

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.

Friday, May 13, 2022

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1 P R O C E E D I N G S

2 (1:00 p.m.)

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

16 This and the subsequent consultation
17 will last three hours. The upcoming consultation
18 is scheduled for May 23rd beginning at 1:00 p.m.
19 Eastern Time. The registration link for this
20 future session is available through a link in the
21 chat. For optimum audio quality please ensure
22 your microphone remains on mute unless you would

1 like to speak. Please take a moment to add your
2 title and affiliation to your name in Zoom. To do
3 this, click on the participant list, find your
4 name, click on the blue more button next to your
5 name and choose rename.

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

12 MR. GARRIOTT: Good afternoon or morning
13 depending on where you're at. We greet you with a
14 good heart. My name is Wizipan Garriott. I serve
15 as Principal Deputy Assistant Secretary for Indian
16 Affairs here at the U.S. Department of Interior.
17 Thank you for joining today's consultation and
18 before we begin, as is our way, we will have a
19 moment of silence for reflection, contemplation or
20 prayer, whatever is best suits you and how you
21 prepare for meetings, kind of official meetings
22 and we hope that the information that is shared

1 today is useful and helpful to Indian Country
2 moving forward. So, we'll take a moment to
3 reflect.

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

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

12 MR. GARRIOTT: No problem and, again,
13 while we pull that up, these are prompt questions
14 to help with the discussion. Obviously, if folks
15 have ideas, thoughts, recommendations, comments
16 that go beyond that, those are always welcome. We
17 will begin with the Part 151 proposed regulations
18 on land acquisition. Tribal homelands provide
19 the foundation for Tribal sovereignty and
20 self-determination and as a result protecting and
21 restoring Tribal homelands is a top priority for
22 the Department. It was also something that has

1 been mentioned by President Biden as a priority
2 for his administration.

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

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

20 Three, the draft revisions identify the
21 information needed for a complete fee-to-trust
22 application after which the Secretary will have

1 120 days to issue a decision. Are there
2 additional ways to increase certainty in the fee
3 to trust application process? Four, the draft
4 revisions propose criteria for evaluating
5 applications involving land within the boundaries
6 of a reservation, land contiguous to the
7 boundaries of a reservation, land outside the
8 boundaries of a reservation and land for an
9 initial acquisition. Do the draft revisions
10 sufficiently account for the range of fee-to-trust
11 applications?

12 Five, the draft revisions explain how
13 the Secretary will determine whether statutory
14 authority exists to acquire land in trust status
15 including determinations whether a tribe was under
16 federal jurisdiction in 1934. Do these criteria
17 sufficiently explain how the Secretary will
18 evaluate the information? And then finally,
19 question six, do the draft revisions sufficiently
20 consider the concerns of state and local
21 governments. So, we will begin the consultation
22 now and take comments. We will prioritize

1 comments from elected Tribal leaders or those
2 speaking on delegated authority from Tribal
3 leaders. Use the raise your hand function and we
4 will call on you in order. I also always
5 apologize to folks if I pronounce a name or get a
6 title wrong. I mean no disrespect and just bear
7 with me as we go through that process. So, we
8 will now open it up and the first hand that I see
9 raised is Chairman Tehassi Hill.

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

20 Number one, under the Secretary's policy
21 it cites the goal is to reduce checker boarding.
22 Within a certain village located almost entirely

1 within the Nation's reservation boundaries that
2 will continue to challenge our very consistence in
3 any fee-to-trust applications. We know the
4 village will argue that any land taken into trust
5 will enhance checker boarding. We recommend the
6 finding what this policy stated needs is any
7 ambiguity will lead to further litigation and
8 challenges.

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

19 And, third, we would request the DOI
20 reaffirm that when the IBIA takes land-into-trust
21 and it is appealed to the IBIA and the IBIA
22 decision is favorable and then that appealed to

1 the federal court, the land should still be deemed
2 in trust during the court hearing. And, fourth,
3 the fee-to-trust process is so lengthy and
4 cumbersome especially when the Nation submits its
5 applications and indicates that the land's
6 intended purpose when then after the application
7 is submitted can be several years the Nation
8 decides it would like to use the land for a
9 residential or commercial development, we then
10 have to withdraw the application and resubmit our
11 application.

12 And, fifth concern 151.15, the Secretary
13 will conduct a review of environmental conditions.
14 Language could be added in this section to clarify
15 the purpose of this review, i.e., to protect United
16 States from liability for environmental
17 contamination and to clarify that third parties
18 like we have litigious municipalities, do not have
19 standing to assert these interests. BIA regional
20 office regulations are not always consistent such
21 as for home inspections we would request to build
22 a caveat to give some flexibility. Also, United

1 Nations environmental reviews mostly consist of
2 home inspections instead of requiring an actual
3 home inspection done by the BIA staff, which they
4 don't do in the winter. We would recommend
5 utilizing the 2247 review and allow tribes to have
6 a home inspection done by a certified home
7 inspector. That's end of our comments for the 151
8 section, so again, thank you, counsel.

