UNITED STATES DEPARTMENT OF THE INTERIOR

INDIAN AFFAIRS

TRIBAL CONSULTATION ON DRAFT REVISIONS TO LAND ACQUISITION AND CLASS III TRIBAL-STATE GAMING COMPACT PROCESS REGULATIONS
"PART 151 AND PART 293 CONSULTATIONS"

Washington, D.C.

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PROCEEDINGS

(1:00 p.m.)

MS. WILBERT: Thank you all for your patience. You have now been placed into the consultation session. This is the third of four virtual nationwide government to government consultations hosted by the Department of the Interior Office of the Assistant Secretary for Indian Affairs prior to making proposed revisions to two regulations, 25 CFR Part 151, Land Acquisition and 25 CFR Part 293, Class III Tribal State Gaming Compact Process. This is a government to government consultation and is closed to the press. If you are a member of the press please sign off at this time.

This and the subsequent consultation will last three hours. The upcoming consultation is scheduled for May 23rd beginning at 1:00 p.m. Eastern Time. The registration link for this future session is available through a link in the chat. For optimum audio quality please ensure your microphone remains on mute unless you would
like to speak. Please take a moment to add your title and affiliation to your name in Zoom. To do this, click on the participant list, find your name, click on the blue more button next to your name and choose rename.

The session will be recorded. If you do not consent to being recorded you may disconnect at this time. Closed captioning is available in real time at the link in your chat. I will now turn it over to Principal Deputy Assistant Secretary, Mr. Wizipan Garriott.

MR. GARRIOTT: Good afternoon or morning depending on where you're at. We greet you with a good heart. My name is Wizipan Garriott. I serve as Principal Deputy Assistant Secretary for Indian Affairs here at the U.S. Department of Interior. Thank you for joining today's consultation and before we begin, as is our way, we will have a moment of silence for reflection, contemplation or prayer, whatever is best suits you and how you prepare for meetings, kind of official meetings and we hope that the information that is shared
today is useful and helpful to Indian Country moving forward. So, we'll take a moment to reflect.

Thank you everyone for taking that time and, again, welcome. This is the third of four officially scheduled consultations on our proposed land-into-trust and gaming regulations. If we can pull up the PowerPoint and we'll kind of walk through some of the prompt questions.

MS. WILBERT: Absolutely. I'm sorry, technical difficulties with the Point.

MR. GARRIOTT: No problem and, again, while we pull that up, these are prompt questions to help with the discussion. Obviously, if folks have ideas, thoughts, recommendations, comments that go beyond that, those are always welcome. We will begin with the Part 151 proposed regulations on land acquisition. Tribal homelands provide the foundation for Tribal sovereignty and self-determination and as a result protecting and restoring Tribal homelands is a top priority for the Department. It was also something that has
been mentioned by President Biden as a priority for his administration.

In response to repeated voices by tribes over the years and the Department's recent consultations with tribes that took place in October of 21, the Department is developing draft revisions to provide for more efficient, less cumbersome and less expensive fee-to-trust process. There's information and links in the chat if you need more information. Next slide.

And to begin, we have a series of questions to help prompt discussion. Question one, do the draft revisions make the fee-to-trust application process more efficient. Are there additional ways to make the process more efficient? Question two, do the draft revisions reduce the costs of the fee-to-trust application process. Are there additional ways to reduce costs?

Three, the draft revisions identify the information needed for a complete fee-to-trust application after which the Secretary will have
120 days to issue a decision. Are there additional ways to increase certainty in the fee to trust application process? Four, the draft revisions propose criteria for evaluating applications involving land within the boundaries of a reservation, land contiguous to the boundaries of a reservation, land outside the boundaries of a reservation and land for an initial acquisition. Do the draft revisions sufficiently account for the range of fee-to-trust applications?

