules would
4 apply to petitioners currently in the process. And while we are probably a couple
5 of years from issuing final rules, the Discussion Draft addresses how it would
6 address petitioners.

7 And so we need feedback from the public in terms of if how we have laid it
8 out in the Discussion Draft is appropriate.

9 Essentially, if we issued a final rule anyone who had not reached, any
10 petitioner who had not reached active consideration before the issuance of the
11 final rule would come under the new version.

12 And those petitioners that were in active consideration when the final rule
13 took effect, they would have a choice of proceeding under the existing rules or
14 proceeding with a new petition under the new rules.

15 And then what we've provided is an opportunity for those, you know we
16 have heard that the process is broken. That's a viewpoint that a lot of people
17 have expressed.

18 And so as part of the Discussion Draft we have included a narrow
19 opportunity for a petitioner who has been denied federal acknowledgment under
20 the previous regulations, that they could repetition if they prove by a
21 preponderance of evidence to either the assistant secretary or the Office of
22 Hearings and Appeals, whoever would be the decision maker there, that they
23 could repetition if a change in the new version of the regulations warrants

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3 reversal of their final determination.

4 And then if that was proved by a preponderance of the evidence, then
5 they could repetition.

6 So we're also seeking comment – we're seeking comment on all parts of
7 the Discussion Draft or the current rules, particularly should we revise any of the
8 definitions in the current rules? And if so, which ones? And how should they be
9 revised?

10 One of the things that we've been thinking about is would it be helpful to
11 petitioners to have a model format of a petition? It wouldn't be imposed.

12 It wouldn't be a required format but it would be a model format that
13 petitioners could utilize and craft to their own specific history and background to
14 present their petition.

15 Questions about the criteria for community. What objective criteria can we
16 use? How should those be defined? How can they be clarified?

17 The same thing with political influence and authority and descent from an
18 historical tribe. What objective criteria should we have in there?

19 Knowing that we have, on the one hand we have a request for objective
20 criteria so everyone knows what the standards are going into the process, on the
21 other hand we have to balance that objective criteria.

22 And I think the challenge for all of us in this rulemaking process is
23 balancing the need for objective criteria with criteria that are flexible enough to

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3 meet the unique histories of every tribe.

4 It can be a small thing but it can actually improve the process and that is
5 should we impose page limits on various steps of the process? Should we
6 impose page limits on a petition – not the underlying documentation, not the
7 historical source documents but the petition itself?

8 Should we impose page limits on the Department's proposed finding so
9 that a proposed finding is – I'll just pick a number – 50 pages instead of 300
10 pages? Does that make it more readable for the public and useful for the public?

11 And then the comments in support or in opposition to a proposed finding
12 and then the final determination, should we impose page limits on the parties?
13 And if so, what should those be?

14 So the comments are due August 16th, in a few weeks. Please e-mail any
15 comments to this e-mail address shown above or you can mail them to Liz.

16 And the next steps are then is that we will review all the comments we
17 receive and then move forward in the process with a proposed rulemaking based
18 on the comments we have received and how we have evaluated those.

19 And then the process, as I mentioned earlier, will essentially start over and
20 we'll have another round of consultation and public meeting and then move
21 forward with a proposed rule.

22 And so with that I will open the floor to anyone who has comments. Again,
23 please state your name and speak slowly for the court reporter so that she can

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3 get everything. Thank you.

4 MASHPEE WAMPANOAG CHAIRMAN CROMWELL: Thank you, Deputy
5 Assistant Secretary Roberts, I appreciate it. Cedric Cromwell, Chairman of the
6 Mashpee Wampanoag Tribe.

7 Discussion Draft revisions, adjustments and criteria, there is a point made
8 in Criterion E, descent from historical tribe, allows historians' and anthropologists'
9 conclusions as evidence of descent from historical Indian tribes since first
10 sustained contact with non-Indians.

11 That's an important piece there but the fiduciary responsibility in a tribe is
12 the anthropologists and the historians, it's very expensive and it's costly and it's
13 timely.

14 And if there is a tribe that doesn't have those financial resources to be
15 able to hire these experts – and we know this all too well – we have to depend on
16 the Department.

17 And the Department is very lax in a sense where, you know, you've got a
18 lot of work. You've got 565, well, 566 tribes to deal with on a multitude of issues.

19 And we appreciate that but how can we ensure that the burden on the
20 tribes from that financial responsibility can be relieved?

21 How can the Department provide more resources in that area and
22 resources that could be knowledgeable to that specific tribe's region? Because
23 every region is different. Obviously their research is. But it's very expensive.

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3 DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS

4 ROBERTS: Thank you. I don't know that we have any answers to that question
5 today. It is something that we have heard at some of the other public meetings
6 and consultations in terms of the costs of going through the process.

7 And also, you know every region is different and there may be experts in
8 those various regions that could be helpful to the Department and the petitioner.
9 And it is something that we will need to take a look at.

10 PENOBSCOT NATION MEMBER JIM SAPIER: Yes, Jim Sapier,
11 Penobscot. In the 1970s (Inaudible) at the J.F.K. Federal Building in Boston. And
12 one of the things that we came across was the Settlement Act and the land
13 claims case which really created the federal acknowledgement process back in
14 the 1970s.

15 In 1978 Penobscot, Passamaquoddy and Maliseet got recognized via that
16 court decision of Passamaquoddy v Morton. It was Passamaquoddy and
17 Penobscot versus Secretary Morton.

18 I was just thinking as I was looking through this that the recognition
19 process was created because we didn't believe that tribes had to sue the state or
20 everybody else to be able to become a federally-recognized tribe.

21 But we also found that the Department of Interior was guilty of never
22 looking at treaties that were in existence which were upheld by the U.S.
23 Constitution. Now you're saying 1934 counts because who said what.

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3 It's really in direct conflict with 1934 as would be the Constitution of the
4 United States that recognized treaties, which every one of our New England
5 tribes and New York tribes, etc cetera – the East Coast tribes – have been part of
6 George Washington asking for help when the colonies were being established.

7 But I think there is some historical information that's got to be standard
8 within the Interior, especially people that are reviewing the recognition.

9 In consultation, I do want to compliment Kevin and you, Larry, for this. I
10 think that it is really good to hear the tribes out. And I do favor the new tribes that
11 are trying for recognition.

12 In some cases the state suppression is greater than people realize. The
13 tribes are going under suppression that you can't fathom of what we have go to
14 through, even with recognition.

15 We're recognized tribes. And we're looking for the Interior to carry out
16 their trust responsibility to the highest degree of trust fiduciary responsibility.

17 Now, if the states are suppressing tribes like they were us, the cost of
18 recognition is just so great and then the Interior, nobody is listening to our
19 treaties that were made with George Washington and the help that we gave
20 Colonel Allen when he came up asking for help with the New England tribes and
21 all the tribes.

22 I really think it's time that you get some anthropologists and historians in
23 Interior that looks at the Northeast because we've got screwed badly. We got

2
3 hurt badly.

4 We got wiped out by disease – not war, by disease. And then we had the
5 English come in and do whatever they wanted. We helped George Washington
6 to knock them around and create the 13 original.

7 Again, thank you very much. And I really think that take into consideration
8 the tribe that is coming in and how much it's going to cost them and help them do
9 the research if they put a petition in.

10 Even if they put a letter in to you guys you should be able to at least
11 advise them on how to proceed because I don't ever want to have go to through
12 all those years that we did for recognition.

13 And, also, we created – New England created that act, the original act that
14 went through because we did not want tribes to have to go to court with land
15 claims in order to be recognized.

16 That's my comment and that was a pretty good presentation, by the way.
17 By the way, I like the Interior.

18 DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS ROBERTS:
19 Thank you and thank you for those comments. And one of the things – there are
20 two things that I forgot to mention during the presentation.

21 One is while we are focused on 1934, because that represents a change
22 in federal policy, we're not precluding petitioners from submitting information prior
23 to 1934 to be considered by the Department. But in terms of looking at that

2
3 relationship we're starting at 1934.

4 The other thing I should mention is that the redline that you have with the
5 Discussion Draft is obviously a red line of the existing regulations. As we're
6 going through this process of issuing a proposed rule, the proposed rule will,
7 more likely than not, be written in plain language.

8 So the language will look different because we have general federal rules
9 and regulations where basically OMB and the Administration want us to have our
10 rules rewritten in plain language.

11 So I don't want anyone to be surprised that when the proposed rule comes
12 out that it would be in a plain language format.

13 MASHPEE WAMPANOAG VICE CHAIRWOMAN BAIRD: Thank you.
14 Jessie Little Doe Baird, again, Mashpee Wampanoag. The 1970s were a very
15 hopeful time for American Indians and the United States.

16 As you know, hundreds of our reservations and tribal territories were in the
17 throes of cultural and political resurgence.

18 During this time indigenous people were also still on the bad end of an
19 ever-expanding gap of social and economic health when compared with non-
20 indigenous citizens in America.

21 It was partly for this reason that in 1975 my parents and grandparents and
22 all of the elders of Mashpee filed for federal recognition. Being Petitioner
23 Number 11 the ink on the guidelines for applying had barely dried.

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3 I was eleven years old. I do not remember much of the debate and
4 discussion around the issue but what I do remember was a palpable feeling of
5 hope for change in our conditions regarding health, housing and education.

6 But probably most importantly I remember that one of the main goals was
7 that we in Mashpee would be able to preserve some of our homelands that were
8 in Mashpee, an Indian town that was fast becoming clear-cut, stripped of her top
9 soil, and gentrified as the hunger for waterfront mansions grew.

10 Federal recognition, we just knew, would be the way to save our burial
11 grounds, fishing beds and bays and ensure that we could continue to hunt and
12 provide.

13 Isn't this purpose of federal – isn't this the purpose of federal
14 acknowledgement – to ensure that tribes have the tools and protections
15 necessary to exist?

16 Federal acknowledgement does not aim to provide an avenue for niceties.
17 It is important for all of us to keep this in mind.

18 Recognition of our very existence by the United States government has
19 now become the most basic necessity of survival in dealing with the United
20 States government and negotiating the programs owed to tribes through the legal
21 and special trust obligation that the United States government has where original
22 governments are concerned.

23 Yes, federal recognition was going to save our lands, save our health, and

2
3 help us to keep – or in some cases put – a roof over our heads.

4 We waited for 31 years for an answer from OFA. And in that time we
5 watched so much of Wampanoag territory be swallowed up. In 1984 Mashpee,
6 for example, was the fastest growing town in the entire United States.

7 In 1975 when Mashpee submitted our letter of intent I was in the sixth
8 grade and there were 800 people in Mashpee, the majority being Mashpee
9 Wampanoag. Today there are 16,000.

10 We cannot say how much of our territory would not have been developed
11 had it not taken 31 years for my tribe to complete the process.

12 We cannot say how many lives would have been saved that were lost due
13 to the lack of tools to combat addiction and alcoholism.

14 And we cannot say whether the women in my tribe that were murdered by
15 their partners would have gotten out if we had the programs to provide support
16 and education that federal recognition of our tribe would have made possible.

17 What we can say is that 31 years was an absurd neglect of duty, in my
18 opinion, and that the 54,000 pages of documentation that comprised the
19 Mashpee Wampanoag submission documents has to be the epitome of
20 unreasonable documentation requests.

21 A streamlined process is much appreciated and necessary. Change to
22 1934 for contact date is also very helpful, in my opinion.

23 For tribes east of the Mississippi the requirement for documentation of

2
3 existence since first contact has placed an unfair burden as we have had contact
4 with Europeans on a sustained basis for nearly 400 years now. Most tribes west
5 of the Mississippi River have had sustained contact for 200 years less time.

6 It always seemed to me that while I felt a great sense of pride in my
7 particular tribe, having survived on our land without ever giving up our territory or
8 being moved, we were actually being punished for that long history and being
9 required to document it.

10 If all applicants begin in 1934 as a sustained record, this seems more
11 reasonable. And it makes a more even playing field.

12 The next issue that I offer thoughts toward is the process by which tribes
13 show prior recognition of their existence by outside sources. And I do believe
14 this is extremely important.

15 I think it's important for obvious reasons but I think that unless a tribe has
16 lived in a very secluded area, without any nearby indigenous neighbors, non-
17 indigenous observers should not be heavily relied upon.

18 Indians know who their neighbors are and have been. We will know our
19 own kind in ways that cannot be articulated by traditional anthropological
20 methodologies.

21 The cultural competency that each tribal citizen holds in making that
22 distinction between a group and a tribe is knowledge that really cannot be taught.
23 This sort of knowledge is experiential and gained passively as we grow up in our

2
3 communities.

4 If a group of individuals is seen by observers to be a tribe, this necessarily
5 implies that community exists.

6 In order to gauge community, one must necessarily spend time with a
7 people. Anthropological reports today in and of themselves are arm's-length
8 observations and compilations of historic hearsay and so cannot gauge
9 community in a complete sense of the word.

10 Toward this end I suggest that OFA consider documented interaction
11 among and between the applicant community and the nearest existing
12 indigenous neighbors and that the documentation being considered be counted
13 only if it has occurred on a sustained basis prior to 1978 when the regulations for
14 acknowledgement were codified.

15 This would both assist in the requirement for outside recognition by other
16 indigenous communities and eliminate the chance for argument that interaction,
17 itself, is based upon the desire for federal recognition and eliminate the possibility
18 that interaction today would be shut off if one group did not favor recognition of
19 another. Thank you.

20 PLEASANT POINT PASSAMAQUODDY CHIEF CLAYTON CLEAVES:
21 Good morning. My name is Clayton Cleaves. I'm Tribal Chief of the Pleasant
22 Point Passamaquoddy Tribe in Downeast Maine, probably the most eastern
23 Indian tribe in the U.S.A.

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3 My statement is similar to that of Jim Sapier's comments earlier. The
4 concern I have relates to disclosures posed by the state and by the federal
5 government, especially by the state.

