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)
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MS. WILBERT: Thank you all for your patience. You have now been placed into the consultation session. This is the second 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 each subsequent consultation will last three hours.

Upcoming consultations are scheduled for this Friday, May 13th beginning at 1:00 p.m. Eastern Time and May 23rd beginning at 1:00 p.m. Eastern Time. Registration links for these future sessions are available at a link in the chats.

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 lower button next to your name
and choose rename.

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

MR. NEWLAND: (Speaks Native Language)

Good afternoon everybody. Good morning to those
of you on the West Coast in Alaska time. My name
is Bryan Newland. I serve as the Assistant
Secretary for Indian Affairs here at the
Department of the Interior and I'm honored and
pleased to have you with us today for our
government-to-government consultation on two
different sets of regulations that the Department
has drafted. The first is a revision to the
Department's Land-into-Trust regulations at 25 CFR Part 151 and the second set is the Department's regulations governing the review of Tribal State Class III Gaming Contacts at 25 CFR Part 293.

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

Unfortunately, I have to leave this consultation session just before 3:00 p.m. so our Principal Deputy Assistant Secretary Wizipan Garriott will facilitate the conversation after
that, but before we begin we always want to make
sure that we're starting off in an appropriate way
and so to bless our meeting today and offer some
words of prayer we have invited Greg Abrahamson
from the Spokane Tribe. Mr. Abrahamson, it's
good to see you.

MR. ABRAHAMSON: Thank you, Bryan, and
thank you Tribal Leaders. Creator God, thank you
for this day. Thank you for all the Tribal
Leaders and all the people in the Department of
Interior that are working with the tribes to do
the tasks that we have before us to take care of
our tribal people and those that are not born yet
thereto to do our tasks and do a good job and work
in good consolidation with each other to be able
to work on the land issues because the land is so
important to our people here. Creator, thank you
for all the good stuff you've given us. Thank you
for our elders who we love and give us wisdom.
Thank you for our past and for the season who kept
the ground for us and who let us in this way that
we're able to do this job and to be able to set up
for the upcoming and for the ones that aren't born yet and for the generations to come of them. We are happy to be able to be amongst each other and take good care and being together and do what's right and with good intentions to get a good job done for our people. We remain, amen.

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

As we set forth in our Dear Tribal Leader letter, we have undertaken these draft regulations to improve the fee-to-trust process and fulfill President Biden's commitment to make
the land-into-trust process easier for tribes to navigate. And we have a link on the bottom for those of you who want to follow along in the draft regulations themselves. That's at the bottom of your screen. We will leave it up for just one minute longer before we switch to the next slide. Let's go to the next slide please and we'll put the link in the chat as well.

So we put forth several questions to you in our Dear Tribal Leader letter and I just want to reiterate those. These are intended to help frame the discussion. They are not exclusive. We know that folks have a lot of things that they want to share, but the first question that we ask is do the draft revisions make the fee-to-trust application process more efficient? Are there additional ways to make that process more efficient? Question No. 2. Do the draft revisions reduce the costs of the fee-to-trust application process? Are there additional ways to reduce costs? Question 3 is do 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?

We also ask or put to you the draft
revisions proposed 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 a
tribe's initial acquisition. Do the draft
revisions sufficiently account for the range of
fee-to-trust applications? Next slide please.

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

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

And while we wait for tribal leaders to raise their hands, I will note that you can provide written comments on these draft regulations by midnight on Thursday, June 30th. You can send those to consultation@bia.gov. Do we have any Tribal leaders or representatives who wish to comment
on the land-into-trust regulations? We have Chairman Cheryl Andrews-Maltais from Aquinnah.

Aquinnah.

MS. ANDREWS-MALTAIS: Good afternoon and thank you so very much for this and I apologize for getting on late and kind of missing out on these. I've got COVID so I'm a little foggy. I thought we were in June that's why I wasn't paying too much attention these days. I wanted to thank you for the opportunity to or for reviewing these codes and providing I guess opportunities for some revisions. As you know post Carcieri this has been a real struggle for tribes and I haven't had a chance to go through everything as closely as I would like to, but just wanted to say in general that anything that actually allows the Secretary to really take into consideration a preponderance of evidence that can be compiled by tribes to demonstrate that there was a relationship although the federal government did not either acknowledge or apply the federal relationship is well received.
In addition to that language that is in people's, one of the settlement agreements and/or agreements in relationships with the United States and of past practices of accepting land-into-trust is also something that truly must be taken into account. Streamlining the process for any lands that are contiguous to any tribe's reservation lands should also be weighted very heavily as well as ensuring that tribes have the opportunity to have an initial reservation whether they have establish that at the time of federal recognition or they are establishing it at any point around the time continuum as having that relationship with the United States should also be part of the considered deliberative process.