9 MR. GARRIOTT: Thank you, Chairman. We
10 really appreciate that and just as a general note,
11 you know, we have a lot of folks that have spent a
12 lot of time reviewing and drafting these but as in
13 all processes when you're very focused on things,
14 you know, it's really great to have others take a
15 look at it and so that's a big purpose of these is
16 to utilize the collective knowledge and thinking
17 of those in Indian Country, so really thank you
18 for those comments. Are there others and if
19 you're participating by phone, use star nine to
20 raise your hand and then star six to unmute
21 yourself. I see Representative Kristin White
22 Eagle.

1 MS. EAGLE: Yes, thank you. Thank you
2 to BIA, thank you for this opportunity to be able
3 to speak to you. I want to greet all the Tribal
4 leaders and everyone in attendance today and say
5 thank you for the time today to be able to speak
6 to you a little bit today. I am a representative
7 on our Ho-Chunk Nation legislature and speaking
8 on behalf of the Ho-Chunk Nation, the governing
9 body of our Nation.

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

1 Winnebago do reside today.

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

14 Our modern Nation started with nothing,
15 but today we have 10,057 acres of trust and
16 allotment land and we have 4817 acres of fee land.
17 Many parcels of the trust land were purchased on
18 the open market as fee land and transferred into
19 trust through the Part 151 process. Our land is
20 now scattered throughout the southern half of the
21 state of Wisconsin in 15 different counties.
22 There's also 1500 acres of that trust land that

1 was part of a former Army ammunition plant that
2 was transferred to our Nation by an act of
3 Congress.

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

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

21 No reservation was ever created in the
22 area that we have always lived and as I stated

1 previously, most of the land we have was placed
2 into trust through the Part 151 process and much
3 of it in the past 20 years. So, I would say that
4 the Ho-Chunk Nation is very familiar with this
5 process.

6 One of the primary goals of course that
7 the Nation shared with the BIA is to restore and
8 preserve and protect our homelands. We are all
9 tied to our homelands and its absolutely paramount
10 to any of our existence. Over the years the
11 Nation has experience varying degrees of
12 difficulty with the Part 151 process. There was
13 even a time that we can share with you that our
14 legislature would send staff up to the Regional
15 BIA office in Ashland and we told them not to come
16 back until that land was placed into trust.
17 Sometimes that would take as long as two or three
18 weeks, but it worked. After a while the people at
19 the BIA would get tired of having our staff at
20 their office every single day and we're told that
21 eventually that was a critical factor in putting
22 the lands into trust as quickly as they could.

1 I want to speak to some of the proposed
2 changes here and that brings me to what the
3 Department is currently proposing. The Ho-Chunk
4 Nation has been able to navigate the process
5 effectively, but these proposed revisions are
6 helpful and we do appreciate it that the
7 Department is offering them. The Ho-Chunk will
8 submit written comments in greater detail before
9 the June 30th deadline, but just to comment
10 briefly on a few of the positive changes that I
11 think are important to share here regarding Part
12 151.3 on the Secretary's land acquisition
13 policies.

14 These changes should benefit tribes as
15 they made clear and specified what Tribal
16 self-determination, economic development or Indian
17 housing means so it arguably expands the
18 recognized grounds for taking land-into-trust.
19 Another one is 151.4, determining the statutory
20 authority to acquire land-into-trust. The forms
21 of evidence listed seem to be appropriate and
22 having them codified confirms their status as

1 recognized evidence of Tribal existence. This
2 will maintain consistency through different
3 administrations into the future.

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

1 like to end with one question.

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

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

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

18 There was a round of consultations that
19 went out kind of hoping, and this was in October,
20 we kind of talked about that helps us to scope and
21 to begin the drafting process for these proposed
22 rules and so after these consultations we're going

1 to gather everything, all of the comments, both
2 the oral and the written and everything that kind
3 of goes into the record. There may be one
4 additional listening session as well and then
5 we're going to take this back to the drawing board
6 and begin to incorporate all of this in
7 preparation for issuance of a final rule. So,
8 hopefully that answers your question. Obviously
9 if there are other more specific questions, always
10 please feel free to reach out to Maria Wiseman who
11 is the Senior Policy Advisor for the Climate and
12 the Environment in our office. She advises the
13 Assistant Secretary directly and she can be
14 reached by phone at 202-208-7227 or email at
15 maria.wiseman@bia.gov and her information is in
16 the chat and then, of course, you referenced
17 submitting written comments. We will be accepting
18 those and that information is also in the chat.