6 Unlike the federal government, they do not have definitions of Indian civil
7 rights. As a result the Wabanaki tribes in Maine are forever left in the state of
8 confusion when we try to advance lifestyles for the people we serve in support of
9 sovereignty and economy.

10 I could go on but we desperately need consultation with the Department of
11 Interior and with the state authorities.

12 I firmly believe that the State of Maine 1980 Land Claims Settlement Act
13 must be reopened and that I would ask the Department of Interior to take the
14 leading role on that and to advise the Wabanaki chiefs of the State of Maine
15 accordingly.

16 MASHPEE WAMPANOAG CHAIRMAN CROMWELL: Good morning.
17 Again, my name is Cedric Cromwell. I'm the chairman of the Mashpee
18 Wampanoag tribe. And I want to thank the Penobscot tribe for hosting this
19 consultation and thank you Deputy Assistant Secretary and team for being here.

20 And I want to just really point out this is a very important consultation on
21 the proposal for much needed reform of the federal acknowledgement process.

22 I am glad that the Department is proposing to keep its promise to fix a
23 system that has been broken for years, leaving behind generations of abuse,

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3 waste and broken dreams.

4 My tribe was acknowledged by the Interior Department in 2007, nearly 30
5 years after we started a process that kept on changing until the technical
6 requirements of satisfying the criteria far exceeded the substance of what should
7 have been critical: whether the Mashpee Wampanoag tribe was in fact an Indian
8 tribe whose status had been unfairly neglected by the federal government and
9 whether the United States should admit its mistakes and undertake its
10 responsibility to my people.

11 Admitting a mistake, that's what federal acknowledgement really is, not
12 creating a tribe, not granting any rights or privileges that are somehow magically
13 available once federal status exists.

14 Once a tribe has successfully completed the process and gotten a final
15 positive determination, and if that final positive is not taken away in appeals, then
16 the United States has admitted that for the long years from the beginning of the
17 republic to the present the federal government has overlooked its duty.

18 But it's a small, pretty small admission. And it doesn't come with an
19 apology or compensation, just a chance to start and try desperately to fill in the
20 blanks for housing, healthcare, education and infrastructure that had been
21 missing in tribal communities that somehow managed to survive intact and also
22 to survive the federal acknowledgement process.

23 We managed to survive but it wasn't easy. For 400 years we survived

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3 flags, colonization, displacement and outright land grabs. We survived the Indian
4 schools, the Depression, the not-so-benign oversight of rural, colonial and state
5 governments.

6 We have lost many of our people, most of our land. And in the
7 acknowledgement process we proved all that we have had to. But we also paid
8 for it, not only in money but in lost time, lost opportunities, and the pain of
9 watching our elders pass on before the United States would publicly admit its
10 mistake. We're still paying but we're now starting to build.

11 Other tribes are still stuck in the process. They shouldn't have to pay
12 millions of dollars and endure decades of bureaucracy because the United States
13 can't keep track of the tribes it is bound to protect.

14 Why has the burden come to be as erroneous – onerous, I'm sorry, as a
15 criminal prosecution? Why is tribal identity dependent upon the label used by
16 outsiders? And why is the recorded data of invaders more important and more
17 valuable than tribal learning and tradition?

18 We are encouraged by the draft proposal offered by the Department.
19 While we were able to document our tribe's history for a period of extending
20 nearly four centuries, we don't think that the exercise should be necessary.

21 Many Indian tribes in the Northeast, particularly, survived through
22 invisibility in disguise. If they can demonstrate their tribal identity in 1934, a
23 period when there was no discernable advantage in existing as a tribe, and show

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3 that they have met the criteria for tribal existence from that point forward, then
4 there is no need to accumulate boxes of historical material to demonstrate how
5 that tribe managed to survive the centuries since European contact.

6 We agree that a core part of the process must be to determine tribal
7 existence and tribal community. No doubt.

8 But no tribe should have to travel to England or France or Spain to secure
9 colonial records. No tribe should be disqualified because 19th Century records
10 were discarded or libraries were destroyed.

11 A tribe like ours spent centuries at the mercy of the state government
12 because the federal government didn't step up except to consider removing us
13 west of the Mississippi and except to put our children in Indian schools, except to
14 take our land for military purposes and the state violate our protection against
15 sale and allotted and taxed our land base out of existence.

16 Survival as a non-federal tribal community has always been a challenge.
17 The federal acknowledgement process has become nothing other than a
18 nightmare.

19 By all means, clarify the burden. Pare down unnecessary data collection.
20 And make it more likely that the United States will finally assume responsibility
21 for the tribes that have managed to survive decades and centuries of neglect.

22 We at Mashpee do not believe that such reform would be "lowering the
23 bar," as some complain. We believe that it will finally be honest opportunity for

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3 the United States to assess and fulfill its responsibility to Indian tribes.

4 By all means, keep meaningful criteria in place to determine whether a
5 tribe still exists but realize that an uninterrupted relationship between a tribe and a
6 state is virtually complete evidence of survival.

7 We agree that certain circumstances justify an expedited positive
8 determination and not just expedited negative in the current rules.

9 Most of all, we agree that the burden of proof should be clarified and
10 observed so that a tribe need only show that they have demonstrated that the
11 criteria are met more likely than not. There is no need for conclusive proof of
12 criteria that are, by nature, elusive and subjective.

13 If you do move forward with the reform, please be aware that prior
14 precedent should not be allowed to taint the process going forward. We are glad
15 you understand that the process needs fixing.

16 Decisions over the last decade or so should not determine how the criteria
17 should be evaluated in the future. If you keep the flaws of the recent past, it will
18 defeat the benefit of any new rules.

19 Going forward with these rules I suggest that you include in your working
20 group representatives from tribes that have recently experienced the process
21 with both positive and negative outcomes.

22 They can surely tell you where “the bodies are buried.” Here in Maine the
23 Passamaquoddy tribe once asked the United States to step up to protect tribal

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3 lands under the Nonintercourse Act.

4 The United States refused because the tribe has not been recognized.
5 But the courts did not accept that excuse.

6 In that case the federal courts reminded the United States that it owed at
7 least some trust responsibility to a tribe that might, in fact, merit federal
8 acknowledgement.

9 The trust responsibility should be the basis for acknowledgement process
10 that lights the way to a delayed government-to-government relationship, not one
11 that sets up increasing and ever-changing obstacles to that relationship.

12 You know, fundamentally, the acknowledgement is a process necessary
13 to fix the mistakes of the federal government that ignored its responsibilities to
14 Indian tribes, but that burden falls unfairly on tribes that have been mistakenly
15 ignored.

16 I spoke to the record. Those points are very sincere and serious about
17 federal acknowledgement. You know, we looked at the histories of Indian tribes
18 that were part of the 13 colonies or I should say the 13 colonies were part of us.

19 You know, over 200-plus years before this plague of European contact hit
20 out west – and I'm not differentiating between Indian tribes because we know
21 there is an amendment that all tribes should be treated equally – I think it was
22 1994 that amendment.

23 And that is very important to understand that, that all tribes should be

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3 created equally and treated equally.

4 And I applaud you for looking at these fixes in the federal
5 acknowledgement process that, in fact, fix the problems that we at Mashpee, as
6 my vice chair spoke and you know brothers at Shinnecock, Narragansett,
7 Penobscot, Passamaquoddy have clearly spoken to those very, very tough
8 challenges.

9 And we look for these fixes because we want to see that, you know, tribes
10 that do qualify under this very important criteria don't have this long, expensive,
11 arduous process. It's very painful.

12 Thirty-plus years we went through this. And we lost. We lost a lot of
13 people in the process. We went through a lot of pain: beatings, harassments,
14 terrorism on our own homelands.

15 And guess what? We're still on our homelands. They're all fee-based and
16 we don't own a lot of them and we look to get land back so that we can provide
17 all the meaningful services.

18 But the fixes that we see today that have been presented – and, again, I
19 pointed out earlier that the cost is very expensive when tribes don't have those
20 financial resources; and we find the financial resources. But we really need the
21 help from the Department.

22 I think that's what you are providing today: help. You are providing a
23 brighter light, much needed support for the acknowledgement process. And I

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3 want to thank you. We appreciate it.

4 DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS ROBERTS:
5 Thank you.

6 SHINNECOCK NATION MEMBER GUMBS: Lance Gumbs, Shinnecock
7 Indian Nation, former tribal chairman, also a member of our federal recognition
8 committee that worked on this petition for our nation for over 32 years.

9 Just a little background that I wanted to give. The Shinnecock Nation did
10 not actually apply. In 1977, '76-'77 we had actually moved forward with a land
11 claim.

12 The Department of Interior came back and said to us, whoa, wait a
13 minute. You don't exist. And we're like, what do you mean we don't exist? They
14 said, well, we have this new process. It's called the federal recognition process
15 and we're going to put you on the list.

16 So in 1978 we were the Number 4th tribe on the list. Mashpee was
17 Number 11. We were Number 4 on the list in 1978. That process, at that time
18 tribes were being recognized with 150-200-300 pages as the process moved
19 forward.

20 We submitted our paperwork and I'm going to skip forward for a minute
21 before I go backwards. We submitted our paperwork at that time. And in 2010,
22 after we received our federal recognition, we had a FOIA request in. And we
23 received a document from the Department of Interior.

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3 And that document was dated from 1979. And it said that the Shinnecock
4 Tribe, at that time we were called, was indeed a tribe and should be recognized
5 expeditiously.

6 Now think about that for a minute because this goes to the very heart of
7 the whole process. In 1979 there was an internal document that said we should
8 be recognized expeditiously.

9 We didn't get it until 2010 when we were finally recognized. And that's 32
10 years later. So, indeed there is a problem with the process.

11 Part of that is the makeup of the people inside the Department of Interior
12 that deal with processing the applications. I will give you an example.

13 Our nation experienced significant problems during the process. On
14 September 25th, 1998, our petition with OFA – O-F-A – was considered to be a
15 partially documented petition. Now this is from '78 to '98 and it was still
16 considered to be a partially documented petition.

17 At one point the nation made the argument that for Criteria B the petition
18 depended upon the crossover evidence of political activities described under
19 83.7(c) to meet 83.7(b) yet OFA rejected outright the argument and required the
20 nation to submit evidence for Criteria B which is community before it would
21 consider placing our nation on the ready, waiting-for-active-consideration list.

22 This had a significant detrimental effect since the nation had to expend
23 time and significant resources to meet OFA's demands. It took us five years to

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3 prepare the necessary submission to meet that criteria. Not only did it take us
4 five years, but it took us millions of dollars.

5 In the meantime – and this goes to something that you said earlier, Larry,
6 about people losing their place in line – in the meantime other petitioners were
7 placed on the list before the nation which had the effect of extending the waiting
8 time for our nation by years.

9 And we were told at one point that it would be almost two decades before
10 our petition was even going to be looked at and reconsidered, after we had been
11 Number 4.

12 Now somehow, mysteriously, we moved from Number 4 to Number 17. I
13 thought the object was go to 4-3-2-1 done. We went the opposite direction.

14 In the end, after all that was said and done – and that was a five-year
15 period – OFA comes back and says, you know what, you were right. And they
16 relied on the crossover position that we had argued five years before and several
17 million dollars before.

18 The point of that example is that this is one of the many issues that the
19 nation had to deal with in its petition. Thus, the changes to the process are
20 welcomed since the process is too long.

21 It's too burdensome. It's too expensive. It's clearly too unpredictable. It is
22 not transparent. And it sometimes leads to litigation, as we at Shinnecock
23 eventually had to do, in order to move forward with our federal recognition

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3 process.

4 The last two tribes that have received federal recognition through this
5 process, the Mashpee Wampanoag and the Shinnecock Indian Nation, both had
6 to go to court in order to move this process forward. So, clearly, it is ineffective
7 and not working at this point.

8 We eventually received our final and effective decision on October 1st,
9 2010, 32 years after we were initially put on the list.

10 I want to turn to some of the proposed changes. The burden of proof has
11 changed from a reasonable likelihood of the validity of the facts related to that
12 criteria to a preponderance of the evidence. The change is unwarranted.

13 The purpose of the proposed regulations is to mitigate the burdensome
14 process, not to make it more burdensome by requiring a petitioner to meet a
15 heavier burden.

16 Number 2. The process must be more transparent. A hearing is allowed
17 at a certain point yet the body conducting the hearing may – and that’s the
18 optimum word there “may” – call OFA staff as witnesses. Due process requires
19 more than that.

20 The regulation should contain provisions making it mandatory for the
21 hearing body to hold a hearing, to allow witnesses to be called and questioned,
22 and even on cross-examination, and to allow the petitioner to fully present its
23 petition and to explore the reasoning and malice and the malices(sic) and basis

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3 for OFA's decision.

4 We could never do that. We were just told, this is it. Go back and do it.
5 We could not meet with them. We could not have discussion with them. We
6 could not have some dialogue to find out or even to present our reasoning behind
7 our case. There is a problem there.

8 The proposal to delete Criterion A is correct. It is unnecessary criteria. It
9 is an unnecessary criteria since, to a degree, it is reflected in Criterion B or C as
10 evidence of tribal existence.

11 Furthermore, we found that OFA will cross-reference Criteria A evidence
12 with Criteria B and C. Essentially this practice would be adopted by the deletion
13 of Criteria A.

14 We agree with the proposed changes to Criterion B, community, and C,
15 political authority, which required documentary evidence from March 4th, 1789 –
16 1789.

17 By reducing the timeframe from 1934 to the present the proposal takes
18 into account the historical oppression of Indian tribes and Indian people while
19 taking into account social, economic, and political disruptions in our nation's
20 history such as the Civil War, World War I, and II, and racial segregation.

21 Thus, 1934 is a reasonable starting point since it is the year the Indian
22 Reorganization Act was passed, when the federal government was actively
23 seeking out tribal existence across the nation in a comprehensive and Discussion

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3 determined way.

4 That FOIA Request that we received in 2010 should be a complete
5 embarrassment to the Department of Interior. To have that document and to
6 have people in that office acknowledge that we were a tribe in 1979 and then we
7 go through this process, wait 32 years, find this document, it's appalling.