Five, the draft revisions explain how the Secretary will determine whether statutory authority exists to acquire land in trust status including determinations whether a tribe was under federal jurisdiction in 1934. Do these criteria sufficiently explain how the Secretary will evaluate the information? And then finally, question six, do the draft revisions sufficiently consider the concerns of state and local governments. So, we will begin the consultation now and take comments. We will prioritize
comments from elected Tribal leaders or those
speaking on delegated authority from Tribal
leaders. Use the raise your hand function and we
will call on you in order. I also always
apologize to folks if I pronounce a name or get a
title wrong. I mean no disrespect and just bear
with me as we go through that process. So, we
will now open it up and the first hand that I see
raised is Chairman Tehassi Hill.

MR. HILL: Yes, thank you. The Oneida
Nation is grateful that the administration is
taking the opportunity to update regulations. The
Nation's challenges lie primarily in the amount of
time to remain an IBIA. We have applications that
have been in the appeal process for eight years
with no decision and no rule back. The Nation
will be developing more in-depth comments on the
draft regulations but wanted to highlight a few
recommendations during this consultation.

Number one, under the Secretary's policy
it cites the goal is to reduce checker boarding.
Within a certain village located almost entirely
within the Nation's reservation boundaries that will continue to challenge our very consistence in any fee-to-trust applications. We know the village will argue that any land taken into trust will enhance checker boarding. We recommend the finding what this policy stated needs is any ambiguity will lead to further litigation and challenges.

Number two, 151.9, the Secretary will notify the state and local governments with regulatory jurisdiction over the land to be acquired. Does this language assume that the state and local governments have regulatory jurisdiction over the fee land owned by tribes on the reservations? The Oneida Nation, the village of Hobart, the seventh circuit ruled that municipal land use regulations are not applicable on Tribally owned fee land.

And, third, we would request the DOI reaffirm that when the IBIA takes land-into-trust and it is appealed to the IBIA and the IBIA decision is favorable and then that appealed to
the federal court, the land should still be deemed
in trust during the court hearing. And, fourth,
the fee-to-trust process is so lengthy and
cumbersome especially when the Nation submits its
applications and indicates that the land's
intended purpose when then after the application
is submitted can be several years the Nation
decides it would like to use the land for a
residential or commercial development, we then
have to withdraw the application and resubmit our
application.

And, fifth concern 151.15, the Secretary
will conduct a review of environmental conditions.
Language could be added in this section to clarify
the purpose of this review, i.e., to protect United
States from liability for environmental
contamination and to clarify that third parties
like we have litigious municipalities, do not have
standing to assert these interests. BIA regional
office regulations are not always consistent such
as for home inspections we would request to build
a caveat to give some flexibility. Also, United
Nations environmental reviews mostly consist of home inspections instead of requiring an actual home inspection done by the BIA staff, which they don't do in the winter. We would recommend utilizing the 2247 review and allow tribes to have a home inspection done by a certified home inspector. That's end of our comments for the 151 section, so again, thank you, counsel.

MR. GARRIOTT: Thank you, Chairman. We really appreciate that and just as a general note, you know, we have a lot of folks that have spent a lot of time reviewing and drafting these but as in all processes when you're very focused on things, you know, it's really great to have others take a look at it and so that's a big purpose of these is to utilize the collective knowledge and thinking of those in Indian Country, so really thank you for those comments. Are there others and if you're participating by phone, use star nine to raise your hand and then star six to unmute yourself. I see Representative Kristin White Eagle.
MS. EAGLE: Yes, thank you. Thank you to BIA, thank you for this opportunity to be able to speak to you. I want to greet all the Tribal leaders and everyone in attendance today and say thank you for the time today to be able to speak to you a little bit today. I am a representative on our Ho-Chunk Nation legislature and speaking on behalf of the Ho-Chunk Nation, the governing body of our Nation.

A little bit of the history that needs to be said here is to share a little bit here, the Ho-Chunk Nation was formally known as the Wisconsin Winnebago Tribe. We officially changed our name through a Secretarial election in 1994 and Ho-Chunk is our own name for our tribe and it means people of the big voice. Our language is the parent language for 15 different languages in the Siouan language family. And the Ho-Chunk in Wisconsin have endured numerous forced removals. Reservations were established in Iowa, Minnesota, South Dakota and the final one in Nebraska and that is where our direct relatives from Nebraska
Winnebago do reside today.