Having the ability to have the local or regional offices weigh in on this is important. However, as we know not all the regional offices have the capacity to address this important step independently and I believe that having the deemed approved provisions in there are going to be very beneficial to the tribes in order to make sure
that we're not -- that we don't lose out on the opportunities as our applications languish within the process.

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

I will stop now and leave opportunity for other tribal leaders to speak, but will reserve the right to speak again if time permits. Thank you so very much and I truly appreciate the
opportunity to weigh in and thank you for looking
at this situation and trying to figure out ways to
find some resolution while we wait on a
legislative fix to that horrendous decision by the
Supreme Court of the United States with regard to
the Carcieri decision. Thank you.

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

MR. MICKLIN: Thank you, Mr. Assistant
Secretary. (Speaks Native Language) My Indian name is Yaan Yaan Eesh, Will Micklin in English. I'm Vice President of the Executive Council for the Central Council of the Tlingit and Haida Indian Tribes of Alaska, Regional Tribes of Southeast Alaska and I'm also CEO for the Ewiaapaayo Band of Kumeyaay Indians, a California tribe.

We will supplement our prior written comments, just a couple of observations here. Mr. Assistant Secretary. One is on the standard for evaluation of need by which the Secretary determines whether there is merit to the tribe's application and we are just concerned that this standard not narrow the opportunities for acquisition particularly in the context of the President's -- with the order on restoration of tribal homelands. The one area that seems apparent in this is no change in use, it's not explicit among the criteria that would qualify as a reasonable articulation of need and so will propose some language in this, but we just want to make sure that where tribes historically have had
emergent uses for lands acquired in trust that may
not be fully known at the time of application that
that not be a strike against the viability of their
application.

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

Third, the underlying policies with
regard to a review of environmental impacts or
potential environmental impacts rest squarely on
policy interpretations of the National
Environmental Policy Act and in the prior
Administration there was a marked departure from
the generally held and precedent established by precedent interpretations of, in both impacts and recently foreseeable impacts or recently foreseeable future actions that precedent and existing policy at least in the past would not permit due to the highly speculative or indefinite nature of those concerns. And yet it seemed to dominate the prior four years of fee-to-trust evaluations.

So there are significant policy interpretations that underlie the proposed revisions, that we would just want to make sure that the Department holds to its historical precedent and the accepted interpretation which it would seem would need to be put back on the rails from prior actions if we are to proceed as I think we all acknowledge that that precedent which is deep both from the IBIA as well as Secretary's decisions in interpreting the environmental standards should be I guess reaffirm as to their application. I'm not quite sure how that would be expressed in the part 151 regs if at all, but
a note to the Department that is significant
in determining the outcomes of applications, if not
dispositive.

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

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

MR. NEWLAND: Thank you for your comments, Will. I really appreciate that. I just don’t want to spend a lot of time responding to folks in real time, but it just, two points very quickly. I want to make sure that I respond to your comments with respect to your, your concerns about not narrowing tribes' options to request land-into-trust including for no change in use of the lands. That is something that's a priority for us. One of the things that the existing regulations make it difficult to do is to declare that purpose or a non-purpose if you will for the trust acquisition or to identify that the acquisition would be used for conservation or protection of natural resources or cultural resources or what have you and so one of our policy objectives is to make sure that tribes have the ability to acquire land-in-trust to simply have protected homelands and that's why that was included in this statement of policy. So we wanted to make sure to include that and if you've
got suggested language for us that you think would
do the trick better, of course we would be happy
to see it and review it.

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

MR. MICKLIN: Thank you, Assistant
Secretary Newland. My one point on the no change
in use is tribes have worked proactively with
local government to assure them that the proposed
uses would not significantly impact local
government land use designations and their
consequences and in doing that no change in use to
us means retaining the current zoned designated
use by local government. So that may be as a matter
of wording is retaining the existing use under
local government jurisdiction when to transfer to
tribal jurisdiction would be maintained, maybe is a
more affirmative statement than the somewhat ambiguous
or wholly ambiguous no change in use. Thank you.