8 And these are the type of – I call them – atrocities that have happened in
9 this process with tribes over this time period.

10 Larry, you mentioned earlier in the conversation that only 17 tribes have
11 actually, you know, gone through and made it through this process. How many
12 tribes are waiting right now? There is over 200 tribes the last time I looked at the
13 list.

14 Some may be legitimate. Some may not be legitimate. But the process –
15 if only 17 tribes have been recognized since 1978, do the math. That's atrocious.
16 There needs to be a real adjustment of this process.

17 The amount of money that we spent going through this, hiring the
18 genealogists, hiring the archeologists, the historians, everyone that we had to get
19 was cost-prohibitive for my nation.

20 So what did we have to do? We had to go out and get us a developer for
21 gaming to come back in and help us move forward with being able to pay for the
22 process.

23 Tribes are not set up – especially the tribes that do not have that funding,

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3 the state tribes that are recognized by their states don't have that kind of money
4 to do this.

5 So it is becoming – it is cost-prohibitive for them. It was cost-prohibitive
6 for us. At one point in time ANA was helping tribes out. But that evaporated,
7 disappeared, and you know, went the happy highway of not being funded again.

8 And so we were left with no alternatives but to try and either do this
9 ourselves or to go out and seek a developer. Luckily, we were able to do that
10 and we were able to move forward. But there are so many tribes out there that
11 do not have that opportunity.

12 And so if tribes are being forced into doing other or taking other avenues,
13 there is a problem. That's not what this process was set up for.

14 It was set up to determine, to take a look at are you a legitimate tribe or
15 are you not a legitimate tribe. And the criteria is there. But the problem with the
16 criteria is how it is interpreted.

17 The criteria hasn't changed in all of this time – slightly in 1994 I believe but
18 the basic overall premise of it hasn't changed. So what changed? What
19 changed is the internal interpretation of the criteria.

20 And that I don't see addressed in these documents. And that's a major
21 problem. You have three people that basically you put out an RFP for to hire
22 them to look over a tribe's petition.

23 They don't know my tribe from Adam yet our lives are put into three

2
3 people's hands to make a determination as to whether we are a tribe or not.
4 That's a problem.

5 So I don't see some of these things addressed in these changes. I
6 applaud the changes. But having gone through this process and being the final
7 tribe to have been recognized at this point, there is still a long way that this has to
8 go in order to make it even reasonable for the average tribe to go through this
9 process.

10 You cannot allow three people to make the determination for the lives for,
11 in my case, 1,500 members – some tribes 2,000 members – and that be the end
12 of it. That's a problem.

13 So there is a number of issues in here that, you know, that aren't
14 addressed and hopefully we're going to submit other testimony to talk about
15 some of our concerns that actually aren't addressed in this.

16 I thank you for this start because it is a great start. But nobody can tell us
17 – not the Department of Interior, no one in this room, none of these other tribes
18 that have been out here in this consultation can tell us, the Shinnecock Nation,
19 what it is like to go through this process.

20 If you haven't done it – we did a study some years back and we found that
21 72 percent – 72 percent of the tribes that are federally recognized today would
22 not make it through the process that we went through if they had to go through it.

23 That's an astounding number. They would not be able to produce the

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3 documentation that we had to produce – as Chairman Cromwell said, going to
4 England, getting paperwork from that time period. They wouldn't be able to
5 produce that type of paperwork.

6 So I applaud your efforts and I look forward to more discussion on this
7 because there are some things that still need to be done in it. Thank you for
8 giving me the opportunity to address this.

9 DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS ROBERTS:
10 Thanks for your comments. I know it's going to be helpful for the Department in
11 terms of having comments from those tribes that have gone through the process
12 as well as the comments earlier about how the process came to evolve in 1978.

13 It sounds like the Penobscot Nation was saying, you know, it was their
14 litigation against the Department that they were arguing that it was unfair for the
15 tribes to have to sue the Department to become recognized.

16 I have heard that Mashpee and Shinnecock had to essentially resort to
17 that as well. So this is all – this is why we have tribal consultations, to get input
18 from tribal leaders.

19 NARRAGANSETT TRIBAL MEMBER BROWN: Hello, again. Hiawatha
20 Brown, Narragansett Tribe. Our plight was a little different. We filed a petition in
21 '76. In '78, which was backwards, we acquired 1,800 acres of land through the
22 federal government in the State of Rhode Island.

23 In 1983 we became federally acknowledged and actually federally

2
3 acknowledged. Our recognition predates the United States. We never lost our
4 recognition.

5 Through that five-year period from '78 to '83 this is where our problems
6 started with the State of Rhode Island and their intrusions and their racist
7 attitudes and mentality. But, most importantly, the federal government,
8 Department of Interior, played right along with them.

9 I certainly commend the Obama Administration. The Department of
10 Interior has done some wonderful things in the last five years. But all you're
11 doing is cleaning up the mistakes that the previous administrations have made
12 for the last 100 years.

13 And we hope you are going to continue on in your next three years to
14 correct the problems that should have been dealt with through the trust
15 responsibility of the Department of Interior and through their fiduciary obligations
16 to federally-recognized tribes.

17 As Lance indicated, it is a beginning and we applaud you for your start on
18 this. But in my mind the message has to come from Indian country. It cannot
19 come from the Department of Interior or any other federal agency.

20 You – you agencies and entities have a certain responsibility. And it's not
21 the paternal attitude that has been pervasive for the last 100 years or better.

22 Under this administration I have seen a tremendous change. And, again, I
23 will reiterate, I am proud that this administration has stepped up and finally is

2
3 doing the right things in supporting our issues in defending tribal rights and tribal
4 sovereignty.

5 We also filed under the federal recognition process. And, again, we had a
6 30-inch document that was submitted. However, we ended up settling out of
7 court. And we ended up now falling under the term as a “settlement tribe.”

8 It has created more problems for us than prior to the federal recognition
9 and acknowledgement process. In my opinion – I’m 60 years old – we were
10 better off as non-federally tribe, as a non-federal tribe than we are as a federal
11 tribe.

12 The intrusion of the state now is unreal. We are treated as a PL-280 tribe.
13 And certainly the State of Rhode Island is not a Public Law 280 state, nor are we
14 a Public Law 280 tribe.

15 We have been working diligently again for the last four years through
16 USCIT and eight other settlement tribes to correct that wrong that has been done
17 to us.

18 But the restrictions that have been imposed upon us by the State of
19 Rhode Island has limited us from doing anything and everything.

20 We attempted to have gaming in '96 and we were knocked out of that
21 loop. We are the only tribe that was eliminated through the process of going
22 through gaming, through IGRA.

23 And it was done by a slip of a pen by Senator Chaffee on a back-door

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3 move. We defeated him on, at the federal court level. We defeated the State of
4 Rhode Island on the congressional floor.

5 And all he could do was attach a rider to the Appropriations Bill in 1996
6 which eliminated it. And it was four or five words. And it said, "For the purpose
7 of gaming the Narragansett lands are not considered Indian country." That was a
8 bunch of bull.

9 Prior to '96 we had 13 years of or 16 years as a federally-recognized tribe.
10 We met every criteria as a reservation: reservation status and everything else.

11 We were receiving somewhere in the neighborhood of \$6 million through
12 the federal agencies. We met all the requirements and all these other things.
13 But, again, it was a manipulation of the State of Rhode Island and their racist
14 attitude, which is still pervasive today.

15 It appears to me that this whole recognition process and the position
16 Interior has taken right now is kind of mirroring the Carcieri issue. And I think
17 that's a mistake.

18 There are certainly parallel issues. There are certainly parallel concerns.
19 But they're distinctly two separate issues.

20 And it is typical of the federal government to lock everything in the courts
21 and especially the United States Supreme Court, to lock everything under one
22 umbrella and leave it to us or our attorneys or our lobbyists to sift through this.

23 I feel that that's clearly the responsibility of the Department of Justice and

2
3 the Department of Interior to defend their trust responsibilities to tribes. I don't
4 think they've done an adequate job.

5 In closing, we will submit a position paper which will be much more
6 detailed. Again, I appreciate the support from this administration and hope you
7 are going to continue on this path to do the right thing and correct the wrongs
8 that have been bestowed upon us as nations, as sovereign nations.

9 But I also think that the Interior needs to take a more active position
10 dealing with the attorney generals of the respective, of all states and the
11 governors.

12 They are the ones manipulating the system right now. They have greater
13 clout and more power than Indian tribes do within this federal system. And,
14 again, in my mind, that is not fair.

15 We went through a process to have a distinction between states, towns
16 and other communities and federal reserves. And in my case dealing with the
17 Narragansetts there is no distinction.

18 And I feel that Interior is part of this problem. Interior needs to correct the
19 problem. We have invited the assistant secretary as well as the secretary to
20 come down to the Narragansett Reservation to first-hand see what our issues
21 and concerns are.

22 We have also invited them to sit with the State of Rhode Island, our
23 political people. Now whether that is going to come to fruition or not, that

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3 remains to be seen.

4 But in my mind that is the things that the Department of the Interior needs
5 to do or put another group together that is going to be able to do this.

6 The information that comes from the attorney general's office and the
7 government, the governors' offices are not adequate and accurate information
8 pertaining to Indian tribes, specifically my tribe.

9 They've lied. They've cheated. They've stole. And there is a host of
10 other adjectives that I could add to this that I won't today. But they've done all
11 these things to us. And yet we're still here and we're going to fight the battle.

12 If we can fight this collectively with the people in this room, and through
13 our Indian organizations on a national level, we may prevail. But if we feel – if
14 tribes think they're going to stand out on their own and defend their own issues,
15 it's not going to happen. We're far beyond that point.

16 The uniformity and unanimity of Indian country is paramount to our
17 survival as Indian people and a distinct group of people, a special, distinct group.

18 Who knows what is going to happen under this next administration? Who
19 knows who is even going to be the candidate for the next president? We'd better
20 also start thinking about where that is going and come together as a unified
21 group in support of whomever that person may be.

22 But, clearly, whatever administration steps in or whatever president steps
23 in, they've got their hands full to be able to stand up to what has been Discussion

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3 accomplished under this current administration.

4 We applaud you for that. We thank you for that. And, once again, we'll be
5 working with you and hopefully you will be working with us. Thank you.

6 DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS ROBERTS:

7 Thank you.

8 EASTERN PEQUOT TRIBAL COUNSELOR SHERI M. JONES: Thank
9 you. My name is Sheri Jones, again, and this is Katherine Sebastian Dring. And
10 we are Tribal Counselors of the Eastern Pequot Tribal Nation.

11 We welcome you here to the Northeast but we also thank you for this
12 opportunity to be able to speak and participate in this forum and to the federal
13 tribes present, also.

14 We greatly appreciate your clear interest and concern for the native
15 nations who have been adversely impacted by overly complex acknowledgement
16 regulations which result in arbitrary denials of federal recognition.

17 The Eastern Pequot Tribal Nation is one of the nations that can trace its
18 roots back to first contact with non-Indians.

19 We have continuously occupied our reservation in North Stonington,
20 Connecticut, since it was first established in 1683 by the Colony of Connecticut.
21 We were here before there was a State of Connecticut.

22 Our reservation is one of the oldest Native American reservations in the
23 country. We have maintained a consistent and constant government-to-

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3 government relationship with the State of Connecticut and the United States.

4 We also share both a backyard and history with the two federally-
5 recognized tribes in the state – the Mashantucket Pequot Tribe and the Mohegan
6 Tribe.

7 We petitioned for federal acknowledgement in 1978 to become eligible for
8 federal housing, education, and healthcare programs for our members. Our
9 petition for federal acknowledgement was pending for more than two decades
10 through various regulatory and administrative changes.

11 The State of Connecticut and the surrounding towns also did everything
12 they could to delay and thwart our recognition efforts. While our tribe had to seek
13 out funding from sources, backers, the State of Connecticut was able to use state
14 resources in their continuing fight against us.

15 But finally in March 2000 Kevin Gover, then Assistant Secretary – Indian
16 Affairs, issued a preliminary positive final for federal acknowledgement of our
17 tribe under the Clinton Administration.

18 In July 2002 Assistant Secretary Neal McCaleb issued a positive final
19 determination acknowledging the Eastern Pequots under the Bush
20 Administration.

21 We were deemed to have met all seven criteria and were federally
22 recognized or on the list of the *Federal Registry*.

23 However, in September 2002 the Connecticut, then Connecticut attorney

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3 general and surrounding towns continued their fight against us and appealed our
4 positive final decision by filing a request for reconsideration to the Interior Board
5 of Indian Appeals, the IBIA.

6 In essence, they asked the IBIA to pretend that the more than 350-year
7 relationship between our tribe and the state never existed. In May 2005, the IBIA
8 issued a stunning decision that vacated our final positive decision and remanded
9 the final determination for reconsideration.

10 In October 2005 Associate Deputy Secretary James Cason, without
11 allowing the Nation to respond to the IBIA ruling, issued an unprecedented
12 reconsidered final determination that reversed our positive federal
13 acknowledgement decision.

14 The Eastern Pequot Tribal Nation is the only tribe in the BIA's history to
15 have gone through the federal acknowledgement process to have received
16 federal recognition to have it stripped away after receiving two positive decisions.

17 We believe that the draft regulations are a major step in the right direction
18 to simplify the acknowledgement process and reduce the amount of time and
19 money required to get a final decision.

20 We particularly applaud your decision to recognize the importance of
21 historical reservations and to allow tribes to have expedited decisions if they
22 maintain a state recognized reservation.

23 Reservations, whether federally or state recognized, that existed

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3 throughout the 1900s served as a home base and gave tribes an important tool
4 to thwart the assimilation and detribalization policies of the mid-1900s.

5 The present federal acknowledgement regulations turned the federal
6 government's once simple process of recognizing tribal government into an
7 overly burdensome process.

