

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.

Monday, May 9, 2022

2:00 p.m. (ET)

1 PARTICIPANTS:

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Principal Deputy Assistant Secretary, Indian Affairs

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12 CRAIG ABRAHAMSON
Spokane Tribe

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14 CHERYL ANDREWS-MALTAIS
Chairwoman, Aquinnah Tribe

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16 WILL MICKLIN
Vice President, Central Council of the
Tlingit and Haida Indian Tribes of Alaska

17
18 KELLY DENNIS
Shinnecock Tribe

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20 PATRICIA MARKS
Peebles Kidder

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22 NICCI LEHTO
Federal Government Relations Specialist
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24 JON HARE
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26 LORETTA TUELL
Nez Perce Tribe

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28 ROBERT ODAWI PORTER
Capitol Hill Policy Group

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

2 (2:00 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 second 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
12 Tribal-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. This and each
16 subsequent consultation will last three hours.

17 Upcoming consultations are scheduled for
18 this Friday, May 13th beginning at 1:00 p.m.
19 Eastern Time and May 23rd beginning at 1:00 p.m.
20 Eastern Time. Registration links for these future
21 sessions are available at a link in the chats.
22 For optimum audio quality please ensure your

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

7 This session will be recorded. If you
8 do not consent to be recorded you may disconnect
9 at this time. Close captioning is available in
10 real time at the link in the chat. I will now
11 turn it over to the Assistant Secretary for Indian
12 Affairs Bryan Newland.

13 MR. NEWLAND: (Speaks Native Language)
14 Good afternoon everybody. Good morning to those
15 of you on the West Coast in Alaska time. My name
16 is Bryan Newland. I serve as the Assistant
17 Secretary for Indian Affairs here at the
18 Department of the Interior and I'm honored and
19 pleased to have you with us today for our
20 government-to-government consultation on two
21 different sets of regulations that the Department
22 has drafted. The first is a revision to the

1 Department's Land-into-Trust regulations at 25 CFR
2 Part 151 and the second set is the Department's
3 regulations governing the review of Tribal State
4 Class III Gaming Contacts at 25 CFR Part 293.

5 These regulations are not directly
6 connected to one another, but because we are aware
7 of the burden that we place upon tribes when we
8 engage in consultation and that you all are
9 engaging with a lot of agencies all the time on
10 consultation, we have tried to consolidate these
11 sessions for your convenience. So how we are
12 going to try to operate today's session is to
13 reserve the first half of our three hours to
14 receive comments on the land-into-trust
15 regulations, take a very brief break to allow
16 folks to refill their coffee or their water, and
17 then go into consultation on the Gaming Contact
18 regulations.

19 Unfortunately, I have to leave this
20 consultation session just before 3:00 p.m. so our
21 Principal Deputy Assistant Secretary Wizipan
22 Garriott will facilitate the conversation after

1 that, but before we begin we always want to make
2 sure that we're starting off in an appropriate way
3 and so to bless our meeting today and offer some
4 words of prayer we have invited Greg Abrahamson
5 from the Spokane Tribe. Mr. Abrahamson, it's
6 good to see you.

7 MR. ABRAHAMSON: Thank you, Bryan, and
8 thank you Tribal Leaders. Creator God, thank you
9 for this day. Thank you for all the Tribal
10 Leaders and all the people in the Department of
11 Interior that are working with the tribes to do
12 the tasks that we have before us to take care of
13 our tribal people and those that are not born yet
14 thereto to do our tasks and do a good job and work
15 in good consolidation with each other to be able
16 to work on the land issues because the land is so
17 important to our people here. Creator, thank you
18 for all the good stuff you've given us. Thank you
19 for our elders who we love and give us wisdom.
20 Thank you for our past and for the season who kept
21 the ground for us and who let us in this way that
22 we're able to do this job and to be able to set up

1 for the upcoming and for the ones that aren't born
2 yet and for the generations to come of them. We
3 are happy to be able to be amongst each other and
4 take good care and being together and do what's
5 right and with good intentions to get a good job
6 done for our people. We remain, amen.

7 MR. NEWLAND: Thank you so much for
8 sharing those words of prayer that get us started
9 and for being with us today. So we're going to --
10 as I mentioned we're going to begin by focusing
11 the discussion first on our land-into-trust
12 regulations so I'm going to walk through the
13 questions that we posed to all of you to frame the
14 conversation and then turn the floor over to
15 tribal leaders and tribal representatives after
16 that. We have got a brief PowerPoint to kind of
17 walk through that. I will pull it up now. Here
18 it is.

19 As we set forth in our Dear Tribal
20 Leader letter, we have undertaken these draft
21 regulations to improve the fee-to-trust process
22 and fulfill President Biden's commitment to make

1 the land-into-trust process easier for tribes to
2 navigate. And we have a link on the bottom for
3 those of you who want to follow along in the draft
4 regulations themselves. That's at the bottom of
5 your screen. We will leave it up for just one
6 minute longer before we switch to the next slide.
7 Let's go to the next slide please and we'll put
8 the link in the chat as well.

9 So we put forth several questions to you
10 in our Dear Tribal Leader letter and I just want
11 to reiterate those. These are intended to help
12 frame the discussion. They are not exclusive. We
13 know that folks have a lot of things that they
14 want to share, but the first question that we ask
15 is do the draft revisions make the fee-to-trust
16 application process more efficient? Are there
17 additional ways to make that process more
18 efficient? Question No. 2. Do the draft
19 revisions reduce the costs of the fee-to-trust
20 application process? Are there additional ways to
21 reduce costs? Question 3 is do the draft
22 revisions identify the information needed for a

1 complete fee-to-trust application after which the
2 Secretary will have 120 days to issue a decision.
3 Are there additional ways to increase certainty in
4 the fee-to-trust application process?

5 We also ask or put to you the draft
6 revisions proposed criteria for evaluating
7 applications involving land within the boundaries
8 of a reservation, land contiguous to the
9 boundaries of a reservation, land outside the
10 boundaries of a reservation, and land for a
11 tribe's initial acquisition. Do the draft
12 revisions sufficiently account for the range of
13 fee-to-trust applications? Next slide please.