Today's Ho-Chunk citizens, we are the descendants of those who were removed from this homeland but many numerous of them walked back to Wisconsin and many times through treacherous, horrendous conditions and we're also those descendants from those that were able to avoid being removed. We even have so many stories of our relatives who had to hide in swamp lands and they never left the area. So, I want to impress upon everybody and the BIA that the importance of how our Tribal Nation have in that connection with our land.

Our modern Nation started with nothing, but today we have 10,057 acres of trust and allotment land and we have 4817 acres of fee land. Many parcels of the trust land were purchased on the open market as fee land and transferred into trust through the Part 151 process. Our land is now scattered throughout the southern half of the state of Wisconsin in 15 different counties. There's also 1500 acres of that trust land that
was part of a former Army ammunition plant that
was transferred to our Nation by an act of
Congress.

Of course, you know, that ended up
becoming and it is still today contaminated land,
but we are continuously going through the process
of remediation for it. And that is just a small
portion of that entire parcel that was once owned
by the Army. They actually ended up transferring
the prime land to the state to use as a beautiful
state park.

Another large block of land was
transferred by a legislation in 1996 and that's
the Kickapoo Valley Reserve. We have about 1200
acres in trust out of the total 8600 acres out
there. And these two sites are the largest
contiguous land bases for the Ho-Chunk Nation but
let me point out that neither one allows for any
development for us to meet our critical unmet
needs such as housing and economic development.

No reservation was ever created in the
area that we have always lived and as I stated
previously, most of the land we have was placed
into trust through the Part 151 process and much
of it in the past 20 years. So, I would say that
the Ho-Chunk Nation is very familiar with this
process.

One of the primary goals of course that
the Nation shared with the BIA is to restore and
preserve and protect our homelands. We are all
tied to our homelands and its absolutely paramount
to any of our existence. Over the years the
Nation has experience varying degrees of
difficulty with the Part 151 process. There was
even a time that we can share with you that our
legislature would send staff up to the Regional
BIA office in Ashland and we told them not to come
back until that land was placed into trust.
Sometimes that would take as long as two or three
weeks, but it worked. After a while the people at
the BIA would get tired of having our staff at
their office every single day and we're told that
eventually that was a critical factor in putting
the lands into trust as quickly as they could.
I want to speak to some of the proposed changes here and that brings me to what the Department is currently proposing. The Ho-Chunk Nation has been able to navigate the process effectively, but these proposed revisions are helpful and we do appreciate it that the Department is offering them. The Ho-Chunk will submit written comments in greater detail before the June 30th deadline, but just to comment briefly on a few of the positive changes that I think are important to share here regarding Part 151.3 on the Secretary's land acquisition policies.

These changes should benefit tribes as they made clear and specified what Tribal self-determination, economic development or Indian housing means so it arguably expands the recognized grounds for taking land-into-trust. Another one is 151.4, determining the statutory authority to acquire land-into-trust. The forms of evidence listed seem to be appropriate and having them codified confirms their status as
recognized evidence of Tribal existence. This will maintain consistency through different administrations into the future.

And, another one is 151.8, the documentation submitted to request land into trust. The requirement that the BIA notify an applicant tribe that its application is complete will have naturally the beneficial effect of just basically informing an applicant tribe as of a date certain that it has submitted everything that is required and this is going to go a long way to increasing certainty. Also, the addition of a mandatory time period within which to decide on a completed application is an important positive modification of the process. So, I think I will end it there with highlighting those. I do want to thank Assistant Secretary Newland and all the staff there. Thank you, Mr. Garriott as well. We appreciate the opportunity to be able to provide some comments. I do look forward to hearing from other Tribal leaders as well and to the next step, the rule making process and I would
like to end with one question.

Will there be another round of consultations once the Notice of Proposed Rule Making is sent out by the Department? Thank you all.

MS. WILBERT: Mr. Garriott, you were muted for that.

MR. GARRIOTT: Oh, sorry about that. I just wanted to say thank you for sharing those comments and very helpful and also thank you for sharing about your Nation's history and as some folks are probably aware, that this was a big week for the Department of Interior talking about our difficult history and legacy around boarding schools and being able to be truthful about our history and the impacts of federal Indian policies is really important so thank you.