8 The process requires tribes to wait years before being considered for
9 recognition, forces tribes to borrow funding from many sources and incur great
10 debt, allows political opposition and political influence to run rampant, and results
11 in inconsistent decisions – and some simply wrong-headed decisions.

12 We are also concerned that the acknowledgement regulations have
13 increasingly moved from Cohen's early statement of what constitutes a tribe.

14 Under Cohen there was no requirement that a tribe prove each element
15 every 20 years or that the failure to prove one element should result in a
16 conclusion that a tribe could not be recognized. Rather, each of the elements
17 could establish the existence of a tribe.

18 The draft regulations make some positive steps toward recapturing the
19 original understanding of what constitutes a tribe.

20 With these general comments in mind, our specific recommendations
21 include the following:

22 Section 83.1. Definitions. For clarify and to reflect the purpose of the
23 reference to 1934, we recommend in the definition of "continuously or Discussion

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3 continuous”, after the word “from”, insert “date of the enactment of the Indian
4 Reorganization Act of 1934”. This reference to the IRA reflects the end of the
5 allotment process and Congress’ policy to continue to recognize tribes as
6 sovereign governments.

7 We recommend, also, that the regulations establish a presumption that, if
8 the tribe existed in 1934, that the tribe is still in existence presently.

9 History reflects that the government made it difficult for tribes to exist in
10 1934. Therefore, if a tribe still existed in 1934, it is fair to assume that it still
11 exists in modern times. Therefore, the burden should be placed on the
12 government to prove termination rather than force tribes to prove that they still
13 exist.

14 We recommend deletion of the term “historically,” “historical,” or “history”
15 as the term as presently defined purports to require documentation from first
16 sustained contact with non-Indians. This term places an unnecessary burden on
17 tribes and is unnecessary.

18 We recommend deletion of the term “Office of Hearings and Appeals” or
19 “OHA.” We recommend against assigning decision-making to OHA.

20 Furthermore, we are unaware of any Departmental Case Hearing Division
21 and our concerned that any such division would not have the requisite
22 background and experience in Indian law, history and culture to take on
23 acknowledgement cases.

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3 EASTERN PEQUOT TRIBAL COUNSELOR KATHERINE

4 SEBASTIAN DRING: Under Section 83.3(f), we are concerned that that section
5 and 83.10(r) suggest that the assistant secretary doesn't have the authority to
6 correct previous mistakes.

7 The assistant secretary, however, can revisit and reconsider previous
8 decisions under the acknowledgement regulations and should not restrict that
9 broad authority.

10 Therefore, we recommend that you clarify that the AS-IA may continue to
11 reverse policy decisions and remedy clear mistakes of law and facts if required in
12 the interest of justice for tribes.

13 Section 83.4 and the other similar sections suggest that tribes that have
14 already submitted documentation to the Department must resubmit that
15 documentation.

16 This is a major burden on tribes, especially tribes who have already
17 submitted a fully documented petition and have received an adverse decision.

18 We estimate that it would take thousands of hours and hundreds of
19 thousands of dollars to once again research and resubmit a fully documented
20 petition.

21 We recommend that the Department make each tribe's files easily
22 available for each tribe and to devise a methodology for allowing the tribe to rely
23 on existing Department files when appropriate.

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3 Section 83.5 and similar sections appear to authorize the Office of Federal
4 Acknowledgement to make substantive recognition decisions. While we agree
5 that there can be appropriate delegations to the OFA, and the OFA should clearly
6 serve as staff to the assistant secretary, and should not usurp that authority, we
7 strongly support the concept of an expedited favorable decision process
8 referenced in Section 83.6(c) and 83.10.

9 Section 83.6 purports to limit the number of pages of the documented
10 petition. We agree that for the petition we would recommend that the petition be
11 limited to 50 pages, excluding exhibits.

12 With respect to Section 83.6(d) we agree that the evidence should be
13 viewed in the light most favorable to the petitioner. This standard is consistent
14 with the long-held legal standard that laws should be viewed in the light most
15 favorable to the Indian tribe.

16 We recommend that in this section after a tribe has provided the basic
17 information required for a petition the burden of proof should shift to the
18 Department and that the AS-IA must find only substantial evidence supports the
19 validity of the facts claimed when viewed in the light most favorable to the
20 petitioner.

21 We agree that Subsection 83.7(a) should be deleted.

22 We recommend that the Subsection (b) should require a substantial
23 portion of the petitioning group to comprise a distinct community and that an

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3 arbitrary percentage or a predominant portion of the group is unnecessary.

4 Section 83.7(b)(2) should also require a substantial percentage of
5 marriages, members, etc cetera, rather than a fixed percentage.

6 Subsection 83.7(b)(1) and (2) should continue to include the terms
7 “organization, religious beliefs and practices” and add “systems and ceremonies.”

8 Section 83.7(c) should include tribal leader interactions with other
9 governments as evidence of political influence over its members. Tribal
10 members allow their leaders to represent them before governments to resolve
11 issues with those governments.

12 The term “historical” should be deleted from Subsection 83.7(e) and the
13 phrase “from 1934” should be added at the end of the first sentence.

14 We also recommend that the petitioner should also be required to identify
15 a substantial number of petitioner’s members as being descendants from the
16 1934 Indian tribe.

17 Section 83.8(b) combined with 83.10(b) authorizes the OFA to decide
18 whether a tribe was previously recognized. We believe that all decisions should
19 remain vested with the AS-IA who is charged with exercising the trust
20 responsibility for tribes.

21 We recommend that Section 83(c)(1) should be revised to add at the end
22 of (1) the phrase “whether or not such treaty was ratified.”

23 Subsection (2) should be revised to read as follows: “Evidence that the

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3 group has been denominated by a tribe by act of Congress, actions by the
4 Executive branch, or a federal court decision.”

5 We agree that a documented petition, under 83.9, should be the basis for
6 beginning review of a tribe’s petition and that the OFA should be delegated the
7 authority to take the administrative actions required by Section 83.9.

8 Section 83.10 should include a requirement that all arguments and
9 evidence submitted by other interested or informed parties shall be provided to
10 the petitioner and that the petitioner shall be given an opportunity to review and
11 respond to those submissions.

12 The OFA should have discretionary authority under Subsection (e)(2) to
13 suspend active consideration of a documented petition only after consultation
14 with and agreement of the petitioner.

15 To expedite reviews and decisions on recognition we recommend that
16 staff performance appraisals include a requirement that the staff meet designated
17 internal deadlines. We understand that this approach improved the land
18 acquisition process.

19 We strongly support the concept in 83.10(g) of providing an expedited
20 process for tribes that have maintained a reservation since 1934.

21 We agree that 83.11 should be deleted.

22 Thank you for your time and your dedication to Indian tribes. Without you
23 and others like you, the Eastern Pequot Tribal Nation would have little hope that

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3 it can achieve the recognition that it so deserves. Thank you.

4 DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS ROBERTS:

5 Thank you for those detailed comments. And I know that a number of
6 commenters this morning have been reading from comments.

7 If they want to submit those for the record, you are free to do so. And they
8 will go up on our Website. And we will also provide them to the transcriptionist
9 so that she makes sure that what you have read into the record actually is
10 reflected in the transcript, so.

11 PENOBSCOT NATION MEMBER SAPIER: Jim Sapier, Penobscot. It
12 really is an honor when you think about it, Larry, to be here with the tribes who
13 are the oldest continuous governments in the world.

14 I think that's an understanding I think that the administration has a
15 problem with, Interior and services and programs and people. And I'm getting
16 trained in Indian Affairs, really administering programs within the reservations or
17 should be, at least, understanding that the tribes here represented – represent
18 the oldest continuous governments in the world.

19 And if you look at the truthful history of the United States, it's got to be
20 told. Somebody has got to tell the truthful history of the United States.

21 As you go, as you hear the presentations being made, whoever heard of
22 the Eastern Pequots or Narragansetts or, you know, Wampanoag and Mashpee?
23 You know, who ever heard of the, you know, those people?

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3 But if the Department of Interior took the lead and really did the truthful
4 history of the United States instead of leaving it to some museum or some
5 academic who wants to just recite, you know, the “founding fathers.”

6 They sure as hell weren’t our founding fathers, for sure when you know
7 they were – in 1756 did you know that they were scalping Penobscot men,
8 women and children in 1756?

9 Did you know that? That a male received 50 English pounds for a male
10 Penobscot scalp. For a woman it was 40 English pounds in 1756; for a boy
11 under 12 it was 25 English pounds; and for a little girl under 12 it was 20 English
12 pounds.

13 Now that’s 1756. You don’t see that in the history books. Interior
14 probably doesn’t know it until we gave the assistant secretary a copy of that
15 proclamation passed by the Colony of Massachusetts.

16 Then in 1924 we were made citizens of the United States. Whoa. That
17 was great. But at Penobscot we didn’t get elected – we weren’t able to vote in
18 elections until 1960; 1924 we were citizens and didn’t get the right to vote until
19 1960s.

20 But, you know, our veterans served in the Revolutionary War because
21 Washington, Georgie boy, sent up Colonel Allen to say Penobscots, will you join
22 us? And Mic Macs and Maliseets and Passamaquoddys will you join us against
23 these – these, those people?

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3 In 1950s because we were so fed up with the suppression, discrimination
4 in the State of Maine we went to the United Nations.

5 The Penobscot went to the United Nations, met with Dag Hammarskjold.
6 Do you remember Dag? Dag Hammarskjold? He was with the United Nations.
7 And we proposed that would you take to the world court us suing the State of
8 Maine for two-thirds of the State of Maine which we owned – two-thirds of the
9 State of Maine Penobscot owns – only to find out that world court does not have
10 the power to enforce their findings with any country in the United Nations.

11 So we sort of backed off from that and we eventually ended up suing the
12 Interior to take the State of Maine to court through Justice.

13 So, it's got to be you guys have got more information on Indian tribes than
14 any museum, anyone else. I think it's time for you to start providing the truthful
15 history of the United States and, therefore, those tribes that Dag recognized may
16 have a chance of not having to spend all of those years, as we had to do, and the
17 pain and suffering.

18 You know in 1970s our chief was receiving \$12 a month and he was
19 running a whole government of the tribe. Twelve dollars a month is what the
20 chief got for running the tribe.

21 I really think that somewhere, you know, somewhere we've got to correct
22 this. We've had more veterans than any other community in the United States in
23 the Revolutionary War right up straight to Afghanistan. My nephew just got back

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3 from Afghanistan.

4 And then when you look at the history of the United States perhaps
5 somebody might want to take a look at, oh, my god, the United States has gone
6 to war again. I wonder what tribes are going to pay, how much land we're going
7 to lose and how much resources and natural resources we're going to use to pay
8 for that war.

9 Isn't it time, don't you think, that we ask, we ask for a true history of the
10 United States? I really think that it is. And I really want to thank you, Larry, for
11 putting up with us because you're really getting a lot of stuff which somebody
12 else should be getting down, down where you come from – where is it?
13 Washington? Down south there. Thank you.

14 DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS ROBERTS:
15 Thank you. Currently in Washington from Oneida, Wisconsin.

16 PLEASANT POINT PASSAMAQUODDY TRIBAL CHIEF CLEAVES: I just
17 have a couple more statements. Once again, Clayton Cleaves, Tribal Chief from
18 the Passamaquoddy tribe.

19 I want you to know that I'm alone – I'm not alone here. Like the old saying
20 goes, "there is three people and one god. That's 3,700 people in this one chief.
21 So you're talking to 3,700 people from the Passamaquoddy Tribe today.

22 Unemployment conditions I'd say by Pleasant Point, Perry, Maine, are at
23 an alarming rate of 67 percent. One of the seasonal work environment that is

2
3 available to us is the elver fishing – not alewife but the elver fishing. They look
4 like little sewing needles. They are only about two or three inches long. They
5 are also called glass eels.

6 And I signed out 587 permits and licenses for tribal members to go harvest
7 this product and sell those products to the Asian market. And the State of Maine
8 pointed to me like – they just didn't point.

9 They said, "You are over-harvesting." We harvested 800 pounds during
10 2012. The State of Maine harvested 22,000 pounds. And they're accusing the
11 Passamaquoddys for over-harvesting the elver, alewife, elvers. And the
12 equipment you need is either dip nets or fyke nets.

13 Well, this year when the season began March 1 and ended May 31st, 50 of
14 our tribal members were arrested and they were – and there were laws in made,
15 you know, from March 1. There were new amendments to the laws that were
16 made. And now they're calling these acts criminal.

17 So at the moment, right now, we have 50 cases pending in several courts
18 all over the State of Maine. And that's, that's devastating. That's really
19 devastating because we feel we have inherent rights, applied treaty rights.

20 And we're going to need assistance, especially from the United States
21 Department of Fisheries and Game Division. It's a sad day at Passamaquoddy
22 because, like I said a while ago, we're at 67 percent. People are freezing in the
23 winter time.

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3 During 2011 we had 87 homes that froze up with little or no financial
4 assistance. LIHEAP needs to go up. Now, for 2014 they're projecting another 5
5 or 6 percent cut, maybe up to, maybe up as high as 15 percent cut.

6 Being an extremely rural area of Maine there is an extreme hardship.
7 We're right there by the coast. It's always – with the wind chill factor it's always
8 35-40 below zero.

9 Even here at Indian Island when the wind is picking up here it's
10 somewhere around 9 and 10 below zero all the time, all throughout the winter.
11 And so we use a lot of fuel.

12 We depended upon CITGO, People's – Citizens – is that Citizens? Yes.
13 From Venezuela but Chavez passed away. And he was actually in this room not
14 too long ago committing to assist, you know, tribal members in New England.

15 We need to restore those. So I think the Department of Interior needs to
16 really, really step up and take this at heart. I mean I could sit here for the next
17 five months and not repeat one complaint.

18 But I just want to let you know that, you know, the economy is in its worse
19 shape ever since the creation of Maine laws were established several decades
20 ago. Thanks.