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

MS. DENNIS: Hello, Assistant Secretary,
yes, you guessed correctly from the Shinnecock Tribe.
Thank you. I'm sorry about earlier today. I also
have COVID so things are very fuzzy for me. And I
wish Chairwoman Andrews-Maltais from the Aquinnah
Wampanoag Tribe healing. I hear that she also has it. I also want to echo all of her points. They are absolutely the Shinnecock concerns as well and also our Vice Chairman Randy King of the Shinnecock Nation who spoke earlier. Our main concerns are not restricted to them status and I am happy to sit there.

And as a tribe that has limited administrative capacity, I'm still trying to figure out so much after receiving federal recognition in 2010, not having a whole lot of help from previous administrations and we're so thankful for, you know, this current administration trying to rectify that and trying to figure out how to make things easier or less of a burden for tribes. We just hope that, you know, with these new regulations there is that technical assistance available to tribes and, you know, that we do have that opportunity still to understand and to pursue initial reservation with trust land as well as, you know, getting housing together. We've run out of space for housing on our restricted fee
territory so we really can't facilitate many new
allotments to tribe members, on our 800 acres that
we have for the tribe residential territory.

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

Sorry if I sound a little confused with
my sickness, but I just want to make sure with my
later comments that I will continue to work on
those comments. Thank you.

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

Our next speaker is Patricia Marks, and
we have nobody in the cue behind Ms. Marks.

MS. MARKS: Can you hear me?

MR. NEWLAND: Yes.

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

Also you emphasize in here that when the tribe owns an interest in the land, I'd like to see, suggest that you consider expanding that to when the tribe or a member of the tribe owns or owned an interest in the land which would take care of those allotment lands that were lost.

We've got a lot of tribes trying to reacquire
property and it would be great if the policy could actually emphasize that as one of its objectives is the actual return of tribal land. Thank you.

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

Our next comment comes from Nicci Lehto?

Did I get that right?

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

MS. NEWLAND: Yes.

MS. LEHTO: Okay. (Speaks Native Language) Good afternoon. My name is Nicci Lehto and I'm a tribal member of and a Federal Government Relations Specialist for the Prairie Island Indian Community in MN. First, thank you to Assistant Secretary Newland and to the Biden Administration for your continued dedication to tribal consultation and also consideration. It's greatly appreciated.
My question is to ask is the Bureau of Indian Affairs going to make transcriptions of these consultations available in addition sufficiently in advance of the written comment deadlines that tribes can use them in preparing comments and submission to these important changes? That is my only question at this time, but again I thank you for your time, attention, and your continued work and all that you are doing for tribal nations.

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

MS. LEHTO: Thank you. I appreciate that because there’s a lot of information going
past it and I'm trying to keep notes as fast as 
I can and it's just --

MR. NEWLAND: You and me both.

MS. LEHTO: It's hard to, yeah, kayak

them Niagara Falls. I would like to just be able,
to you know, even if it's a concise run down or
synopsis, that'd be really helpful. So thank you.

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

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

MS. NEWLAND: Okay. With that we have
nobody in the cue to speak on the fee-to-trust
regulations. Again, we have several consultations
coming up. Another one on these topics this
coming Friday and then we have our final
consultation on this topic later this month. I
think the dates are in the chat, Monday, May 23rd
from 1:00 to 4:00 p.m. Eastern time. And then of
course, spoken and written comments all the way
until the end of June at our consultation website
Are there any other Tribal leaders or representatives who wish to comment on the draft land-into-trust regulations at this time? Yes, Chairwoman Andres Matais.

MS. ANDRES-MATAIS: First, thank you everybody for all your well wishes. I truly appreciate it and everybody is like, you know, when you're done get back to resting so yes, I will. I just wondered whether or not there was any consideration for a truly expedited process where it speaks to almost the non change of use, but also for donations from individuals or entities that we not be part of the federal system. It is rare that we get donations, but every so often people's hearts soften and they realize that they have been the unlawful or unfair, but mainly unlawful stewards or owners of Tribal lands. And particularly when they do contain ceremonial or sacred sites on them whether or not we are entertaining any sort of truly expedited process through which a person or
organization can donate those types of lands to
the tribe in order to ensure that there is a
continuation of the protections that have been in
place whether formally or informally and that it
would fall underneath the non-change of use and
deemed approved and without having to stay the
requirements of such expensive environmental
studies and processes that go on through other
types of land acquisition that may be for other
purposes except for the preservation or agree to
preservation through a donation of land.