There was a round of consultations that went out kind of hoping, and this was in October, we kind of talked about that helps us to scope and to begin the drafting process for these proposed rules and so after these consultations we're going
to gather everything, all of the comments, both
the oral and the written and everything that kind
of goes into the record. There may be one
additional listening session as well and then
we're going to take this back to the drawing board
and begin to incorporate all of this in
preparation for issuance of a final rule. So,
hopefully that answers your question. Obviously
if there are other more specific questions, always
please feel free to reach out to Maria Wiseman who
is the Senior Policy Advisor for the Climate and
the Environment in our office. She advises the
Assistant Secretary directly and she can be
reached by phone at 202-208-7227 or email at
maria.wiseman@bia.gov and her information is in
the chat and then, of course, you referenced
submitting written comments. We will be accepting
those and that information is also in the chat.

Are there others who would like to make
a comment? I see Chairwoman Andrews.

MS. ANDREW-MALTAIS: Good afternoon and
I just wanted to thank you again for this
opportunity and the work that you've put into making changes and modifications and amendments to these regulations. They are very well received and long overdue. I just wanted to also note that in response to the questions that you have in the chat box that, yes, the revisions the trust application more efficient and ways of being able to streamline you've been incorporating in with regard to date specific or timeframe specific portions that make it so that we can actually determine when we can expect decisions and/or expect that we will have final approvals.

And the costs of the fee-to-trust application is still rather concerning at this point. If we can have more fleshing out of where categorical exclusions would be able to be very flexibly employed especially when we have no change of use and particularly when we're looking for protections of sacred sites, ceremonial sites and other cultural resources because, again, part of what the requirements of the environmental assessments, environmental surveys as well as the
ichnology component. We believe honestly that the tribes are the best keepers of our own history and oftentimes we're the ones that are feeding the iconologist the information in order to get these connections to the land and to be able to utilize or employ our tribe's history with the documentation of the tribe can provide versus having to spend tens of thousands of dollars on having somebody else tell our story would be another way of reducing some of those costs.

The 120-day notice in question three is great and land that is contiguous, being able to have almost like a mandatory acquisition provision put into contiguous land and land that is within the boundaries because again, if the effort or the exercise is to try to streamline the process, reduce the labor burden as well as the cost burden, those types of things as long as they fit general criteria established by Bureau to be able to fit into the contiguous or land within having it worded the same as mandatory acquisition would be certainly a way of streamlining and reducing
Having the flexibility to make the determination by the preponderance of evidence with regard to the definition of under federal jurisdiction, really appreciate how the incorporation of more and more a different concept of what that information and documentation is, is very well received and particularly for those tribes that are east of the Mississippi that were mainly impacted by the Carcieri decision because oftentimes when the newly formed United States was able to defer the costs of caring for the Native people they employed having us being taken care of by states or religious organizations that had been doing this and forcing and mandating Christianity on us. That was a way of avoiding the United States taking responsibility for our communities but also being able to be included by virtue of identification in formal federal reports that have come to our communities to visit us and report on the status of us with basically a checkmark saying that you don't have to worry about paying for costs.
these Indians. These organizations are paying for them is going to be very, very helpful for not only us in our area, but also other tribes that were not part of the IRA constitutional amendment or accepting of the IRA and the constitutional process.

And I do have some concerns with still having so much or really identifying what weight state and local governments comments are going to have with regard to the tribe's application and whether or not this clarity that while the comments will be taken into consideration that they should not be able to overrule the tribe's right and/or ability to reacquire lands of part of our ancestral territory. And outside of that, just again, thank you so very much for the opportunity to comment on this. Thank you so very much for the work and the consideration and the deliberative process that you went through in order to develop these new regulations. This is one of the first times we really feel that we've been heard as Tribal Nations to have these
comments, concerns and recommendations

incorporated into new regulations.

One last question is if we're going to be able to employ them by interim final rules before the final rules or whether or not we're going to go straight to final rules. And with that, I thank you again and have a great afternoon.

MR. GARRIOTT: Thank you Chairman Andrew-Maltais. I think that we'll be able to follow up on the deployment of interim versus final rules but we'll have more information to be able to share on that. And, again, thank you for your comment.