21 DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS ROBERTS:
22 Thank you.

23 MOHEGAN, HAMILTON BAND, TRIBAL COUNCIL MEMBER MICHAEL

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3 McDONOUGH: Michael McDonough from Tribal Council for Mohegan, Hamilton
4 Band. I'd like to thank the Penobscot Nation for being host today.

5 I want to circle back to a topic that was raised by many of the earlier
6 speakers and that's the topic of cost and expense.

7 On your fourth slide, the need for revisions, the third item is the expensive
8 nature of the revisions. And we've heard discussed earlier today the trust
9 relationship of the Department of Interior to the native peoples.

10 And I suggest that there be consideration in these proposed changes to
11 establish or re-establish, as I believe there was once, a fund to help defray the
12 cost of the process of recognition.

13 We heard earlier about various tribal groups having to get into bed with
14 developers or backers to help fund the process of recognition. Those backers
15 often sow dissent within tribal groups.

16 They can often be involved in picking winners and losers, casting out
17 disfavored groups from within a tribal community or politically less powerful
18 groups within a tribal community. They often determine the post-recognition
19 direction of the tribe, the focus of their efforts.

20 And I don't believe it's in the interest of anybody, including the Department
21 of Interior, to set up a process that becomes a "pot of gold" for developers who
22 siphon off the limited resources of tribal groups because we're forced to walk that
23 path with them hand-in-hand in what can be called a "bargain with the devil."

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3 Thank you.

4 DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS ROBERTS:

5 Thank you for your comments. Your comments in terms of additional resources
6 for the process have been made at other consultations and it's something that
7 we'll look at.

8 One of the things that we shared with, at other meetings, is that, you know
9 we – I don't need to tell anyone here, we're in extremely difficult budget times
10 with sequestration.

11 Just from Indian Affairs alone we cut \$126 million from our budget this
12 year. And so – and that's just for services to federally-recognized tribes. And so
13 what we're looking at – well, we'll look at the resources question.

14 It's a difficult one for the Department. And we're looking at how to improve
15 the process so it doesn't take decades to get through it and millions of dollars to
16 get through it.

17 NANTICOKE LENAPE MEMBER REVEREND JOHN NORWOOD: I'm
18 Reverent John Norwood, Nanticoke Lenape. I want to thank the Bureau for
19 holding these meetings. I want to thank you for taking the initiative of "taking the
20 bull by the horns" and trying to make positive change.

21 And I want to thank all of the leaders from various tribal communities that
22 are here, especially the federal tribes who did not reinforce the distinction that is
23 false and engaging the federal government with the exclusion of those who have

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3 not yet been acknowledged. I applaud you for doing that.

4 I am the co-chair of the Federal Recognition Task Force for the National
5 Congress of American Indians. We've been working on this issue for about a
6 decade and are gratified to see positive change on the horizon.

7 The proposed changes we do applaud. There are specific suggestions
8 that will be forwarded to you in written form in the immediate future, But I did
9 want to comment on a couple of things that were raised.

10 One is the definition of "historic," an important definition. To maintain that
11 definition as being from contact with non-Indians I think continues an unfair
12 burden, especially for those of us who are the people of first contact here along
13 the Eastern Seaboard, and that having that be shifted to 1934, if a petitioning
14 tribe is able to establish the fact that they existed in 1934 as a tribal community,
15 then that should be the date from which they need to prove descent.

16 This would be far more consistent with the way that enrollments were
17 done out west. If a group can establish the fact that within a generation of 1934
18 they were identified, that should be sufficient to prove that they are, indeed,
19 descending from an historic group.

20 And some of that proof should also include, not only modern historians
21 and anthropologists, but the documentation that has been provided through the
22 years.

23 Going back even prior to 1934 there have been studies done by arms of

2
3 the government, by various institutions listing individuals, listing families
4 associated with communities; and that should suffice.

5 For many years the Bureau of Ethnology was an arm of the government
6 that actually did list tribes and in many instances listed the families associated
7 with those tribes. That should suffice in regard to establishing a link with an
8 historic tribal community.

9 The other item that I just wanted to briefly comment on is that previous
10 acknowledgement should not require government-to-government relationship or
11 the government acknowledging that it has a trust responsibility.

12 Tribes should not be penalized because the government has failed to do
13 what it ought to have done long before 1934, and that instead the mere
14 acknowledgement of the existence of a community in a record that is, that was
15 published by an arm of the government should suffice as long as it is prior to
16 1978 to aid in the establishment of prior recognition.

17 If the government has listed the group as a tribe in some record or through
18 some arm of the government, that should be given greater weight than it has
19 been.

20 Finally, I am here representing an organization called the Alliance of
21 Colonial Era Tribes. Our board has been discussing the fact that there is a great
22 concern about “the foxes governing the henhouse.”

23 And what we mean by that – and I borrow a term from one of our southern

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3 members when I saw that – is that the current OFA staff has a history of – well,
4 I'll just say it – bias against many of the petitioners.

5 And it has been indicated in this room that it is extremely difficult to have
6 individuals who have proven such bias continue to maintain this process under
7 the assumption that suddenly they're going to change their spots and be fair.

8 I do agree that the process that is being proposed may minimize that. But
9 I don't think that it will eliminate it as long as certain individuals are still the ones
10 that are making decisions.

11 It may be helpful to see if we can get new staff. But it also may be helpful
12 to ensure that OFA does not make decisions, that they process information, they
13 collate it, they provide it to the assistant secretary, and that the decisions are
14 made at that level or by another board like the Office of Hearings and Appeals.

15 Thank you.

16 DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS ROBERTS: I
17 will say that I have heard the comments of frustration with OFA.

18 OFA has been part of this process. OFA has been part of the Discussion
19 Draft, pulling that together. And OFA is an important part of the process.

20 And what we're looking at in terms of improvement is regardless of who is
21 the assistant secretary or who is in the Office of Federal Acknowledgement or
22 who is staffing the assistant secretary that we have objective criteria, that
23 everyone knows essentially what the rules are and how they are going to be

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3 applied. So that's what we are hoping to get with a, with a proposed rule.

4 SCHAGHTICOKE TRIBAL CHIEF RICHARD VELKY: Thank you. Again,
5 my name is Richard Velky. I'm the Chief of the Schaghticoke Tribal Nation,
6 Connecticut. I'd like to thank Chief Francis and the Penobscot Nation for having
7 this forum on Indian Island today.

8 Deputy Assistant Secretary of Indian Affairs Larry Roberts and the
9 representatives of the Office of the Assistant Secretary for Indian Affairs, I
10 appreciate the opportunity to appear before you today and present testimony on
11 behalf of the Schaghticoke Tribal Nation on the Discussion Draft of the potential
12 changes to the Department's code of federal regulations, Part 83, process for
13 acknowledging certain Indian groups as federally-recognized tribes.

14 I would like to begin by saying that from a perspective of a tribal nation
15 that has been through the federal acknowledgement process, we do support the
16 direction the Discussion Draft appears to be pursuing in terms of making the
17 federal acknowledgement process more transparent, more clear, more efficient,
18 and more workable.

19 By way of background, Schaghticoke Tribal Nation filed our letter of intent
20 in 1981. And in January of 2004 the Assistant Secretary for Indian Affairs issued
21 a positive final determination of our petition.

22 However, that determination was met with a firestorm of political
23 opposition from the State of Connecticut, Connecticut politicians, and Discussion

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3 Connecticut towns.

4 Every member of the Connecticut congressional delegation joined in
5 publicly denouncing the Department's positive final determination of a tribal
6 nation that has existed for more than 400 years and that has also been
7 recognized as an Indian tribe from colonial times to the present, first by the
8 Colony of Connecticut when it sequestered lands for our nation in 1700s and
9 later by the state establishment of a reservation for the Schaghticoke Tribal
10 Nation in 1736.

11 In 2005, a year after the positive final determination, the unrelenting
12 political pressure of the, on the Interior Department and the White House led to
13 an unprecedented reversal of the positive final determination and a reconsidered
14 final determination was issued concluding that the Schaghticoke Tribal Nation
15 was not entitled to a government-to-government relationship with the United
16 States.

17 The Schaghticoke Tribal Nation shares this unique status with just one
18 other tribal group, also recognized by the State of Connecticut, the historical
19 Eastern Pequots.

20 Our experience in the process suggests to us that the Discussion Draft
21 does not represent a dramatic departure from the standards that have been
22 applied in the past but it does take a more thoughtful approach to the relevance
23 of the state recognition and the probative value of a state action in establishing a

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3 reservation for a tribe.

4 Schaghticoke Tribal Nation commends the authors of the Discussion Draft
5 in proposing expedited favorable criteria that would make the process more
6 efficient in terms of time entailed in the processing of a petition.

7 If the petitioner has either maintained a reservation recognized by the
8 state since 1934 and continues to hold the reservation recognized by the state or
9 if the United States has held land for a group at any point in time since 1934, this
10 is a fair and reasonable expectation.

11 We also believe that the proposed relationship between an expedited
12 favorable finding and the finding that a group meets the mandatory criteria of
13 Paragraph D, E, F, and G of Section 83.7 records the appropriate relevance to
14 the probative value of the state-established and state-recognized reservation.

15 This criterion is also fair and reasonable in expediting the assurance of
16 final determination acknowledging the petitioner as an Indian tribe.

17 Our experience in the federal acknowledgement process is a good case in
18 point of why the Discussion Draft, commendably, eliminates that part of the
19 process that allows for a petition for reconsideration.

20 When the Assistant Secretary of Indian Affairs issued a positive final
21 determination it is only after all the evidence that has been submitted to the
22 Department, both supportive and oppositional, has been carefully evaluated
23 within the context of evidentiary standards.

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3 As the deputy secretary well knows, prior to the assistant secretary's
4 issuance of a final determination the burden is on the petitioner to prove that it
5 meets all applicable mandatory criteria.

6 Once the assistant secretary determines that the burden has been met,
7 the resulting positive final determination should be a final agency action of the
8 Department.

9 Thereafter, as in most other challenges of administration final agency
10 action, the burden proving that the assistant secretary positive final determination
11 is arbitrary and capricious or an abuse of the secretary's discretion should rest
12 with those who elect to litigate their opposition of the assistant secretary's
13 determination.

14 In addition, as a tribal nation that received a positive final determination
15 which was later reconsidered and reversed, we firmly believe that there should
16 be an opportunity for a petitioner to make the case supported by a
17 preponderance of evidence that the changes from the previous version of the
18 regulation to the current version warrants reversal of a negative final
19 determination.

20 In conclusion, reform of the federal acknowledgement process has been a
21 long time in coming. It is clear that have you thoroughly examined all that has
22 gone on before in the federal acknowledgement process and responsibly taken
23 into consideration recommendations for how the process can be made clearer,

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3 more efficient, more transparent, more accountable, more equitable, and
4 certainly more workable for the tribes.

5 We are grateful for your efforts and for your courage in taking on what has
6 for too long been characterized as an intractable problem. In doing so you have
7 undoubtedly been guided by the wisdom of our elders when they taught us that
8 nothing is impossible.

9 One such elder, one of Indian country's greatest advocates, commented
10 on two most controversial issues that have for years plagued the effort to reform
11 the federal acknowledgement process.

12 And it was summed up in this way, and I quote, "Should the fact that a
13 state has recognized tribes for over 200 years be a factor for consideration in the
14 acknowledgement process? I would say definitely yes. How could it be
15 otherwise?"

16 "Don't most if not all of our states want the federal government to
17 recognize official actions of a state government?"

18 "Don't most of our states want the federal government to defer to the
19 sovereign decisions and the actions of those states over the course of their
20 history? I think the answer to that question would be decisively in the affirmative.

21 "So let it be clear about one thing: the federal acknowledgement process
22 is all about recognition and the sovereignty(sic) of native nations that were here
23 long before immigrants came to American shores."

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3 That quote comes from Senator, the late Senator Daniel Inoue made in
4 May of 2005 at a hearing before the United States Committee on Indian Affairs.

5 I'd like to thank, also, all the tribes for being here today, and especially
6 those that have already made it through the federal recognition process and took
7 your time today to come and speak on behalf of the tribes that are still going
8 through this process.

9 Our tribe, for one, has submitted over 45,000 pages of documentation.
10 Ridiculous. We are still in the BIA today.

11 If you go underneath for federal recognition, what to do, we're listed as
12 follow the Schaghticoke Tribal Nation to achieve your recognition. Figure it out
13 why. Here we are here today still fighting to be with our federal brothers and
14 sisters.

15 I thank you all for the time today and thank you, Larry, for being here and
16 for your counsel. Thank you.

17 DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS ROBERTS:
18 Thank you.

19 MASHPEE WAMPANOAG VICE CHAIRWOMAN BAIRD: Thank you.
20 Sorry, just one more comment. Something that just keeps popping in my head is
21 there seems to be a problem with, an overarching problem that's just niggling at
22 me and that is that we are trying to, necessarily so, make a process more
23 objective, trying to make it more objective so people understand what the

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3 boundaries and expectations are.

4 But the problem is culture is so subjective and I don't know how we can do
5 that when – I don't know how we can reconcile these two realities because there
6 are such idiosyncrasies of cultural that are abstract and not so concrete.

7 And because they're so idiosyncratic, I mean, there are very, very large
8 differences between my husband's tribe which is Aquinah Wampanoag and my
9 tribe which is Mashpee Wampanoag, both Wampanoag tribes.

10 But to objectify what counts as community, for example, would be really
11 hard for somebody from the outside to get at.

12 And so I am back to I really, really caution that we not only use internal
13 observers in OFA to make these sort of decisions, that we use outside observers,
14 outside of OFA.

15 For example, here is a problem. If we are saying that the existence, the
16 continued existence of a reservation or land held for a tribe can go toward proof
17 of tribal existence, the problem with that is the definition of reservation or land
18 held is a definition that is created by the federal government. It is not created by
19 the people of that culture.

20 So now we're back to using the bench of a non-indigenous entity to decide
21 what is appropriately indigenous. So I'm not saying I really have an answer for
22 this but it's really been pestering me. And I just want to put it out there for people
23 to maybe put their brains to how we do this.