MR. NEWLAND: There is a lot packed into
that question, but thank you. Just briefly there
is -- I don't want to call it an expedited pathway
because every application is different, but there
is certainly I think a taxonomy in this draft in
terms of which ones are going to get the clearest
or fastest path toward a decision. Of course on
reservation acquisitions are far easier from a
legal standpoint to move because, you know,
they're within an existing reservation and the
tribe's legal interest in consolidating its
jurisdiction is at its highest. Of course, the contiguous and the initial trust acquisition ones are right there. And then the off-reservation ones I think will continue to receive a little more scrutiny. Of course, there's, you know, there are variations among all of these, but it would be very difficult for us to declare a purpose as receiving expedited treatment. That's not to say that we can't or we won't. We would be happy to consider draft language or recommendations on how to do that. There are just many factors that go into how much standing other parties have and what their interests are in a particular application.

MS. ANDRES-MATAIS: Thank you so much.
MR. NEWLAND: Thank you. Our next commenter is Jon Hare. I hope I pronounced that right from Stillaguamish.
MR. HARE: Yes, can you hear me?
MR. NEWLAND: You betcha.
MR HARE: All right, give me all your time.
I kind of have, you know the new regulations. I've been 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
23 Second thing, one of the things that’s
not in the proposed rules, the definition of
interested parties. We have one one, you can
have one citizen that has become an interested
party and they're treated as a governor and
mayor and they can appeal with no money, no time.
And ultimately two years later, the IBIA will
go, this person did not have standing to sue.
So I was for me, if I just think that's kind of
a check off thing results of we're talking time
and delays and some tribes have problems and some
don't with citizens, but it seems like that that would
really -- if they could just bring that position
up to speed I think that's just fair. Every
recognition has a different standard where you kind of
have to demonstration why you are interested and
why you some interest in this property, but
ultimately if they do that, BIA will deny them on
standing, but that could take two to three years.
And that's about some other comments too.
The other thing that I saw in the review
regs is the criteria which are very kind of
expanded on what we would call self-determination,
you know, cultural or treaty things, but I don't
know if it's a mistake, but I'm correct, but in
the reservation section they seem to eliminate
the words "Harvey" (phonetic) and "economic" and
it's like that can be used against us if it's not
(inaudible) or economical regulation. I don't
know if that's by mistake or if I misread it.
Anyway, those are my comments and some things I
thought I would get up to you. Some of it is
related to this, some of it's not until I process
it.

MR. NEWLAND: Thank you, Jon. So there
are a number of things that we can do. Right now
the average time to process a single tribal
application for land-into-trust is approximately
965 days. That's almost three full years to
resolve every fee-to-trust application. Some of
that is because of policy, some of that is because
of capacity within the BIA and some of that are
procedures. And so we are not taking an approach
in terms of like choosing one path to get that
number down over the other. We are trying to make
sure that the processing of applications including
our use of TAAMS, our partnership with tribes that
have contracted realty functions. We are trying
to improve that. The survey property description
components are areas that, you know, the mechanics
of land-into-trust we're trying to make sure that
we are taking steps to improve those and of course
our regulations are the policy component as well.
And we are trying to get that number from 965 days
down to less than a year. That's our target and
that's an average. Some applications again are
more complex and, you know, have a lot of factors
for us to consider, but a simple acquisition of
land within an existing reservations just for
example without any environmental issues, without
any change in use shouldn't take us 965 days to
process that. So we're trying to address all of
those components.

With respect to your comment, Jon, about
the draft regulations eliminating some of these
purposes; I hear your concerns. They're well
taken. We are trying to drive away from the BIA
making judgments about whether a tribe needs
additional land and substituting our judgment for
the tribes and, you know, trying to substitute our
judgment on the validity of the purpose, but
having been on the other side of this equation, I
also know sometimes, you know, that sort of thing
can get used against tribes as well and so your
comments are well taken and we'll make sure that
that's why we're doing this consultation process.
And we'll make sure that we take them back to the
working table as we continue to move forward here.
And thank you for your comments here.

MR. HARE: Thank you.

MR. NEWLAND: We did get a comment in
the chat from Jordan Shaper. I hope I'm
pronouncing your name properly, Jordan, about
clarifying the terms in the various -- the terms
"great" and "greatest" in the different parts of
how the Secretary will evaluate applications.
Again, we can attempt to do that as we go forward.
One of the things that we don't have available to
us in this process yet is a preamble to the
regulations which can help clarify terms that are ambiguous and provide guidance to folks and the purpose behind regulations and of course when we do hear from folks like you, Jordan, that there is ambiguity or lack of clarity, we can give those a closer look and consider other language to clarify that. And of course we welcome draft language from folks if you've got a better way for us to include that.