14 Fifth, the draft revisions explain how the
15 Secretary will determine whether statutory
16 authority exists to acquire land-into-trust
17 including determinations whether a tribe was under
18 federal jurisdiction in 1934. Do these criteria
19 sufficiently explain how the Secretary will
20 evaluate that information? And the last question
21 we pose is whether the draft revisions
22 sufficiently consider the concerns of state and

1 local governments.

2 At this time we are going to open the
3 floor up. Again, I want to make sure that we are
4 prioritizing elected Tribal leaders and designated
5 Tribal representatives first. And we will simply
6 call on folks in the order they raise their hands.
7 To reiterate this is a government-to-government
8 consultation and is not intended to be open for
9 the media and so if you are a member of any press
10 outlet, we are going to ask that you disconnect at
11 this time. If you wish to speak you can raise the
12 raise my hand function at the bottom of your
13 screen on Zoom or if you are joining by phone you
14 can press *9 and that will identify you by your
15 phone number and then to un-mute yourself you can
16 press *6. So with that we will open the floor to
17 comments from Tribal leaders.

18 And while we wait for tribal leaders to
19 raise their hands, I will note that you can
20 provide written comments on these draft
21 regulations by midnight on Thursday, June 30th. You can
22 send those to consultation@bia.gov. Do we have any
22 Tribal leaders or representatives who wish to comment

1 on the land-into-trust regulations? We have Chairman
2 Cheryl Andrews-Maltais from Aquinnah.

3 **Aquinnah.**

4 MS. ANDREWS-MALTAIS: Good afternoon and
5 thank you so very much for this and I apologize
6 for getting on late and kind of missing out on
7 these. I've got COVID so I'm a little foggy. I
8 thought we were in June that's why I wasn't paying
9 too much attention these days. I wanted to thank
10 you for the opportunity to or for reviewing these
11 codes and providing I guess opportunities for some
12 revisions. As you know post Carcieri this has
13 been a real struggle for tribes and I haven't had
14 a chance to go through everything as closely as I
15 would like to, but just wanted to say in general
16 that anything that actually allows the Secretary
17 to really take into consideration a preponderance
18 of evidence that can be compiled by tribes to
19 demonstrate that there was a relationship although
20 the federal government did not either acknowledge
21 or apply the federal relationship is well
22 received.

1 In addition to that language that is in
2 people's, one of the settlement agreements and/or
3 agreements in relationships with the United States
4 and of past practices of accepting land-into-trust
5 is also something that truly must be taken into
6 account. Streamlining the process for any lands
7 that are contiguous to any tribe's reservation
8 lands should also be weighted very heavily as well
9 as ensuring that tribes have the opportunity to
10 have an initial reservation whether they have
11 establish that at the time of federal recognition
12 or they are establishing it at any point around
13 the time continuum as having that relationship
14 with the United States should also be part of the
15 considered deliberative process.

16 Having the ability to have the local or
17 regional offices weigh in on this is important.
18 However, as we know not all the regional offices
19 have the capacity to address this important step
20 independently and I believe that having the deemed
21 approved provisions in there are going to be very
22 beneficial to the tribes in order to make sure

1 that we're not -- that we don't lose out on the
2 opportunities as our applications languish within
3 the process.

4 Additionally, a lot of these
5 opportunities come with economic development
6 opportunities and when they are allowed to
7 languish as long as they have been able to, we
8 lose opportunities for to be able to develop economic
9 self-sufficiency because those windows of
10 opportunities do not stay open indefinitely. I
11 think it is going to be critical to ensure that
12 while states and local economies or governments
13 have the opportunity to weigh in that their voice
14 does not drown out the need and the obligation of
15 the United States to provide land basis for which
16 our tribes are necessary to start with our
17 re-establishments of our communities, our housing
18 and our economic development.

19 I will stop now and leave opportunity
20 for other tribal leaders to speak, but will
21 reserve the right to speak again if time permits.
22 Thank you so very much and I truly appreciate the

1 opportunity to weigh in and thank you for looking
2 at this situation and trying to figure out ways to
3 find some resolution while we wait on a
4 legislative fix to that horrendous decision by the
5 Supreme Court of the United States with regard to
6 the Carcieri decision. Thank you.

7 MR. NEWLAND: Thank you so much, Madam
8 Chair, and my prayers and best wishes to you that
9 you get through COVID without feeling too bad and
10 without any complications and you heal up and
11 continue to be a forceful advocate for your
12 people. Okay, at this time we don't have any other
13 Tribal leaders or representatives in the cue to
14 speak. A reminder that I will be dropping off
15 this consultation in about 40 minutes for a
16 conflict, but our Principal Deputy Assistant
17 Secretary Wizipan Garriott will continue the
18 discussion for the remainder of the day. On my
19 screen in order I've got Will Micklin and then Kelly
20 Dennis and then Patricia Marks. Will, we'll start
21 with you.

22 MR. MICKLIN: Thank you, Mr. Assistant

1 Secretary. (Speaks Native Language) My Indian name
2 is Yaan Yaan Eesh, Will Micklin in English. I'm
3 Vice President of the Executive Council for the
4 Central Council of the Tlingit and Haida Indian
5 Tribes of Alaska, Regional Tribes of Southeast
6 Alaska and I'm also CEO for the Ewiiapaayo Band
7 of Kumeyaay Indians, a California tribe.

8 We will supplement our prior written
9 comments, just a couple of observations here
10 Mr. Assistant Secretary. One is on the standard
11 for evaluation of need by which the Secretary
12 determines whether there is merit to the tribe's
13 application and we are just concerned that this
14 standard not narrow the opportunities for
15 acquisition particularly in the context of the
16 President's -- with the order on restoration of
17 tribal homelands. The one area that seems
18 apparent in this is no change in use, it's not
19 explicit among the criteria that would qualify as
20 a reasonable articulation of need and so will
21 propose some language in this, but we just want to
22 make sure that where tribes historically have had

1 emergent uses for lands acquired in trust that may
2 not be fully known at the time of application that
3 that not be a strike against the viability of their
4 application.