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3 But I certainly know that I don't think that we can possibly do it by asking
4 three or four or five people that have never lived near a community to understand
5 what that community is.

6 And I certainly could not be taken from my tribal community and put in
7 another nation's territory and presented with two or three different groups of
8 people and say, okay, I want you to determine who has material culture that's
9 appropriate to their tribe and who doesn't.

10 I really couldn't do that. I don't have the cultural competency to do it. So,
11 again, just some cautions, I guess.

12 DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS ROBERTS:
13 Thank you.

14 MASHPEE WAMPANOAG VICE CHAIRWOMAN BAIRD: Thank you.

15 MOHEGAN, HAMILTON BAND, TRIBAL COUNCIL MEMBER
16 McDONOUGH: Michael McDonough, Hamilton Band Mohegan, again. One
17 other – this is a specific point with regards to the idea of setting a percentage of
18 marriages between group members.

19 When you apply that to New England tribal groups we have historically
20 pre-contact intermarried with other tribal groups, post-contact intermarried across
21 every race that was here. So it is something that, culturally, is not representative,
22 necessarily, of the New England tribal groups.

23 And I would guess that, like myself, many of the people in this room have

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3 multiple tribal heritages, you know, growing up and coming from areas such as
4 Westerly or North Stonington or Preston or Eastern Massachusetts or Rhode
5 Island.

6 DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS ROBERTS:
7 Thanks for that comment. One of comments we received at a session in
8 Michigan most recently is from some of the groups making the point that – and it
9 was one of the federally-recognized tribes – saying that they were a relatively
10 smaller tribe and there is a limited pool and so that their members, obviously, will
11 marry outside of that specific tribe.

12 And so they were basically saying that that part of the criteria is antiquated
13 and we ought to update that and look at other ways to apply that criteria.

14 MASHPEE WAMPANOAG CHAIRMAN CROMWELL: I'd, Larry, if
15 it's okay I'd like our counselor to say a few words, Judy Shapiro.

16 DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS ROBERTS:
17 Okay.

18 MASHPEE WAMPANOAG CHAIRMAN CROMWELL: Okay.

19 MASHPEE WAMPANOAG COUNSELOR JUDY SHAPIRO: Lawyer,
20 photographer. Obviously, Mashpee has been doing a lot of thinking about this
21 and we'll be submitting some more comments later.

22 I would like to express the very serious concern that the burden of proof
23 be tied into the burden of fiduciary obligation.

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3 If the government's job here is to say who have we overlooked? who have
4 we neglected? who have we wronged for these 200 years, then placing the
5 burden improperly on the tribe to say this is how our records were destroyed, this
6 is how our people were massacred or removed or moved or something, this is
7 how our lands were lost, it should be no more than more likely than not. Lance
8 pointed this out.

9 I don't think that there is any point in the process where the tribe should
10 have a burden of showing more likely than not for the reasons that Vice
11 Chairman Baird pointed out.

12 Culture is subjective. You're not going to get easily measurable
13 information. You're not going to get verifiable, quantifiable data that is going to
14 reach a level of preponderance of the evidence if you make it that hard.

15 At that point that a tribe has shown that more likely than not it has been
16 neglected, it has been assaulted, it has been mistreated by the federal
17 government for 200 years, then the burden should shift to the government to
18 show why the status should not change.

19 That's the primary thing I think that we need to say, that all of this has to
20 bear in mind whose duty and whose duty has been failing for all these years.

21 Thank you.

22 DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS

23 ROBERTS: Thank you.

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3 PENOBSCOT NATION MEMBER SAPIER: I'm sorry to take up so much
4 of your time.

5 DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS ROBERTS:
6 This is what we're here for.

7 PENOBSCOT NATION MEMBER SAPIER: Jim Sapier, Penobscot. I was
8 thinking that where you had mentioned earlier that DOI was going through a
9 \$126 million sequester that – and we're talking about existing tribes taking a
10 \$126 million sequester and also protesting new tribes coming on when you
11 streamline this system – I really thing that NCAI and USCIT has got to be
12 intimately involved within this system to help you work through this.

13 And then, off the record, every tribal leader here should get a hold of their
14 Congressional delegation and start moving on repairing what Interior is going
15 through, assisting Interior to recover that one-point, 126 million plus, oh, maybe
16 10 percent more and another 5 percent for new tribes coming on. That would be
17 the minimum.

18 In any case, going back on the record, thank you, Larry, for coming here
19 and doing what really needs to be done.

20 And do work on the history of the United States, the truthful history of the
21 United States and these other tribes that are being left out will probably be, will
22 come into the system for sure. Thank you.

23 DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS ROBERTS:

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3 Thanks. And in terms of the federal budget, I mean that's just a matter of public
4 record. So we've taken, you know, a \$120 million-plus budget hit because of
5 sequestration just for this calendar year.

6 And my understanding is that if a budget or resolution to sequestration is
7 not passed I think by January of next year that the cuts go deeper than the \$126
8 million. It's like another 8 percent.

9 So when you take that just across Indian country, that's a big hit. And the
10 sequestration has hit every office within the Assistant Secretary's Office so that's
11 Bureau of Indian Affairs, that's OFA, that's every office.

12 PLEASNT POINT PASSAMAQUODDY CHIEF CLEAVES: I have a
13 final statement. Are you ready for this one, brothers? I have an answer to all our
14 problems. Can you imagine that?

15 First of all, we have 249 foreign embassies spread around all over the
16 world. Second, we have human conflicts going on, our U.S. citizens dressed in
17 fatigues and flying helicopters and warplanes and weapons of mass destructions.

18 We had issues in Vietnam and Pearl Harbor, Saudi Arabia, Korea, Japan,
19 and a number of other places. And we're still paying, for example, on the Pearl
20 Harbor conflict.

21 I tried to add up what this is all costing you and I just a couple of months
22 ago and I stopped at \$84 billion a day.

23 So, Mr. Roberts, go back to Congress and ask them to send everybody

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3 home and all of our problems will be resolved. We'll take care of the U.S.A.

4 NANTICOKE LENAPE REVEREND NORWOOD: John Norwood,
5 Nanticoke Lenape. I almost am afraid to make a statement after the final
6 statement of my esteemed colleague but just to get back to something that was
7 mentioned earlier by the assistant chief of Mashpee Wampanoag, the subjectivity
8 of culture and the issue of how one defines land held in community.

9 One item that is often overlooked is that so many of the colonial-era
10 agreements that took place that bind communities together, designate specific
11 lands that communities have continued to live on but may have never been
12 actually formally recognized by the state, should be taken into consideration and
13 given weight.

14 If a tribe is living on what has been designated an historic Indian town, and
15 that has been the case or, in the State of New Jersey, for example, something
16 called Indian Fields was established under the British system, just because the
17 State of New Jersey may not have formally acknowledged that in some way, if a
18 community can show that it continues to exist in that area from that point, that
19 should also be given weight for an expedited positive.

20 DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS ROBERTS:
21 Thank you.

22 KINEO BAND OF MALISEET MEMBER JEFF NICHOLAS: Jeff Nicholas
23 with the Kineo Band of Maliseets. We are not yet federally-recognized so I really

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3 appreciate all those people that have been recognized to stand up and fight for
4 guys like us who don't have a clue what the process is all about. I'm really, really
5 appreciative of that.

6 One of the things that has always bothered me, and I don't know too much
7 about this process yet, is I'm 67 years old and it's been my experience in that
8 time, 30 years working for the government in a law enforcement capacity, that –
9 I'm just going to say it – the white people have really no understanding of tribal
10 peoples.

11 They cannot connect with the, with the heart of and the, you know,
12 cohesiveness of those groups, that they care for each other and they're different
13 from the dollar-a-day society thing that we have to live with.

14 And that brings me to my point of, you know, if someone is going to be
15 setting in an office somewhere down in Washington, more than likely non-native,
16 and is going to be making decisions that are impacting the lives possibly of
17 thousands of people with no understanding of those peoples.

18 I don't have a suggestion of how to do this other than what the gentleman
19 up here said, you know, teach history as it actually happened. But, that's just the
20 thoughts from my, off the top of my head. Thank you.

21 DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS ROBERTS:

22 Thank you.

23 SHINNECOCK NATION MEMBER LANCE GUMBS: Larry, Lance

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3 Gumbs, Shinnecock Nation. I'm just going over my notes here and a couple of
4 things that I had written down that you had said in the beginning.

5 And you had put up there – and this goes, again, to the whole
6 interpretation factor – you had put up there about the different ways that you can
7 be recognized.

8 And one of those ways that you can be recognized is a court decision. In
9 2005 we got a federal court decision that said we were a tribe by Judge Platt in
10 the District Court, Federal District Court on Long Island.

11 It was a binding decision. We took that to, again, to OFA. And OFA sat
12 there and told us that that's great that we got that decision. I hear it is written
13 and I see you have it up here again. It's great that it's written but that's not what
14 Congress really meant when they said that.

15 Here, again, was an off-the-cuff interpretation of part of what is supposed
16 to be the ways to, that a tribe can get federally recognized. So, in 2005 we get
17 this decision from a federal judge and we're told that that's not what Congress
18 meant.

19 These are the kind of problems that are inherent in this system as it
20 currently stands with the people that are there. They are making their own
21 interpretations of laws, of what Congress meant.

22 And we went back to several of the congressional representatives that
23 were still in office just to question them as to is this what you really meant, that a

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3 tribe could be recognized by a federal district court. And they said that is
4 absolutely what they meant.

5 But here, again, was an interpretation. And so until we get past these
6 individualized interpretations of the laws and the rules, we're still going to have
7 these problems with the process.

8 I just wanted to bring that to your attention. You can go look it up. It's
9 2005 we had that court decision and we were told that that's not what Congress
10 meant – another interpretation.

11 DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS ROBERTS:

12 Okay. Thank you.

13 (Whereupon, no further individuals indicated a desire to speak.)

14 DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS ROBERTS:

15 Sounds like everyone is hungry for lunch. Are there any additional comments for
16 this morning? If not, we will take a break until one o'clock for the public session.
17 And then we will reconvene.

18 We will again go through the PowerPoint for people who are not here. If
19 we have – if we don't have any new arrivals we will just continue the discussion
20 at one o'clock, hold that part open for the public for some period of time and then
21 go from there.

22 So thank you all for attending this morning's session.

23 (Whereupon, the Tribal Consultation adjourned on Wednesday, July 31,

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3 2013, at 11:38 o'clock, a.m.)

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PUBLIC MEETING
DRAFT REVISIONS TO FEDERAL ACKNOWLEDGEMENT
REGULATIONS (25 CFR 83) PUBLIC MEETING
JULY 31, 2013
SOCKALEXIS ARENA
INDIAN ISLAND, MAINE

(Transcriptionist's Note: Designation of "(Inaudible)" throughout transcript means that speaker could not be heard due to lack of utilizing microphones or the speaker's comment(s) were not understood.)

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3 The Public Meeting regarding draft revisions to Federal acknowledgement
4 Regulations (25 CFR 83) for the Department of the Interior, Bureau of Indian Affairs,
5 was held at Sockalexis Arena, Indian Island, Maine, on Wednesday afternoon, July 31,
6 2013, and was called to order at 1:13 o'clock, p.m., by Deputy Assistant Secretary –
7 Indiana Affairs Larry Roberts.

8 DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS LARRY ROBERTS:
9 Good afternoon. And I apologize for starting a little bit late but I know there is not a lot
10 of people back from lunch yet but we're going to go ahead and get started just because
11 we're on a pretty tight timetable today.

12 So, I appreciate everybody coming back. And I appreciate seeing some of the
13 new faces here. It's important for the public to be involved with this process. So as
14 soon as we get up and running here with the PowerPoint we will start. Thank you.

15 Thank you for being here this morning. Bear with us for the next 15 to 20
16 minutes. We're going to go through a PowerPoint slide. For those of you who weren't
17 here this morning, my name is Larry Roberts. I'm the principal Deputy Assistant
18 Secretary for Indian Affairs.

19 I'm a member of the Oneida Nation of Wisconsin. And thank you for coming to
20 this public session this afternoon on the Part 83 Federal Acknowledgement regs.

21 At the Department of the Interior we convened a workgroup, an internal
22 workgroup to look at how we could improve the Part 83 process. And a couple of those
23 workgroup members are with me today so I'm going to let them introduce themselves.

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3 MS. KAITLYN "KATIE" CHINN, OFFICE OF THE SOLICITOR, DIVISION OF
4 INDIAN AFFAIRS: Thank you. Hello. My name is Katie Chinn. I'm a citizen of the
5 Wyandotte Nation of Oklahoma. And I work in the Department for the Solicitor's Office,
6 Division of Indian Affairs.

7 MS. ELIZABETH "LIZ" APPEL, OFFICE OF REGULATORY AFFAIRS – INDIAN
8 AFFAIRS: Good afternoon. My name is Liz Appel. I am with the Office of Regulatory
9 Affairs and Collaborative Action and we report to the Assistant Secretary for Indian
10 Affairs.

11 DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS ROBERTS: Okay. So
12 in that packet of materials that was at the sign-in desk for this public meeting there are a
13 number of different materials.

14 There is a copy of the PowerPoint that we are going to go through. There is also
15 a copy of the Discussion Draft of the potential changes to the Part 83 process.

16 I just wanted to let everyone know that in terms of the Department's approach
17 moving forward, one of the things that we will be changing – the Discussion Draft right
18 now is a redline of the existing regulations.

19 And one of the things that we will be looking at in changing as we move forward
20 is putting the regulations in plain English so that they're easier to understand and easier
21 to follow.

22 And that's just a general federal requirement for our regulations as we're
23 promulgating or amending our existing regulations.

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3 So, very briefly, there are essentially three ways in which a tribe can become
4 federally recognized: either through the courts, by Congress, or by the Administrative
5 branch.

6 And what we're here to talk about today is the Administrative branch's
7 acknowledgement of tribes through the Part 83 process.