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

21 MS. ANDREW-MALTAIS: Good afternoon and
22 I just wanted to thank you again for this

1 opportunity and the work that you've put into
2 making changes and modifications and amendments to
3 these regulations. They are very well received
4 and long overdue. I just wanted to also note that
5 in response to the questions that you have in the
6 chat box that, yes, the revisions the trust
7 application more efficient and ways of being able
8 to streamline you've been incorporating in with
9 regard to date specific or timeframe specific
10 portions that make it so that we can actually
11 determine when we can expect decisions and/or
12 expect that we will have final approvals.

13 And the costs of the fee-to-trust
14 application is still rather concerning at this
15 point. If we can have more fleshing out of where
16 categorical exclusions would be able to be very
17 flexibly employed especially when we have no
18 change of use and particularly when we're looking
19 for protections of sacred sites, ceremonial sites
20 and other cultural resources because, again, part
21 of what the requirements of the environmental
22 assessments, environmental surveys as well as the

1 ictchnology component. We believe honestly that the
2 tribes are the best keepers of our own history and
3 oftentimes we're the ones that are feeding the
4 iconologist the information in order to get these
5 connections to the land and to be able to utilize
6 or employ our tribe's history with the
7 documentation of the tribe can provide versus
8 having to spend tens of thousands of dollars on
9 having somebody else tell our story would be
10 another way of reducing some of those costs.

11 The 120-day notice in question three is
12 great and land that is contiguous, being able to
13 have almost like a mandatory acquisition provision
14 put into contiguous land and land that is within
15 the boundaries because again, if the effort or the
16 exercise is to try to streamline the process,
17 reduce the labor burden as well as the cost
18 burden, those types of things as long as they fit
19 general criteria established by Bureau to be able
20 to fit into the contiguous or land within having
21 it worded the same as mandatory acquisition would
22 be certainly a way of streamlining and reducing

1 costs.

2 Having the flexibility to make the
3 determination by the preponderance of evidence
4 with regard to the definition of under federal
5 jurisdiction, really appreciate how the
6 incorporation of more and more a different concept
7 of what that information and documentation is, is
8 very well received and particularly for those
9 tribes that are east of the Mississippi that were
10 mainly impacted by the Carcieri decision because
11 oftentimes when the newly formed United States was
12 able to defer the costs of caring for the Native
13 people they employed having us being taken care of
14 by states or religious organizations that had been
15 doing this and forcing and mandating Christianity
16 on us. That was a way of avoiding the United
17 States taking responsibility for our communities
18 but also being able to be included by virtue of
19 identification in formal federal reports that have
20 come to our communities to visit us and report on
21 the status of us with basically a checkmark saying
22 that you don't have to worry about paying for

1 these Indians. These organizations are paying for
2 them is going to be very, very helpful for not
3 only us in our area, but also other tribes that
4 were not part of the IRA constitutional amendment
5 or accepting of the IRA and the constitutional
6 process.

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

1 comments, concerns and recommendations
2 incorporated into new regulations.

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

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

15 MS. ANDREW-MALTAIS: Excellent,
16 excellent.

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

20 MR. BEYER: Thank you. Good afternoon.
21 Good to hear such great comments today and
22 suggestions. I also took part in the Monday

1 morning session and it was a bit more crickets
2 during that session. I'm just going to build a
3 little bit on some of the comments that have
4 already been submitted by Chairwoman Andrews and
5 Representative White Eagle. Bear with me a little
6 bit as I go through all the papers laying here a
7 little bit but again I do like in 151.8b2 how it
8 has the 120 calendar day after issuance of that
9 complete or that notice of complete acquisition
10 package. What I'm a bit more concerned about is
11 in 151.8b1 where it says we will notify the
12 applicant in writing that the acquisition package
13 is complete. There's no time element to that.
14 That could also take 90 days or 120 days.
15 Wondering again or would suggest that a time
16 element be attached to that notification. It
17 shouldn't take long for the Bureau once they
18 receive that package to look through it and say,
19 yeah, this is complete whether that's 14 days or
20 30 days but something that would quickly alert
21 somebody that they're missing a document that
22 needs to be submitted.

1 And, again, you know, getting to that
2 point with the realty land description reviews or
3 the land description evaluation by the strike team
4 or all the other processes in place, and great again
5 to have that 120 calendar days on the end but
6 again, wondering if by the time a tribe actually
7 gets to that point will they have a complete
8 package, they've crosses all the Ts and dotted the
9 Is. Do we really need to take another 120 days?

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

1 And then there's also reference to
2 development of a Tribal consolidation plan.
3 Again, just under the question of do the draft
4 regulations question number four sufficiently
5 account for the range of fee-to-trust
6 applications. As I noted on Monday, they do not
7 include mandatory acquisitions at this point and
8 again, wondering if there are some efficiencies if
9 there is an secretarially approved land
10 acquisition plan within a Tribal consolidation
11 area if fee-to-trust at least within the
12 reservation could be considered a mandatory
13 acquisition.