5 Secondly on the Carcieri standard, we
6 don't see in the provision where tribes that were
7 required to hold a vote on the IRA, but did not
8 hold a vote were nevertheless by that absence of
9 a vote determined to be under federal
10 recognition. That is an expressed standard in the IRA
11 that if a tribe was asked to or mandated to hold
12 the IRA vote, but did not. By that notice they
13 were recognized to be under federal recognition.
14 We don't see that, that may be intended in the
15 revisions, but we just wanted to bring attention
16 to that.

17 Third, the underlying policies with
18 regard to a review of environmental impacts or
19 potential environmental impacts rest squarely on
20 policy interpretations of the National
21 Environmental Policy Act and in the prior
22 Administration there was a marked departure from

1 the generally held and precedent established by
2 precedent interpretations of, in both impacts and
3 recently foreseeable impacts or recently foreseeable
4 future actions that precedent and existing
5 policy at least in the past would not permit
6 due to the highly speculative or indefinite
7 nature of those concerns. And yet it seemed to
8 dominate the prior four years of fee-to-trust
9 evaluations.

10 So there are significant policy
11 interpretations that underlie the proposed
12 revisions, that we would just want to make sure
13 that the Department holds to its historical
14 precedent and the accepted interpretation which it
15 would seem would need to be put back on the rails
16 from prior actions if we are to proceed as I think
17 we all acknowledge that that precedent which is
18 deep both from the IBIA as well as Secretary's
19 decisions in interpreting the environmental
20 standards should be I guess reaffirm as to their
21 application. I'm not quite sure how that would be
22 expressed in the part 151 regs if at all, but

1 a note to the Department that is significant
2 in determining the outcomes of applications, if not
3 dispositive.

4 And finally just that from the Alaska
5 tribe perspective, there continues to be effects
6 felt from the Sansonetti and opinion of 1993 which
7 is widely discredited and relied upon to an extent
8 beyond its weight and would best be dealt with
9 affirmatively by the Department. Rescind would
10 not be too strong a word, but it'd be continued
11 questions on it all the way from deference to the
12 subsequent court decisions that--that's--that superseded
13 the Sansonetti Opinion and laid cut-away its very
14 foundation is a significant issue if, as
15 expected, the Department is going to take action
16 on Alaska tribe fee-to-trust applications.

17 So I will hold there, Mr. Assistant
18 Secretary, and thank you for your time and
19 attention and we will of course supplement our
20 remarks with more detailed writing. We greatly
21 thank you for speaking to this important, extremely
22 important category of interest and look forward

1 to working with you. Thank you.

2 MR. NEWLAND: Thank you for your
3 comments, Will. I really appreciate that. I just
4 don't want to spend a lot of time responding to
5 folks in real time, but it just, two points very
6 very quickly. I want to make sure that I respond
7 to your comments with respect to your, your
8 concerns about not narrowing tribes' options
9 to request land-into-trust including for
10 no change in use of the lands. That is something
11 that's a priority for us. One of the things that
12 the existing regulations make it difficult to do
13 is to declare that purpose or a non-purpose if you
14 will for the trust acquisition or to identify that
15 the acquisition would be used for conservation or
16 protection of natural resources or cultural
17 resources or what have you and so one of our
18 policy objectives is to make sure that tribes have
19 the ability to acquire land-in-trust to simply
20 have protected homelands and that's why that was
21 included in this statement of policy. So we
22 wanted to make sure to include that and if you've

1 got suggested language for us that you think would
2 do the trick better, of course we would be happy
3 to see it and review it.

4 The second thing I just want to note
5 very quickly on the under federal jurisdiction
6 part of the draft regulations, I believe that we
7 have included expressly that one of the factors
8 for evaluation is a vote under Section 18 with the
9 IRA to ratify or reject the IRA which is
10 designated on the House (phonetic) List, but again
11 we are open to considering other draft language
12 for the regulations if it will better serve
13 the objective here. So I just wanted to respond
14 to those Will, but I appreciate your comments there.
15 They are well taken.

16 MR. MICKLIN: Thank you, Assistant
17 Secretary Newland. My one point on the no change
18 in use is tribes have worked proactively with
19 local government to assure them that the proposed
20 uses would not significantly impact local
21 government land use designations and their
22 consequences and in doing that no change in use to

1 us means retaining the current zoned designated
2 use by local government. So that may be as a matter
3 of wording is retaining the existing use under
4 local government jurisdiction when to transfer to
5 tribal jurisdiction would be maintained, maybe is a
6 more affirmative statement than the somewhat ambiguous
7 or wholly ambiguous no change in use. Thank you.

8 MR. NEWLAND: Thank you, Will, I
9 appreciate that. And thanks for taking time with
10 us today as well. I know all of you are
11 incredibly busy doing -- managing a million other
12 responsibilities so it means a lot that you're
13 here with us as well. I want to make sure that
14 our order of speakers continue. We have Kelly
15 Dennis. I think maybe from the Shinnecock tribe and
16 then Patricia Marks. That's our order of
17 speakers.

18 MS. DENNIS: Hello, Assistant Secretary,
19 yes, you guessed correctly from the Shinnecock Tribe.
20 Thank you. I'm sorry about earlier today. I also
21 have COVID so things are very fuzzy for me. And I
22 wish Chairwoman Andrews-Maltais from the Aquinnah

1 Wampanoag Tribe healing. I hear that she also has
2 it. I also want to echo all of her points.
3 They are absolutely the Shinnecock concerns as
4 well and also our Vice Chairman Randy King of the
5 Shinnecock Nation who spoke earlier. Our main
6 concerns are not restricted to them status and I
7 am happy to sit there.