8 So prior to 1978 the Department essentially decided whether to recognize tribes
9 on a case-by-case basis. In 1978 we promulgated regulations to provide a uniform way
10 to handle those petitions for federal acknowledgement.

11 In 1994 we revised the regulations. But one of the primary components of the
12 revision was to provide a process for those petitioners that could prove previous
13 unambiguous federal acknowledgement.

14 In 2005 – in 2000, 2005 and 2008 the Department issued guidance to OFA,
15 petitioners, and the public in terms of how we would be administering the regulations.
16 And of the 566 federally-recognized tribes, 17 have been recognized through the Part
17 83 process.

18 So we, at the Department, have heard a number of criticisms about the Part 83
19 process. We have heard from the public that the process is broken.

20 We have heard that it takes too long, that it's burdensome, that it is too
21 expensive, that it is too subjective and unpredictable and that we need objective criteria,
22 and that the process itself is not transparent.

23 So in 2009 when Secretary Salazar became the Secretary of Interior he testified

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3 before the Senate Committee on Indian Affairs, and during his testimony before that
4 Committee he discussed how he would examine ways to improve the process while he
5 was secretary.

6 And later that year, in the fall of 2009, the Department again testified before the
7 Senate Committee - Indian Affairs, and during that testimony we, the Department
8 testified the need to examine the process to look at elimination of unnecessary steps in
9 the process, to take a hard look at the standards, and to develop clear standards.

10 And at that point in time the Department stated that they hoped to put out
11 proposed rules within a year of that testimony and then another year to issue final
12 regulations.

13 In 2010 the Department worked internally to develop potential revisions to the
14 process. And then in 2012 the Department again testified before the Senate Committee
15 – Indian Affairs and was asked by the Committee why we had not yet issued proposed
16 regulations.

17 And at that time we testified that we had various goals to improve the process.
18 One was to improve the transparency, to improve the timeliness, the efficiency, flexibility
19 to account for each tribe's unique history, and to maintain the integrity of the process.

20 And then earlier this year Assistant Secretary Washburn and I testified before the
21 House Resources Committee, a subcommittee that focuses on tribal issues. And at that
22 hearing we laid out basically the process that we're going through right now.

23 We explained to the Committee that we had continued to work with a workgroup

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3 within the Department of Interior to develop options to improve the process, that we
4 hoped to put out a Discussion Draft this summer, which is now before you, and then
5 from there we would hold Tribal Consultations and public meetings and then move
6 forward with a proposed rule. So that's what we're doing today.

7 A brief overview of some of the suggestions in the Discussion Draft and I'll step
8 back for a second and just say this is a Discussion Draft. This is a first, a first step and
9 almost before our normal steps in rulemaking.

10 And so in our normal rulemaking process we will just move forward with a
11 proposed rule in the *Federal Register* and seek public comment.

12 What we've done with the Part 83 process is we've circulated this Discussion
13 Draft before we even moved to a Notice of Proposed Rulemaking so that we can get as
14 much input from the public as possible before we move forward with dropping a
15 proposed rule.

16 So the Discussion Draft has a number of different concepts and ideas. One of
17 them is to eliminate the "Letter of Intent," to establish mechanisms for expedited
18 approvals and expedited denials under the process.

19 We're seeking input on how we can clarify the criteria. We're providing – the
20 Discussion Draft sets forth some flexibility for petitioners in how they may go on active
21 consideration and whether they want to withdraw a petition.

22 It provides a process for automatic final determinations. We put a placeholder
23 and we're seeking comment on who should issue the final determination to Discussion

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3 acknowledge a tribe. And then we eliminate the Interior Board of Indian Appeals'
4 review.

5 So with regard to the letter of intent, for those of you that are aware of the
6 process you know that the process starts with a letter of intent and then it can take
7 some period of time before a petition is actually submitted through the process.

8 The Discussion Draft suggests eliminating the letter of intent and just starting the
9 process with the actual petition when the petition is submitted.

10 In terms of expedited negative determinations, the Discussion Draft would set
11 forth a framework where every petition that comes in would be reviewed under three
12 criteria at the outset.

13 And that would be that the petitioner descends from an historic tribe, that the
14 petitioner's members are not primarily members of an already federally-recognized
15 tribe, and that Congress has not passed legislation terminating the tribe and, therefore,
16 forbidding a government-to-government relationship.

17 So we would take a first cut at that and if the petitioner couldn't satisfy those
18 three criteria then we would issue a proposed negative finding within six months which
19 would then be available for public comment and response sort of under the normal
20 process.

21 If a petitioner qualified under those three criteria, we would then look to see
22 whether the petitioner asserted whether they were eligible for an expedited favorable
23 finding.

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3 And the Discussion Draft sets forth a couple of criteria that could be used for an
4 expedited favorable finding, one of which is that the petitioner has maintained since
5 1934 a state-recognized reservation. The other criteria is that the United States has
6 held land for the tribe at any point since 1934.

7 But maybe what we're seeking the input on from the public is are these
8 appropriate criteria? Are there additional criteria that we should be looking at? Should
9 we not use these criteria? We're looking for public input on that.

10 If – could you back up one. Thanks. So if a petitioner satisfied one of those two
11 criteria under the Discussion Draft it would then be an expedited favorable proposed
12 finding that would be issued within six months.

13 If the petitioner either didn't assert or didn't satisfy those expedited criteria they
14 would just be processed under the normal process.

15 Some other suggestions that we have incorporated into this Discussion Draft is in
16 deleting Criteria A which essentially requires identification of the petitioner by an
17 external entity from 1900 to the present.

18 We have also changed the period of analysis for Criteria B, community, and
19 Criteria C, political authority, rather than from time of first non-Indian contact to
20 essentially 1934 to the present.

21 We haven't made changes to Criteria E, descent from an historic tribe, but what
22 the Discussion Draft does set forth is that right now we rely primarily on genealogy
23 records to establish descent from an historic tribe and the Discussion Draft provides that

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3 petitioners could submit evidence from historians and anthropologists to, as evidence.
4 They could submit essentially opinions from historians and anthropologists as evidence
5 to prove descent from an historic tribe.

6 And then you will see throughout the Discussion Draft we have left placeholders,
7 sort of double X's in the draft to say, okay, one of our goals here is objective criteria and
8 are these the right objective criteria that we're using and if they are what sort of
9 percentages or numbers should we be using.

10 In terms of flexibility the Discussion Draft – as the process currently stands now
11 once a petitioner petitions for acknowledgement they are not typically able to withdraw
12 that petition.

13 And so what this would do is it would provide flexibility that a petitioner could
14 withdraw their petition any time before a proposed finding is published. That would
15 provide – OFA would then stop considering the proposed or the petition.

16 And, but the consequence of removing that, withdrawing that petition would be
17 that that petitioner would then essentially move to the “end of the line” and not retain its
18 priority number.

19 We also have a provision that, as I understand it, essentially incorporates
20 existing practice which is if – if the Assistant Secretary issues a proposed favorable
21 finding and we don't receive comments in opposition to that acknowledgement that
22 those proposed favorable findings are automatically made favorable.

23 This process here in the Discussion Draft would, essentially, set forth that if we

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3 issue that proposed favorable finding and the state, local governments or federally-
4 recognized tribes within the state did not submit any opposition to the opposed
5 favorable that it would automatically go final.

6 One of the questions that we're seeking input from the public on is who should
7 make the final determination on whether to acknowledge a tribe.

8 Currently as it stands it is the Assistant Secretary that makes that final
9 determination. We've put placeholders in there on whether we should be utilizing the
10 Office of Hearings and Appeals to make that final determination.

11 So the Discussion Draft sets forth a process where the proposed finding is issued
12 by the Assistant Secretary. And then an option would be once that proposed finding is
13 issued should it stay with the Assistant Secretary under the generally existing practice
14 or should it be then transitioned to the Office of Hearings and Appeals to receive
15 comments either in support or opposition of that proposed finding and then have the
16 Office of Hearings and Appeals issue a final determination?

17 And so the Office of Hearings and Appeals is an independent body within the
18 Department of Interior that holds hearings on other issues so they may not have
19 necessarily background or expertise on tribal issues but they are independent within the
20 Department of Interior.

21 We've also in the Discussion Draft proposed eliminating review by the Interior
22 Board of Indian Appeals. To our knowledge this is the only decision made by the
23 Assistant Secretary where it is not final for the Department.

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3 These decisions by the Assistant Secretary are subject to review by the Interior
4 Board of Indian Appeals. And so by removing that step in the process anyone that
5 wanted to challenge the Assistant Secretary's decision would go right to federal court.

6 We've given some thought in the Discussion Draft in terms of how we would
7 handle petitions that are currently in the process.

8 And so we're interested in feedback from the public on this question in terms of if
9 we were to issue a final rule, let's say two years from now, how should those petitioners
10 in the process be treated.

11 And so the Discussion Draft essentially says if you're not under active
12 consideration a petitioner would have to fall under the new regulations. If you were in
13 active consideration then you would have a choice of whether to go under the new
14 regulations or go under the regulations that are existing today.

15 And then we have a narrow category. You know we have heard that the process
16 is broken and so we have provided a narrow category for petitioners that have already
17 been denied through our process if they can – they may repetition if they can show by a
18 preponderance of the evidence that the changes from the previous version to the new
19 version warrants reversal of final determination.

20 If they can make that showing to either the Assistant Secretary or the Office of
21 Hearings and Appeals then they would be allowed to repetition under the new
22 regulations.

23 In terms of other input that we're seeking back from the public is, you know, what

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3 other revisions should we be making to the existing regulations.

4 Should we be revising definitions? If so, which ones? And how should they be
5 revised? Should the Department put out a, basically a template for petitioners to utilize
6 – not that it be required, a required template but that it be something that would be
7 useful as guidance to petitioners as they are preparing their petition?

8 We're looking for input on what objective criteria we should be using for
9 community, what percentages or what things we should be looking at to prove
10 community.

11 And the same thing with political authority. Should we – what other objective
12 criteria should we be using for political authority and descent from an historic tribe?

13 One of the questions we're asking is should we be imposing page limits on
14 petitioners, the Department and interested parties throughout the process?

15 Should the petition itself be limited in the number of pages – and I'm not talking
16 about the underlying source documents or exhibits. I'm mentioning the petition itself
17 where the petitioner would lay out how it satisfies each of the criteria.

18 Should we put a page limit on our proposed findings so that they're 50 pages as
19 opposed to hundreds of pages that would make them more readable for the public?

20 Should we support, should we have page limits in terms of what comments can
21 be received in opposition or in support of a petition? And should we impose page limits
22 on our final determination?

23 So, as I mentioned earlier, this is almost a step before our – I mean it is a step

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3 before our normal rulemaking process and so we are asking for comments on this
4 Discussion Draft by August 16th.

5 Once we receive those comments we will review all of those internally within the
6 Department and then decide how to move forward with the proposed rulemaking.

7 Once we issue a proposed rule, then the public will again have an opportunity to
8 comment on that proposed rulemaking before it would go final.

9 And so with that I will open it up to the group in terms of any comments or
10 questions you would like to make.

11 And I will say everything is being transcribed here for our public hearings and our
12 Tribal Consultations in the morning. So when you do speak if you could give your first
13 and last name and who you are representing, if anyone, and then so that we have it for
14 the court reporter.

15 We hope to have the transcripts from all these meetings up on our Website in a
16 very short period of time so that let's say if you couldn't have made a consultation or a
17 public meeting in California you are able to read that transcript to see what was said
18 and what ideas were being shared with the Department, so.

19 MS. CHERYLL HOLLEY: Hi. I'm Cheryll Holley from the Nipmuc Nation. In the
20 case of a petitioner who has already been denied, would they have to rewrite a new
21 petition or would you seek an expedited negative finding?

22 They looked at the old petitions, like the, our old preliminary and our old, old
23 proposed and our old final? Would we have to redo the whole thing?

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3 DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS ROBERTS: That's a
4 good question. I think we're open to suggestions on how that should work.

5 I think our thought was is that if a group was denied acknowledgement under the
6 existing regulations that they would need to submit something to the Department
7 showing that they qualify under that – that the new regulations would have made a
8 difference.

9 They would have to make that initial threshold showing to say, yes, we qualify.
10 So it would be a new, a new submission showing how the difference in the regulations
11 qualifies them for that process.

12 MS. HOLLEY: I guess I had the question because for Nipmuc, for the Nipmuc
13 Nation, in your negative, expedited negative finding the very first thing is Section E and
14 for us in our proposed finding it was a significant group of us that was considered
15 Nipmuc. And the Bureau, itself, reversed that and in the final defined that same group
16 of people non-Nipmuc.

17 So if you have the same people reviewing the same information, then if you are
18 already at odds with yourself, I guess I am confused as to what we should do – a new
19 petition or are you relying on the evidence you have already looked at?

20 DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS ROBERTS: It would
21 be whatever information the petitioner provides. But let's just say, for example, that a
22 petitioner was denied under E, Criteria E.

23 And let's just say hypothetically that the final rule made absolutely no changes to

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3 E, then you know the burden under this Discussion Draft would be on the petitioner to
4 show why they would be eligible under the change in rules.

5 It's not an opportunity, necessarily, to re-litigate the Department's earlier finding,
6 per se. But if the rules were to make a substantive difference in the outcome, then that
7 threshold determination would be made.

8 And then we would look at the merits if the petitioner satisfied whatever standard
9 we have that be for petitioners that were already denied through the process.

10 That's how the Discussion Draft is framed now. But we're seeking comment on
11 it, essentially.

12 D. RAE GOULD, Ph.D.: Rae Gould, Nipmuc Nation. In terms of documenting a
13 state reservation, have you had many comments on how that could be clarified or what
14 that documentation would look like?

15 DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS ROBERTS: Quite
16 frankly we haven't.

17 We have received a little bit of comment this morning in terms of that a state-
18 recognized reservation was too narrow, essentially, and that we should be looking at
19 other lands that aren't necessarily a reservation but have been set aside for – have –
20 maybe not even – “set aside” is too strong.