14 And then again, to talk a little bit
15 about the comment made I believe by Chairwoman
16 Andrews to the point of environmental assessment
17 or EIS and perhaps the use of this categorical
18 exceptions, there appears to be a little bit of
19 conflict in 151.8.4i where it says an acquisition
20 package is not complete until the public review
21 period of a final EIS or where appropriate a final
22 EA is complete but yet under 151.15 it expands

1 that. The compliance could include an EIS, an EA,
2 a categorical exclusion or other documentation
3 that satisfies the requirements of NEPA so if
4 there's other opportunities besides an EA and an
5 EIS perhaps those should be added into 151.8.4i
6 where it right now just stands that it's not
7 complete until a public review of an EA and an
8 EIS. And that's all I have today. Thank you
9 again for your time.

10 MR. GARRIOTT: Thank you so much. I
11 really appreciate that. And also for attending
12 multiple sessions. Sometimes it's good to attend
13 one and hear what thoughts are and contemplate
14 kind of further comments so we always appreciate
15 that. Are there others who would like to make a
16 comment? Again, if you're participating by phone,
17 press star nine to use the raise hand function and
18 then star six to unmute yourself. We'll give it
19 another minute or two if there's anyone who wants
20 to gather their thoughts. And, again, this is the
21 third official consultation of planned four and I
22 believe the 23rd is the next official consultation

1 that we'll be having on these regulations. If
2 there are no further comments on the land into
3 trust proposed regulations we can move on to the
4 gaming portion of the consultation.

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

14 Let's go to the questions. Questions to
15 help us kick this portion off are one, do the
16 draft revisions increase certainty and clarity in
17 the Secretary's compact review process. Are there
18 additional ways to increase certainty and clarity?
19 Two, do the draft revisions provide sufficient
20 guidance to parties engaged in compact
21 negotiations. Are there ways to provide
22 additional guidance? Three, should the draft

1 revisions include provisions that facilitate or
2 prohibit the enforcement of state court orders
3 related to employee wage garnishment or patron
4 winnings? Four, should the draft revisions
5 include provisions that facilitate or prohibit
6 state court jurisdiction over the gaming facility
7 or gaming operations? Should this apply to all
8 claims or only certain types of claims?

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

22 And the same process as before and I see

1 that Chairman Tehassi Hill has his hand up.
2 Chairman.

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

19 As currently drafted Section 293.26
20 speaks in terms of Class III gaming regulated by
21 the state and not prohibited in the state, which
22 are concepts drawn from California v Cabazon. A

1 potential downside to including this provision is
2 that they may spark litigation regarding scope of
3 games that could lead to the Supreme Court
4 addressing the circuit's split on this issue.
5 Oneida doesn't believe that identifying things
6 other than exclusivity that may support revenue
7 sharing would be helpful nor would addressing the
8 enforcement of the state court order or state
9 jurisdiction. It is unclear how provisions
10 regarding statewide remote wagering or internet
11 wagering would comport with IGRA which limits
12 Class III gaming to a tribe's Indian lands, 25 USC
13 2710 D1. It would be helpful to an extent on the
14 Department views the legality of such provisions.
15 That's the end of my comments. Thank you. Oh,
16 you're muted again.

17 MR. GARRIOTT: Sorry about that. I keep
18 forgetting. Are there others who would like to
19 make a comment and also thank you, Chairman Hill.
20 And, again, as folks potentially gather themselves
21 for comment, we really are thankful for our staff
22 who've really taken some really in depth look and

1 analysis on trying to develop these regulations.
2 Our office of Indian Gaming has been instrumental
3 and then also a number of the counselors in our
4 office have really taken a lot of the heavy load
5 and analyzing and drafting the proposed
6 regulations and so I'm very grateful to them.

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

15 And then always one note, Assistant
16 Secretary Newland is always very intent on wanting
17 to make sure that we are participating at the
18 highest levels possible in our consultations and
19 he led the first two but today is a happy day.
20 It's the graduation for Haskell Indian Nation's
21 University and so he's attending to some other
22 duties that he has in that respect.

1 Seeing no hands or no other comments we
2 will conclude today's consultation. As always,
3 written comments may be submitted via writing
4 until 11:59 on June 30th and we will continue to
5 accept those and then we will have another
6 consultation later on, on Monday, May 23rd and
7 that will be from 1:00 p.m. to 4:00 p.m. Eastern
8 Time so with that we will conclude today's
9 consultation and again, just express gratitude to
10 all of you for participating and for submitting
11 comments today. Thank you. Have a good rest of
12 the day and weekend everyone.

13 (Whereupon, at 1:46 p.m., the
14 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