8 And as a tribe that has limited
9 administrative capacity, I'm still trying to figure
10 out so much after receiving federal recognition in
11 2010, not having a whole lot of help from previous
12 administrations and we're so thankful for, you
13 know, this current administration trying to rectify
14 that and trying to figure out how to make things
15 easier or less of a burden for tribes. We just
16 hope that, you know, with these new regulations
17 there is that technical assistance available to
18 tribes and, you know, that we do have that
19 opportunity still to understand and to pursue
20 initial reservation with trust land as well as,
21 you know, getting housing together. We've run out
22 of space for housing on our restricted fee

1 territory so we really can't facilitate many new
2 allotments to tribe members, on our 800 acres that
3 we have for the tribe residential territory.

4 Also we note in the paper more and more,
5 there is a great non-profit landmark
6 land-into-trust that is helping to protect sacred
7 sites in and around the Shinnecock Hills. It's
8 become a huge effort where we're surrounded by the
9 most expensive real estate. And I've had Steven
10 Passing (phonetic) from Secretary Deb Haaland that
11 there would be emphasis on protecting sacred sites
12 and having that be part of land-into-trust
13 process which we appreciate so I'm not sure if
14 that's something that has been, you know, a focal
15 point for her, but you know the way that or the
16 process of getting land-into-trust for a specific
17 purposes is different and is something that we
18 definitely need to consider as part of the
19 land-into-trust process and also how it's done
20 discretionary land-into-trust versus mandatory
21 land-into-trust.

22 Sorry if I sound a little confused with

1 my sickness, but I just want to make sure with my
2 later comments that I will continue to work on
3 those comments. Thank you.

4 MR. NEWLAND: Thank you, Kelly, and
5 again I wish you a speedy recovery without a whole
6 lot of discomfort and complications. I wouldn't
7 wish this on anybody and I'm glad to hear from you
8 and I'm appreciative of your comments and I'm more
9 anxious to keep you and community members in our
10 prayers and just hang in there and hope you're
11 doing just fine. And thanks for sharing your
12 comments with us. And just to be explicit about
13 it on the land-into-trust process and objectives,
14 we do want to make sure that one of the objectives
15 in this reform effort is to make sure that this
16 process is available to tribes in a way that works
17 to protect sacred places and other -- and for
18 natural resource tribally led conservation to
19 simply have a protected homelands under tribal
20 governance. I want to make sure that we're being
21 unambiguous about that.

22 Our next speaker is Patricia Marks, and

1 we have nobody in the cue behind Ms. Marks.

2 MS. MARKS: Can you hear me?

3 MR. NEWLAND: Yes.

4 MS. MARKS: Thank you so much and my
5 voice says for a quick recovery to everyone who is
6 suffering from COVID or any other ailments at the
7 time. Bryan, I was thinking about the 151.3 proposal
8 that you put out and the one thing that strikes me
9 as missing is a reference to those lands which the
10 tribes have lost in recent years either due to an
11 allotment being turned over or there's some court
12 decision or otherwise because a big part of the
13 land acquisition policy has always been the
14 restoration of tribal lands that were lost through
15 federal processes.

16 Also you emphasize in here that when the
17 tribe owns an interest in the land, I'd like to
18 see, suggest that you consider expanding that to
19 when the tribe or a member of the tribe owns or
20 owned an interest in the land which would take
21 care of those allotment lands that were lost.
22 We've got a lot of tribes trying to reacquire

1 property and it would be great if the policy could
2 actually emphasize that as one of its objectives
3 is the actual return of tribal land. Thank you.

4 MR. NEWLAND: Thank you very much for
5 that. I appreciate your comments and your
6 substantive comments pointing us to these specific
7 regulatory sections. It is helpful for us in our
8 work. Thanks, Patty, it's good to hear from you.

9 Our next comment comes from Nicci Lehto?
10 Did I get that right?

11 MS. LEHTO: Yes, you did. Thank you. Can you
12 hear me?

13 MS. NEWLAND: Yes.

14 MS. LEHTO: Okay. (Speaks Native
15 Language) Good afternoon. My name is Nicci Lehto
16 and I'm a tribal member of and a Federal
17 Government Relations Specialist for the Prairie
18 Island Indian Community in MN. First, thank you to
19 Assistant Secretary Newland and to the Biden
20 Administration for your continued dedication to
21 tribal consultation and also consideration. It's
22 greatly appreciated.

1 My question is to ask is the Bureau of
2 Indian Affairs going to make transcriptions
3 of these consultations available in addition
4 sufficiently in advance of the written
5 comment deadlines that tribes can use them in
6 preparing comments and submission to these
7 important changes? That is my only question at
8 this time, but again I thank you for your time,
9 attention, and your continued work and all that you
10 are doing for tribal nations.

11 MR. NEWLAND: Thank you, Nicci, I
12 appreciate your kind words and your support and
13 your time today. I don't have an answer for you
14 on that question at the moment. We can try to
15 follow up with you and clarify the timeline. A
16 lot of times there are various factors that affect
17 how fast we get these transcripts together
18 including how many folks comment. So I will make
19 sure to work with our team and our contractors
20 here to get those out as quickly as possible.

21 MS. LEHTO: Thank you. I appreciate
22 that because there's a lot of information going

1 past it and I'm trying to keep notes as fast as
2 I can and it's just --

3 MR. NEWLAND: You and me both.

4 MS. LEHTO: It's hard to, yeah, kayak
5 them Niagara Falls. I would like to just be able,
6 to you know, even if it's a concise run down or
7 synopsis, that'd be really helpful. So thank you.

8 MS. NEWLAND: Thank you for that. All
9 right, Patty, is your hand still up? Did you
10 raise it again?

11 MS. MARKS: I'm sorry, it is not. I
12 will fix it.

13 MS. NEWLAND: Okay. With that we have
14 nobody in the cue to speak on the fee-to-trust
15 regulations. Again, we have several consultations
16 coming up. Another one on these topics this
17 coming Friday and then we have our final
18 consultation on this topic later this month. I
19 think the dates are in the chat, Monday, May 23rd
20 from 1:00 to 4:00 p.m. Eastern time. And then of
21 course, spoken and written comments all the way
22 until the end of June at our consultation website

1 address, consultation@bia.gov.