21 I think the commenter was essentially saying that were recognized as having
22 some sort of tie to a particular unacknowledged tribe that we should be broadening that,
23 that definition.

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3 And so that was a comment we received this morning. But we haven't received a
4 lot of comments on that section one way or another.

5 (Whereupon, when the public microphone was mistakenly turned off there was
6 some confusion turning it back on.)

7 MS. AMANDA BEGAY: It works now.

8 DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS ROBERTS: Okay.

9 MR. DAVID WHITE: Hi. I'm David White (Undistinguishable??) Tribe. I was
10 wondering if there were other comments – and I would also like to comment, too, on the
11 ethics of the Office of Federal Acknowledgement and the influence, political and
12 financial influence that seems to be a factor in some of the decisions that have been
13 made and maybe the un-honorable conduct of some of the offices within OFA and if
14 there is some sort of ethics code or some way that – because we are very aware that
15 our decision was not based on merit but on outside influence as well.

16 So we're concerned about the code of the Office of Federal Acknowledgment
17 and if they are able to give a determination based on merit and fact other than outside
18 influence such as interested parties and corporate interests.

19 DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS ROBERTS: Okay.
20 Well, the Office of Federal Acknowledgement has been involved with our Discussion
21 Draft and has been part of our smaller group that has been looking at how to develop
22 options for this, for improving the process. And so that's one of the things we will take a
23 look at.

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3 MR. WHITE: Is there a schedule or a time date that you guys are planning to
4 implement the changes and have a plan on each step of the way where you plan to be
5 with that?

6 DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS ROBERTS: Yes. So
7 the short answer is no. But generally speaking our experience in promulgating
8 regulations at the Department has been it is typically roughly a two-year process.

9 And so what we'll do is once we have received the transcripts and concluded all
10 of these public hearings we will then get together and hopefully put out a proposed rule
11 in the near future. But I, personally, don't have any idea when that will be.

12 DR. GOULD: Rae Gould, Nipmuc Nation, again. One substantial change here in
13 looking at Criterion E is that it seems historians and anthropologists within the
14 Department would be making the evaluations about genealogy.

15 Does that mean that there will not be a third researcher as there was in the past?
16 There used to be an historian, an anthropologist and a genealogist.

17 DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS ROBERTS: No. The
18 proposed – the insertion in the Discussion Draft is simply, my understanding is that
19 we've primarily relied on genealogy records.

20 And for some petitioners my understanding is that for whatever reason they may
21 have a hard time documenting genealogy records for certain periods of time.

22 And so what this would provide is an opportunity for those petitioners to submit
23 that sort of evidence from an historian or an anthropologist.

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3 That doesn't mean we would change the nature of a genealogist not being
4 involved in that part of the review. It would just – it provides petitioners an opportunity
5 to submit that sort of information as evidence.

6 MS. HOLLEY: Cheryll Holley, Nipmuc Nation. So you're saying external
7 historians and anthropologists, not BIA ones? This is what this paragraph means?

8 DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS ROBERTS: It would
9 be – yes, it would basically – a petitioner could submit, if they have an historian or an
10 anthropologist that is doing work for them they could submit that as evidence as their
11 descent from an historic tribe.

12 MS. HOLLEY: But it is still based on interpretation, really. Isn't it? There is no –

13 DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS ROBERTS: Well, I
14 guess we're – it would be their expert conclusions in terms of submitting that evidence
15 to the Department.

16 But if there are other suggestions that you would have in terms of how we look at
17 Criteria E, we're open to considering that. That's just what the Discussion Draft has put
18 forward.

19 DR. GOULD: Okay, that's really helpful. Rae Gould, Nipmuc Nation, again. If
20 the Ph.D. and the anthropologist were a tribal member who also knows the genealogy in
21 a very intimate way would that in any way influence decisions, do you think?

22 Or, I mean I know these are just drafts and that you can't answer all of these
23 questions and, you know, that some of what you're sharing with us is only really based

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3 on the meetings that you have had and comments from other tribes and interested
4 parties.

5 I'm thinking, you know, again, in our area, in particular, that we do have, you
6 know, tribal people who have those qualifications who could serve those roles but am,
7 you know, obviously very concerned that the federal government might look at that as,
8 well, are those interpretations valid because those are coming from tribal people, even
9 though we have the same, you know, in some cases we have the same qualifications as
10 somebody that we could, you know, hire for \$200 or \$300 an hour.

11 DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS ROBERTS: Right. So,
12 I think that that's – I mean I'm taking your comment.

13 I know you are asking a question and I'm almost answering in the form of a
14 question and I don't mean to do that but I guess if you have particular views as to how
15 the Department should handle that specific situation just provide it to us, yes, and we
16 will consider it.

17 MS. FRAN RICHARDSON GARNETT: Good afternoon. Fran Richardson
18 Garnett from the Nipmuc Nation. As far as having a state-recognized reservation that
19 the BIA would recognize, would that take care of B, C, and E? Would that – how helpful
20 would that be, having a state-recognized reservation?

21 DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS ROBERTS: So the
22 way that the Discussion – and this is all subject to change and comment, right? We're
23 going to look at everybody's comments.

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3 But as the Discussion Draft lays it forward if there is a state-recognized
4 reservation from 1934 to the present then the petitioner would still need to satisfy E, F –
5 E, the descent from an historic tribe; F, that it's members aren't composed of members
6 of an already federally-recognized tribe; and then the criteria that they're not subject to
7 Congressional termination.

8 Those are three threshold issues that we would look at before we even got to
9 those expedited situations.

10 And so if you satisfied those – if a petitioner satisfied those three criteria first and
11 then they satisfied that expedited, that would – that would be essentially it. We would
12 then issue a proposed finding for comment.

13 MS. GARNETT: Thank you.

14 DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS ROBERTS: Sure. I
15 was just reminded you would have to – obviously, D requires you to submit your
16 governing document. You would have to submit your governing document.

17 MR. JEFF NICHOLAS: Jeff Nicholas, Kineo Band of Maliseets. I notice in your
18 definition section you've defined a bunch of terms and things. But the term "reservation"
19 keeps popping up.

20 I think it might be good to get together and figure out what that actually means
21 and put it in the document because what I might consider a reservation might be
22 different than those folks over there and obviously the federal government.

23 If we can make things as clear as possible so we all know the rules of the game

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3 and what we're calling a "bat" is actually a "bat" and what we're calling a "ball" is actually
4 a "ball." Thank you.

5 DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS ROBERTS: Okay.
6 Thank you. Okay, I don't know if we have any – if we don't have any comments at this
7 very moment I don't want to end the public meeting so soon yet but what we'll do is we
8 will take a five to ten minute break.

9 Folks can think about if they have any additional questions and then we will open
10 up the session for additional comments and questions. Okay? Thanks.

11 (Whereupon, a brief recess was observed at 1:49 o'clock, p.m.; the meeting
12 reconvened at 1:59 o'clock, p.m.)

13 DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS ROBERTS: So we're
14 going to go ahead and get restarted if that's okay with everyone. I know a lot of people
15 have traveled a considerable distance to be here today and we appreciate everybody
16 coming to the public meeting.

17 But I think at this point in terms of just being respectful of everyone's schedules I
18 just want to open up again opportunities for comments and questions to anyone that
19 has them.

20 And for – there is a handful of folks that just joined us that were here at the Tribal
21 Consultation session and just to let you know where we are in the process here this
22 afternoon, we have run through the PowerPoint and had some questions and comments
23 from the participants here today. And so just giving folks an additional opportunity to

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3 provide any comments they want for the record.

4 DR. GOULD: Rae Gould, Nipmuc Nation, again. I actually have more of a
5 question than a comment. So, the transcripts from all of the meetings will be available
6 on the BIA Website I think we are hearing in approximately two weeks or so?

7 DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS ROBERTS: Yes. It's
8 hard to say. So this question was asked this morning as well. Basically we have hired
9 a court reporter at every different location and so – thank you – we have hired a court
10 reporter from every different location and they, you know, take one to two weeks,
11 maybe a little bit longer, maybe a little bit shorter, to basically turn their recording into a
12 transcript.

13 Once we receive that we will put it right up on the Webpage. And so some
14 people have asked, well, will the transcripts be done before the close of the comment
15 period on August 16th and I think the answer to that is no they won't.

16 But, as I mentioned earlier, there will be a whole other round of public comment
17 on our proposed rule. And so someone had asked, you know, what is the consequence
18 of changing that comment date on, from August 16th to later.

19 The consequence would be that we just couldn't then start working on all the
20 comments we have received by the 16th and moving forward with a proposed rule. We
21 would hold that time period open. And so that's sort of how things are playing out.

22 DR. GOULD: Okay. And as you were saying earlier the comments are due by
23 August 16th but there is no real timeframe yet for how those will be made public yet.

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3 And that would be through the *Federal Register* I am assuming.

4 DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS ROBERTS: I'm sorry?

5 DR. GOULD: Those comments being made, the comments on this Discussion
6 Draft would be made public or just integrated in and then that revised document will be
7 made public?

8 DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS ROBERTS: All of the
9 comments we receive, both as part of the transcript and the comments that we receive
10 written, written comments on the 16th – Liz can correct me if I'm wrong but – I would
11 prefer that we put all of those written comments that we receive on the Internet; so on
12 the BIA Webpage, that there be some repository there so that everyone can look at the
13 public comments the Department has received, not only in the transcripts but written,
14 written comments, and have those up. And those are the comments that we will be
15 looking at as we move forward with the proposed rule.

16 So you will be able to see – anyone will be able to see, okay, this group made
17 this comment or ten groups made X comment that – you know, you will be able to see
18 all the comments being made. Okay, last – oh. Here we go.

19 MS. GARNETT: Fran Richardson Garnett. I just have a question and I think it
20 may have been brought up earlier but I don't remember hearing the answer. It's
21 regarding the genealogy.

22 And we met it one time and then there's a flip-flop that you don't meet. What do
23 you – what do you recommend? What is a tribe to do to follow through on seeing that

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3 all of the members that are listed descend from the historical tribe?

4 DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS ROBERTS: I don't
5 know that I am in a position today to provide that sort of advice in terms of what a
6 petitioner would need to put in for E, specifically, under the current regulations or under
7 any sort of Discussion Draft changes.

8 What I would say is that if you have a view as to what should be in a petition, this
9 is your opportunity to provide that to the Department for consideration.

10 So we are looking not only for E but we are looking for input on all of the criteria.
11 What should we be looking at? So I'll give you an example that doesn't relate to E.

12 It actually relates to the Criteria – I believe it's – G, that the members aren't
13 members of another federally-recognized tribe.

14 We've received some comments that said, well, we have a number of members
15 in our petition that are eligible for membership in a federally-recognized tribe but that
16 shouldn't preclude us from going through the process and being applied to us so that
17 we're not eligible for acknowledgement just because –

18 They said, you know, for example, some of our members have been members of
19 the petitioning group for a long period of time and because the process has taken so
20 long, just because, you know, they will get financial assistance for schools and college
21 they will enroll in a different tribe that they're eligible for and it's –

22 I think one commenter said that that was almost a product of how long it takes to
23 get through our process and that shouldn't be held against the petitioner.

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3 So we're looking for – so if you have comments on how E should be applied and
4 how E should be examined, that's what we're hoping to get.

5 MR. WHITE: David White, (Undistinguishable??), again. I'm just curious. Once
6 all the comments are received, who will review those comments? And who will decide
7 on which comments stay or go or what the final outcome will be?

8 DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS ROBERTS: So, it's a
9 good question. I don't know that we've formalized the process in terms of next steps
10 entirely. I think that we'll sort of look at what is the most efficient way to move forward.

11 But I can tell you how we have gotten here and generally speaking when for the
12 Department, for Indian Affairs regulations, those are approved by the Assistant
13 Secretary and issued by the Assistant Secretary to issue regulations.

14 So in terms of our process, how we got here, we convened a workgroup of folks
15 from the Solicitor's Office, the Office of Federal Acknowledgement, and the Assistant
16 Secretary's Office to come up with options.

17 And so I anticipate that some or all of those people that were part of the – or
18 some or all of those offices that were part of putting together this Discussion Draft will
19 review the comments and then ultimately the calls to be made on a proposed rule will
20 be made by Assistant Secretary Washburn with, you know, advice from myself and a
21 whole host of others on the staff.

22 MR. WHITE: Thank you. One other question I have is many of us have a
23 concern about the constant change in leadership within the United States government.

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3 And we're concerned that maybe this is coming up during Obama's
4 Administration but when he leaves we're concerned that everything may go out the
5 window or the whole Administration may be changed.

6 So we're concerned that any efforts we make within the next year or two may be
7 fruitless. So I just wanted to make that comment.

8 DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS ROBERTS: Thanks. I
9 will say we have heard, and I know Assistant Secretary Washburn has heard from, you
10 know, we have read about former assistant secretaries saying that they wished they
11 would have looked at how to improve the process earlier in their terms.

12 And this is something that, you know, Assistant Secretary Washburn has really
13 picked up from the 2009 Administration with Secretary Salazar and all the good work
14 that they have been doing from 2009 through 2012.

15 And so you know he has picked this up very early in his term. Hopefully, we are
16 going to have, move forward quickly here. But, you know it is always a – I hear your
17 comment. But administrations in the federal government is always free to change their
18 regulations, so. Yes.

19 Okay, last chance. Anyone? Actually, it's not the last chance. The last chance is
20 August 16th. So I appreciate everyone attending this afternoon.

21 Please, I encourage everyone to submit written comments so we have the
22 benefit of all of your insights. They will be looked at. They will be considered.

23 And all comments will be, we'll do our best to post every comment on the Internet

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3 so people can see what others are saying.

4 So thank you for attending this afternoon. And thank you to the Penobscot
5 Nation for letting us utilize their facility today. Thank you.

6 (Whereupon, the Public Meeting adjourned on Wednesday, July 31, 2013, at
7 2:10 o'clock, p.m.)

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