MS. ANDREW-MALTAIS: Excellent, excellent.

MR. GARRIOTT: Are there others who would like to make a comment? I see Tim Beyer from Quinault.

MR. BEYER: Thank you. Good afternoon. Good to hear such great comments today and suggestions. I also took part in the Monday
morning session and it was a bit more crickets
during that session. I'm just going to build a
little bit on some of the comments that have
already been submitted by Chairwoman Andrews and
Representative White Eagle. Bear with me a little
bit as I go through all the papers laying here a
little bit but again I do like in 151.8b2 how it
has the 120 calendar day after issuance of that
complete or that notice of complete acquisition
package. What I'm a bit more concerned about is
in 151.8b1 where it says we will notify the
applicant in writing that the acquisition package
is complete. There's no time element to that.
That could also take 90 days or 120 days.
Wondering again or would suggest that a time
element be attached to that notification. It
shouldn't take long for the Bureau once they
receive that package to look through it and say,
yeah, this is complete whether that's 14 days or
30 days but something that would quickly alert
somebody that they're missing a document that
needs to be submitted.
And, again, you know, getting to that point with the realty land description reviews or the land description evaluation by the strike team or all the other processes in place, and great again to have that 120 calendar days on the end but again, wondering if by the time a tribe actually gets to that point will they have a complete package, they've crosses all the Ts and dotted the Is. Do we really need to take another 120 days?

The other comment in question two that asks about, and I heard this come up a little bit, other ways to reduce costs. Within the document it talks about perhaps efficiencies attached to having a Tribal consolidation area. And, again, if there's an opportunity that perhaps a Tribal consolidation area has already been consulted with local municipalities, governments and states, would there be an opportunity to add additional efficiencies within that Tribal consolidation area as far as not needing site by site consultations or an additional business plan for every application?
And then there's also reference to development of a Tribal consolidation plan.

Again, just under the question of do the draft regulations question number four sufficiently account for the range of fee-to-trust applications. As I noted on Monday, they do not include mandatory acquisitions at this point and again, wondering if there are some efficiencies if there is an secretarially approved land acquisition plan within a Tribal consolidation area if fee-to-trust at least within the reservation could be considered a mandatory acquisition.

And then again, to talk a little bit about the comment made I believe by Chairwoman Andrews to the point of environmental assessment or EIS and perhaps the use of this categorical exceptions, there appears to be a little bit of conflict in 151.8.4i where it says an acquisition package is not complete until the public review period of a final EIS or where appropriate a final EA is complete but yet under 151.15 it expands
that. The compliance could include an EIS, an EA, a categorical exclusion or other documentation that satisfies the requirements of NEPA so if there's other opportunities besides an EA and an EIS perhaps those should be added into 151.8.4i where it right now just stands that it's not complete until a public review of an EA and an EIS. And that's all I have today. Thank you again for your time.

MR. GARRIOTT: Thank you so much. I really appreciate that. And also for attending multiple sessions. Sometimes it's good to attend one and hear what thoughts are and contemplate kind of further comments so we always appreciate that. Are there others who would like to make a comment? Again, if you're participating by phone, press star nine to use the raise hand function and then star six to unmute yourself. We'll give it another minute or two if there's anyone who wants to gather their thoughts. And, again, this is the third official consultation of planned four and I believe the 23rd is the next official consultation
that we'll be having on these regulations. If there are no further comments on the land into trust proposed regulations we can move on to the gaming portion of the consultation.

For the second half of the consultation we will be discussing the proposed Class III Tribal State Gaming Compact Process Regulations. The Department recognizes the importance of Indian gaming as a means of Tribal economic and community development. The Department is developing draft revisions to the CFR in Part 293 to provide clear guidance regarding the Secretary's review and evaluation of the process.

Let's go to the questions. Questions to help us kick this portion off are one, do the draft revisions increase certainty and clarity in the Secretary's compact review process. Are there additional ways to increase certainty and clarity? Two, do the draft revisions provide sufficient guidance to parties engaged in compact negotiations. Are there ways to provide additional guidance? Three, should the draft
revisions include provisions that facilitate or prohibit the enforcement of state court orders related to employee wage garnishment or patron winnings? Four, should the draft revisions include provisions that facilitate or prohibit state court jurisdiction over the gaming facility or gaming operations? Should this apply to all claims or only certain types of claims?