2 Are there any other Tribal leaders or
3 representatives who wish to comment on the draft
4 land-into-trust regulations at this time? Yes,
5 Chairwoman Andres Matais.

6 MS. ANDRES-MATAIS: First, thank you
7 everybody for all your well wishes. I truly
8 appreciate it and everybody is like, you know,
9 when you're done get back to resting so yes, I
10 will. I just wondered whether or not there was
11 any consideration for a truly expedited process
12 where it speaks to almost the non change of use,
13 but also for donations from individuals or
14 entities that we not be part of the federal
15 system. It is rare that we get donations, but
16 every so often people's hearts soften and they
17 realize that they have been the unlawful or
18 unfair, but mainly unlawful stewards or owners of
19 Tribal lands. And particularly when they do
20 contain ceremonial or sacred sites on them whether
21 or not we are entertaining any sort of truly
22 expedited process through which a person or

1 organization can donate those types of lands to
2 the tribe in order to ensure that there is a
3 continuation of the protections that have been in
4 place whether formally or informally and that it
5 would fall underneath the non-change of use and
6 deemed approved and without having to stay the
7 requirements of such expensive environmental
8 studies and processes that go on through other
9 types of land acquisition that may be for other
10 purposes except for the preservation or agree to
11 preservation through a donation of land.

12 MR. NEWLAND: There is a lot packed into
13 that question, but thank you. Just briefly there
14 is -- I don't want to call it an expedited pathway
15 because every application is different, but there
16 is certainly I think a taxonomy in this draft in
17 terms of which ones are going to get the clearest
18 or fastest path toward a decision. Of course on
19 reservation acquisitions are far easier from a
20 legal standpoint to move because, you know,
21 they're within an existing reservation and the
22 tribe's legal interest in consolidating its

1 jurisdiction is at its highest. Of course, the
2 contiguous and the initial trust acquisition ones
3 are right there. And then the off-reservation
4 ones I think will continue to receive a little
5 more scrutiny. Of course, there's, you know, there
6 are variations among all of these, but it would be
7 very difficult for us to declare a purpose as
8 receiving expedited treatment. That's not to say
9 that we can't or we won't. We would be happy to
10 consider draft language or recommendations on how
11 to do that. There are just many factors that go
12 into how much standing other parties have and what
13 their interests are in a particular application.

14 MS. ANDRES-MATAIS: Thank you so much.

15 MR. NEWLAND: Thank you. Our next
16 commenter is Jon Hare. I hope I pronounced that
17 right from Stillaguamish.

18 MR. HARE: Yes, can you hear me?

19 MR. NEWLAND: You betcha.

20 MR HARE: All right, give me all your time.

21 I kind of have, you know the new regulations. I've been
22 doing this for about 25 years by accident. I don't

1 know, it's kind of separate from this, but the
2 TAAMS process, the new realty TAAMS, which
3 know is a great step-by-step nationwide tracking
4 and everybody does the same stuff, but what I
5 found as far as time, the problem I see, is it
6 only allows the realty person to go one step at a
7 time. Where before you can be doing stuff one
8 through nine all at the same time, but you can't go
9 beyond that you know into deep phase, or anything.
10 I'm almost thinking that's a simple-simple as an IT
11 person allowing that to occur because one of my
12 biggest problems is just step three certificate of
13 inspections requires a BIA official to come out to
14 the property and it can take to or three months and
15 it's just, you know, a simple pretty much for in the
16 properties there and there's no encroachments but
17 that's something more I don't know. I never know
18 who to address that to. But that certainly as far
19 as efficiency would speed process up. I don't see
20 how things could go faster with TAAMS the way it's
21 set up.

22 Second thing, one of the things that's

1 not in the proposed rules, the definition of
2 interested parties. We have one one, you can
3 have one citizen that has become an interested
4 party and they're treated as a governor and
5 mayor and they can appeal with no money, no time.
6 And ultimately two years later, the IBIA will
7 go, this person did not have standing to sue.
8 So I was for me, if I just think that's kind of
9 a check off thing results of we're talking time
10 and delays and some tribes have problems and some
11 don't with citizens, but it seems like that that would
12 really -- if they could just bring that position
13 up to speed I think that's just fair. Every
14 recognition has a different standard where you kind of
15 have to demonstration why you are interested and
16 why you some interest in this property, but
17 ultimately if they do that, BIA will deny them on
18 standing, but that could take two to three years.
19 And that's about some other comments too.

20 The other thing that I saw in the review
21 regs is the criteria which are very kind of
22 expanded on what we would call self-determination,

1 you know, cultural or treaty things, but I don't
2 know if it's a mistake, but I'm correct, but in
3 the reservation section they seem to eliminate
4 the words "Harvey" (phonetic) and "economic" and
5 it's like that can be used against us if it's not
6 (inaudible) or economical regulation. I don't
7 know if that's by mistake or if I misread it.
8 Anyway, those are my comments and some things I
9 thought I would get up to you. Some of it is
10 related to this, some of it's not until I process
11 it.

12 MR. NEWLAND: Thank you, Jon. So there
13 are a number of things that we can do. Right now
14 the average time to process a single tribal
15 application for land-into-trust is approximately
16 965 days. That's almost three full years to
17 resolve every fee-to-trust application. Some of
18 that is because of policy, some of that is because
19 of capacity within the BIA and some of that are
20 procedures. And so we are not taking an approach
21 in terms of like choosing one path to get that
22 number down over the other. We are trying to make

1 sure that the processing of applications including
2 our use of TAAMS, our partnership with tribes that
3 have contracted realty functions. We are trying
4 to improve that. The survey property description
5 components are areas that, you know, the mechanics
6 of land-into-trust we're trying to make sure that
7 we are taking steps to improve those and of course
8 our regulations are the policy component as well.
9 And we are trying to get that number from 965 days
10 down to less than a year. That's our target and
11 that's an average. Some applications again are
12 more complex and, you know, have a lot of factors
13 for us to consider, but a simple acquisition of
14 land within an existing reservations just for
15 example without any environmental issues, without
16 any change in use shouldn't take us 965 days to
17 process that. So we're trying to address all of
18 those components.

19 With respect to your comment, Jon, about
20 the draft regulations eliminating some of these
21 purposes; I hear your concerns. They're well
22 taken. We are trying to drive away from the BIA

1 making judgments about whether a tribe needs
2 additional land and substituting our judgment for
3 the tribes and, you know, trying to substitute our
4 judgment on the validity of the purpose, but
5 having been on the other side of this equation, I
6 also know sometimes, you know, that sort of thing
7 can get used against tribes as well and so your
8 comments are well taken and we'll make sure that
9 that's why we're doing this consultation process.
10 And we'll make sure that we take them back to the
11 working table as we continue to move forward here.
12 And thank you for your comments here.

13 MR. HARE: Thank you.

14 MR. NEWLAND: We did get a comment in
15 the chat from Jordan Shaper. I hope I'm
16 pronouncing your name properly, Jordan, about
17 clarifying the terms in the various -- the terms
18 "great" and "greatest" in the different parts of
19 how the Secretary will evaluate applications.
20 Again, we can attempt to do that as we go forward.
21 One of the things that we don't have available to
22 us in this process yet is a preamble to the

1 regulations which can help clarify terms that are
2 ambiguous and provide guidance to folks and the
3 purpose behind regulations and of course when we
4 do hear from folks like you, Jordan, that there is
5 ambiguity or lack of clarity, we can give those a
6 closer look and consider other language to clarify
7 that. And of course we welcome draft language
8 from folks if you've got a better way for us to
9 include that.

10 So I'm going to hand off the mic cue
11 that I've got to Patty Marks and Will Micklin
12 again. I do want to pause very briefly for two
13 things. I just want to make sure that we're
14 inviting folks who haven't had a chance to comment
15 yet to raise their hands first. I'm happy to go
16 back to you Patty and Will for subsequent
17 comments. And second is I am going to turn the
18 hosting duties over to our Principal Deputy
19 Assistant Secretary Wizipan Garriott who is here
20 today on screen and he will take us home in
21 today's consultation. We will be taking a brief
22 break at about the 90 minute mark and then

1 of NCAI, that's something we're considering. Of
2 course that's NCAI's event and Deputy Assistant
3 Secretary Kathryn Isom-Clause informs me that we
4 are looking at a listening session at NCAI on
5 Monday, June 13th that afternoon so we haven't --
6 we'll nail down those details, but of course we
7 want to make sure we have opportunities to hear
8 from folks in person as well. With that I will
9 thank you guys for your time today. It's great to
10 see and hear from many of you. Many thanks for
11 jumping in.

12 MR. GARRIOTT: Thank you, Assistant
13 Secretary Newland. I will take over the hosting
14 duties for the rest of the consultation and we
15 will continue with Patty and Will who have their
16 hands back up so we will go to Patty.

17 MS. MARKS: Can you hear me, sir?

18 MR. GARRIOTT: Yes.

19 MS. MARKS: Excellent. Just so I can
20 bring to your attention, under Section 151.8, that
21 is now under subsection (A) (3) requiring a map.
22 That's not currently required under the

1 regulations. What the current regulations require
2 trying to do is to in their narrative describe the
3 distance that the property is located from a
4 reservation boundary and the distance that it's
5 located from a state boundary. I'm a little
6 concerned with the idea of a map not being clearly
7 defined as something that can potentially be
8 challenged and also be quite expensive. Some
9 tribes have formal and informal map making
10 capability and others don't. And the same is true
11 with the surveys. We've had parcels submitted
12 stated tracts where the Bureau of Indian Affairs
13 has decided to take two parcels together and in
14 that point the survey requirement wouldn't match
15 and neither would the mapping requirement. So
16 just to bring to your attention that thought and
17 ask you to look at specifically what the Bureau's
18 desire is here.

19 One of the big issues that's delayed a
20 lot of applications in California was the absence
21 of having someone within the Bureau that was
22 capable of redoing the maps for the TAAMS process.

1 So I see where you're going, but it is very
2 ambiguous and I think could be most costly. Also
3 clarifying whether existing applications would
4 have to be amended to meet these new requirements
5 and whether they would be sufficient at the time
6 based on the regulations at the time that they
7 were submitted. So thank you very much.

8 MR. GARRIOTT: Thank you, Patty. Those
9 are helpful comments. Will Micklin.

10 MR. MICKLIN: Thank you, Mr. Garriott.
11 Just to follow up with a couple of questions. One
12 is to emphasize the prior comments about the
13 potential costly delays of the phase 1 inspection
14 or inventory of a parcel is certainly one and pair
15 that with the title commitment requirement which
16 is fairly costly, but both have an expiration date
17 and with the average of the median time to
18 complete an application before a decision,
19 generally those actions can time out and need to
20 be renewed at significant expense to the tribe and
21 burden an effort to the BIA. So that's a
22 consideration that is significant.

1 The time and application generally rests
2 in two areas. One is in its preparation and
3 trying to avoid expiration of required activities
4 or actions within that time period is I think key.
5 And then the other significant delay is after
6 decision. So I'm looking at 151.16. It provides
7 for conveyance title essentially after the
8 requirements of 13 and 14 are met and then on
9 expiration of the time for filing a notice of
10 appeal or upon exhaustion of the administrative
11 remedies under Part 2. We commented on Part 2 and
12 this has a significant effect on the cost and
13 therefore the viability of applications in that if
14 the application is -- decision is suspended during
15 the exhaustion of administrative appeal, it has a
16 real and deleterious effect.

17 There are opportunities under two of
18 them, mostly under 25 CFR part 2, but up under 43
19 CFR, that if applied wouldn't be a significant
20 help to tribal applicants and that is both in the
21 requiring of posting of a bond by an applicant and
22 the determination that an appeal has merit and has

1 a reasonable chance of succeeding and finally of
2 standing. And standing is important in that the
3 Bureau, the Department, and the IBIA have
4 historically spread out their arms and said anyone
5 that appeals has an interest and we disagree,
6 particularly if you look at 43 CFR. You have to
7 have an actual interest and have appreciable
8 subject to harm and of course I already mentioned
9 a bond requirement.