To, the next slide. Question five, should the draft revisions include provisions that identify types of meaningful concessions that a tribe may request from a state other than protection from state license commercial gaming i.e., exclusivity for which a tribe could make revenue sharing payments? How would such provisions affect compact negotiations? Six, should the draft revisions include provisions that facilitate statewide remote wagering or internet gaming and seven, should the draft revisions include provisions that offer or require the submission of electronic records?

And the same process as before and I see
that Chairman Tehassi Hill has his hand up.

Chairman.

MR. HILL: Again I've got some brief comments for Part 293. Overall the Nation feels the revisions are helpful. The goals of identifying what constitutes evidence of bad faith in negotiations and what activities may be considered to be directly related to gaming are positive. Section 293.26 appears to take the broader approach to scope of Class III games outlined in Mashantucket Pequot Tribe v State of Connecticut. What were the more restrictive approach in Rasmi Indian Branch v Wintun Indians in NE Wilson? If the intent is to adopt Mashantucket's interpretation of IGRA it may be helpful to tie this to the language of IGRA which speaks to the terms of a state that permits such gaming for any purpose by any person.

As currently drafted Section 293.26 speaks in terms of Class III gaming regulated by the state and not prohibited in the state, which are concepts drawn from California v Cabazon. A
potential downside to including this provision is that they may spark litigation regarding scope of games that could lead to the Supreme Court addressing the circuit's split on this issue. Oneida doesn't believe that identifying things other than exclusivity that may support revenue sharing would be helpful nor would addressing the enforcement of the state court order or state jurisdiction. It is unclear how provisions regarding statewide remote wagering or internet wagering would comport with IGRA which limits Class III gaming to a tribe's Indian lands, 25 USC 2710 D1. It would be helpful to an extent on the Department views the legality of such provisions. That's the end of my comments. Thank you. Oh, you're muted again.

MR. GARRIOTT: Sorry about that. I keep forgetting. Are there others who would like to make a comment and also thank you, Chairman Hill. And, again, as folks potentially gather themselves for comment, we really are thankful for our staff who've really taken some really in depth look and
analysis on trying to develop these regulations. Our office of Indian Gaming has been instrumental and then also a number of the counselors in our office have really taken a lot of the heavy load and analyzing and drafting the proposed regulations and so I'm very grateful to them.

Are there any other comments? We'll give it a few more minutes. Also, thankful to our representatives and elected leaders and other leaders. We know that there is always a great demand on your time both in your professional life serving your Tribes and also your personal lives serving your families and so participating on a Friday afternoon we thank you for that.

And then always one note, Assistant Secretary Newland is always very intent on wanting to make sure that we are participating at the highest levels possible in our consultations and he led the first two but today is a happy day. It's the graduation for Haskell Indian Nation's University and so he's attending to some other duties that he has in that respect.
Seeing no hands or no other comments we will conclude today's consultation. As always, written comments may be submitted via writing until 11:59 on June 30th and we will continue to accept those and then we will have another consultation later on, on Monday, May 23rd and that will be from 1:00 p.m. to 4:00 p.m. Eastern Time so with that we will conclude today's consultation and again, just express gratitude to all of you for participating and for submitting comments today. Thank you. Have a good rest of the day and weekend everyone.

(Whereupon, at 1:46 p.m., the PROCEEDINGS were adjourned.)

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CERTIFICATE OF NOTARY PUBLIC

DISTRICT OF COLUMBIA

I, Elizabeth Prettyman-Guay, notary public in and for the District of Columbia, do hereby certify that the forgoing PROCEEDING was duly recorded and thereafter reduced to print under my direction; that the witnesses were sworn to tell the truth under penalty of perjury; that said transcript is a true record of the testimony given by witnesses; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was called; and, furthermore, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

(Signature and Seal on File)

Notary Public for the District of Columbia
My Commission Expires: 12/14/2024