10 If those were applied, there would be a
11 significant reduction in the length of time during
12 the exhaustion of appeal and certainly an
13 opportunity for a full Pateck (phonetic) fix by
14 the Department that it would provide that these
15 conveyances not be suspended during appeal and if
16 there's a need to make title revocable if for a
17 contrary outcomes that find against the
18 Department, then the tribal acquisition, then that
19 can be provided for, but those I believe would be
20 rare and the regulation should be fashioned for
21 what is the intended purpose of both 25 CFR part 2
22 and 43 CFR which should be uniformly applied

1 because of the nature of the appeal. It's an
2 appeal and should be conducted according to the
3 standard of conduct.

4 And finally, I'll just say the title
5 consolidation area, it's an interesting contrast.
6 I am not aware in 30 years of practice that it's
7 actually been invoked to any degree and wondering
8 if the Department has plans to actually implement
9 the tribal consolidation area as a means for
10 reducing the time for fee-to-trust applications
11 done for the process. Thank you very much.

12 MR. GARRIOTT: Thank you, appreciate
13 that. As your Assistant Secretary said, we are
14 kind of taking a look at all of our options to
15 make this process work as smoothly as they can.
16 So we are always appreciative of comments and
17 ideas and use of authority and powers that may not
18 have been utilized so much in the past so we are
19 always looking for help in how to do that.

20 For those who are participating via
21 phone, push *9 to raise your hand and then *6 to
22 un-mute yourself if you're wanting to make a

1 comment and you are participating by phone. Are
2 there any other comments on this section of the
3 fee-to-trust section in today's consultation?

4 We'll give it another minute or so of
5 course. Submitted written comments are always
6 welcome and then (inaudible) any comments that are
7 submitted to the chat also become a part of the
8 record. Patty, is that a legacy hand? Were your
9 hands up? They might be a legacy hand.

10 Hearing none, let's go ahead and pull up
11 the PowerPoint for the second part of the
12 consultation. At this time we will move on to the
13 second area of today's consultation which is Part
14 293. And of course one of the goals of this is to
15 really think about, you know, how we can provide
16 greater clarity, you know, around the review and
17 the evaluation of gaming compacts (phonetic) and
18 so with that we have some specific questions to
19 help guide us and as mentioned before these are
20 guiding questions, but comments are not limited to
21 these questions.

22 One, do the draft revisions increase

1 certainty and clarity in the Secretary's compact
2 of due process? Are there additional ways to
3 increase certainty and clarity?

4 Two, do the draft revisions provide
5 sufficient guidance to parties engaged in compact
6 negotiations? Are there ways to provide
7 additional guidance?

8 Question 3: Should the draft revisions
9 include provisions that facilitate or prohibit the
10 enforcement of state court orders related to
11 employee wage garnishment of future winnings.

12 Question 4: Should the draft revisions
13 include provisions that facilitate or prohibit
14 state court jurisdiction over the gaming facility
15 or gaming operation? Should this apply to all
16 claims or only certain types of claims? Again, as
17 we have been doing --

18 Question 5: Should the draft revisions
19 include provisions that identify types of
20 meaningful concessions that a tribe may request or
21 may state other than protection from state
22 licensed commercial gaming, i.e., exclusivity for

1 which a tribe could make a revenue sharing
2 payment. How would such provision effect compact
3 negotiations?

4 Question 6: Should the draft revisions
5 include provisions to facilitate statewide remote
6 wagering or Internet gaming?

7 Question 7: Should the draft revisions
8 include provisions that offer or require the
9 submission of electronic records?

10 Stated previously, use the raised hand
11 function and as always we want to hear (phonetic)
12 comments first from our Tribal leaders and those
13 who have been designate by their Tribal leader to
14 speak on behalf of the tribe and so we will open
15 it up.

16 And I see Mr. Robert Porter.

17 MR. PORTER: Good afternoon, Mr.
18 Principal Deputy Assistant Secretary. Hope all is
19 well. I've got a few questions or really comments
20 as it relates to the regulations, the draft
21 regulations representing the Peruvian Padawataby
22 (phonetic) nation. The overall comments in

1 relation to these improvements are excellent.
2 They cover a lot of different areas for which over
3 the years many of us who have been observing how
4 gaming regulation has occurred, you know, have
5 just had some holes and some issues that were
6 unanticipated and so overall they're really
7 excellent. We look forward to commenting in
8 writing on a number of these as well.

9 A couple of comments in relation to -- I
10 see a little bit of further work and this relates
11 to the definition of an amendment that's being
12 proposed. The language under proposed 293.4
13 appropriately expands and I think is a really good
14 way of defining what an amendment is in terms of
15 covering other agreements, dispute resolution,
16 settlement agreements, and arbitration decisions
17 because as we have seen that has had the effect of
18 changing the underlying economics and legal
19 relationship of compacting parties as time has
20 gone on. As it relates to acknowledging that each
21 of the two parties to the compact has the right to
22 submit, you know, for Interior review for what an

1 amendment is -- that's excellent improvement to
2 the existing regulations. I would invite a
3 further refinement of the language as it relates
4 to 293.6 because 293.6 really just restates the
5 same language, but it doesn't really tie back to
6 the proposed change in 293.4(a) and if you read
7 that in relation to the definition of amendment
8 that's being proposed that are 293.2(a) where
9 amendment means a change, it might be the place in
10 that section to track the same language that's
11 being put forth in 293.4(a) in terms of what that
12 change means. I think I know what it means and I
13 think 9 out of 10 people think, you know, would
14 agree with me, but the worst case scenario is some
15 judge somewhere doesn't know what it means and I
16 think the language could be a little tighter there
17 in terms of tying those sections together.

18 The second point relates to 293.190
19 assessed costs, issue with the states. The
20 language speaks to including the opportunity for
21 recovery of actual and reasonable costs and if the
22 state is unable to show the actual expenses, then

1 that could be evidence of bad faith. One of the
2 problems is that -- what's the enforceability of
3 that if you will of what's actual and reasonable?
4 Ideally the parties inside their compact would
5 have some ability to define that more carefully,
6 but I think from a regulatory perspective, you
7 know, the way in which states I think can
8 definitely take advantage of that provision
9 because an actual expense could be actual, but it
10 could be pretty excessive and not really
11 defensible in which the check and balance from a
12 regulatory perspective to ensure those costs are
13 reasonable and not just an opportunity for the
14 state to sort of back door some kind of revenue
15 sharing if you will in terms of that underlying
16 compact, but overall those are just a couple of
17 points that came out. I will study this more
18 carefully and get you more comments in writing,
19 but thanks again to you and your staff for a
20 really great job in putting these draft comments
21 and regulations together.

22 MR. GARRIOTT: Thank you. I appreciate

1 that and we're really looking forward to the
2 written comments as well. Bryan takes notes as
3 best he can, but we know the written comments will
4 be on point. Mr. Will Micklin.

5 MR. MICKLIN: Thank you, Mr. Garriott.
6 Will Micklin and here I'm speaking for the Tlingit
7 and Haida Indians. So of course from our detailed
8 written comments, there are a couple of
9 observations. One is that and this is a question
10 and sense that the Department's need to evaluate
11 contacts presented to them, many tribes are not in
12 a position to negotiate effectively with the state
13 and the governor and of course ratification by the
14 legislature if required. So it is an uneven
15 contest in that regard and so the question arises
16 of how to protect tribe's interest in this contest
17 of parties with uneven weight in trying to achieve
18 their goals.

19 One of those areas where this manifests
20 is in the state's determination to require
21 intergovernmental agreements between a tribe and
22 subdivisions of state government, local

1 government, whether it's county or municipality or
2 what have you. The apparent trend is states
3 insist that tribes have an agreement with the
4 local government and most of those agreements
5 either imply or require a transfer of funds,
6 payments which we see as a tax on the tribal
7 enterprise.

8 And so it's difficult for tribes to
9 contest, particularly tribes that don't have an
10 initial gaming enterprise or have a small to
11 medium size gaming enterprise difficult to contest
12 the power of the state in this regard so terms
13 that are submitted in compacts that they have
14 these agreements and I think you are aware doesn't
15 necessarily mean that tribes agree that this is
16 just or accorded by a (inaudible), but it is an
17 imposition of the power and will of the state to
18 provide for such agreements.

19 This is along with the second
20 predominant category is the definition of projects
21 and what constitutes the gaming enterprise and
22 therefore subject to these agreements and the more

1 there is the more control that they have and the
2 more likely there could be an intergovernmental
3 agreement and a transfer of payments from tribe to
4 local government. So those are extremely
5 important, but again the contest of wills and
6 weight between tribes and states is difficult for
7 many tribes.

8 The imposition of state law, I think we
9 had better success with that and it is addressed
10 in any revision so we appreciate that. The states
11 have a penchant now of requiring Indian lands be
12 identified not just in provisions of the compact,
13 but also a tendency with maps and as you know the
14 Department determines what Indian lands are, not
15 the compact, not the governor, not the legislature
16 so it is not a material provision of compacts and
17 yet it is a mandatory provision which we think is
18 a misplaced priority and not achievable.

19 So there again my major concerns and yet
20 when tribes submit a compact it is often a long
21 process in negotiation and the tribal interests
22 are harmed by continued delay and not earning the

1 revenues that it could earn if in fact the compact
2 were approved and the enterprise were established.
3 So there you have where tribes can manage to agree
4 to presented to the Department and the question of
5 how the Department can best agree with the
6 government in either being approved by not taking
7 action or affirmatively approving the compact when
8 there are questionable provisions in it and yet
9 the tribe has agreed to it because in many cases
10 it must to protect its interests.

11 Our recommendation is that there be
12 specific provisions in the regulation that speak
13 to the prohibition of taxation through mandated
14 intergovernmental agreements which would be
15 helpful in that contest of unequal parties to a
16 negotiation and at least the threat of that which
17 would be definitive if litigated even though
18 tribes in many instances are not in a position to
19 litigate, but the threat of that would be helpful
20 in moderating the appetite of the state in
21 asserting these intergovernmental agreements which
22 come at great cost to tribes and the environmental

1 provisions they apply to ever more -- ever larger
2 definitions of what a project is that come under
3 the environmental scrutiny and the
4 intergovernmental agreements.

5 Thank you for the opportunity to comment
6 and we look forward to working with your team,
7 thank you.

8 MR. GARRIOTT: Thank you so much, Will.
9 We appreciate that. Are there other comments from
10 others? Then if folks want some more information,
11 we will continue to post links in the chat that
12 folks can look to. And again written comments are
13 due June 30th and those can be submitted to
14 consultation@bia.gov; again consultation@bia.gov.

15 Any further comments? We'll wait a
16 minute or so. Okay, just a reminder, we have had
17 two consultations today and we'll have another
18 consultation on the same subject on Friday so if
19 you didn't get a chance to say anything today or
20 you wanted to comment again or reiterate or
21 further clarify any comments you have provided,
22 there will be several other opportunities to do

1 so.

2 And as mentioned another listening
3 session is being contemplated so stay tuned for
4 more information there. And again written
5 comments are due June 30th so we will -- seeing no
6 other hands, we will conclude today's consultation
7 and I really want to just express gratitude for
8 all of our various Tribal leaders who participated
9 today and for everyone representing tribes and
10 working with tribes for providing comments and
11 then also to our staff who have worked tirelessly
12 to put these together and to coordinate everything
13 as well as our contractor who organized and
14 provided all the technical support for today's
15 consultation. So with that we will conclude and
16 hope that everyone has an excellent and productive
17 week. Thank you.

18 (Whereupon, at 3:20 p.m., the
19 PROCEEDINGS were adjourned.)

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CERTIFICATE OF NOTARY PUBLIC

DISTRICT OF COLUMBIA

I, Mark Mahoney, 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, in and for the District of Columbia

My Commission Expires: May 31, 2022