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

So with that, I see no other hands in
the cue, we have Loretta Tuell. We will call on
Loretta and then Wizipan; I will turn it over to
you.

MS. TUELL: Good morning, Bryan,
especially on the cue here in California; just a
procedural question. The deadline for comments is
June 30th. Is there any anticipation by DOI that
during NCAI in Alaska there would be some informal
listening session to encourage the Tribal leaders
in the room to trade some of your schedule and
whether that is something you anticipate along
with the opportunity during the month of June for
any meetings that may occur out in the Fill Lake
(phonetic) for example in California where we
have, you know, quite a few tribes that do have
their ace meetings whether you're looking for any
opportunities to meet in person with folks -- just
your thoughts on it? Thanks, nice to see you
guys.

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

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

MS. MARKS: Can you hear me, sir?

MR. GARRIOTT: Yes.

MS. MARKS: Excellent. Just so I can bring to your attention, under Section 151.8, that is now under subsection (A)(3) requiring a map. That's not currently required under the
regulations. What the current regulations require trying to do is to in their narrative describe the distance that the property is located from a reservation boundary and the distance that it's located from a state boundary. I'm a little concerned with the idea of a map not being clearly defined as something that can potentially be challenged and also be quite expensive. Some tribes have formal and informal map making capability and others don't. And the same is true with the surveys. We've had parcels submitted stated tracts where the Bureau of Indian Affairs has decided to take two parcels together and in that point the survey requirement wouldn't match and neither would the mapping requirement. So just to bring to your attention that thought and ask you to look at specifically what the Bureau's desire is here.

One of the big issues that's delayed a lot of applications in California was the absence of having someone within the Bureau that was capable of redoing the maps for the TAAMS process.
So I see where you're going, but it is very ambiguous and I think could be most costly. Also clarifying whether existing applications would have to be amended to meet these new requirements and whether they would be sufficient at the time based on the regulations at the time that they were submitted. So thank you very much.

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

MR. MICKLIN: Thank you, Mr. Garriott. Just to follow up with a couple of questions. One is to emphasize the prior comments about the potential costly delays of the phase 1 inspection or inventory of a parcel is certainly one and pair that with the title commitment requirement which is fairly costly, but both have an expiration date and with the average of the median time to complete an application before a decision, generally those actions can time out and need to be renewed at significant expense to the tribe and burden an effort to the BIA. So that's a consideration that is significant.
The time and application generally rests in two areas. One is in its preparation and trying to avoid expiration of required activities or actions within that time period is I think key. And then the other significant delay is after decision. So I'm looking at 151.16. It provides for conveyance title essentially after the requirements of 13 and 14 are met and then on expiration of the time for filing a notice of appeal or upon exhaustion of the administrative remedies under Part 2. We commented on Part 2 and this has a significant effect on the cost and therefore the viability of applications in that if the application is -- decision is suspended during the exhaustion of administrative appeal, it has a real and deleterious effect.

There are opportunities under two of them, mostly under 25 CFR part 2, but up under 43 CFR, that if applied wouldn't be a significant help to tribal applicants and that is both in the requiring of posting of a bond by an applicant and the determination that an appeal has merit and has
a reasonable chance of succeeding and finally of standing. And standing is important in that the Bureau, the Department, and the IBIA have historically spread out their arms and said anyone that appeals has an interest and we disagree, particularly if you look at 43 CFR. You have to have an actual interest and have appreciable subject to harm and of course I already mentioned a bond requirement.

If those were applied, there would be a significant reduction in the length of time during the exhaustion of appeal and certainly an opportunity for a full Pateck (phonetic) fix by the Department that it would provide that these conveyances not be suspended during appeal and if there's a need to make title revocable if for a contrary outcomes that find against the Department, then the tribal acquisition, then that can be provided for, but those I believe would be rare and the regulation should be fashioned for what is the intended purpose of both 25 CFR part 2 and 43 CFR which should be uniformly applied
because of the nature of the appeal. It's an appeal and should be conducted according to the standard of conduct.

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

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

For those who are participating via phone, push *9 to raise your hand and then *6 to un-mute yourself if you're wanting to make a
comment and you are participating by phone. Are there any other comments on this section of the fee-to-trust section in today's consultation?

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

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

One, do the draft revisions increase
certainty and clarity in the Secretary's compact of due 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?

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

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

Question 5: Should the draft revisions include provisions that identify types of meaningful concessions that a tribe may request or may state other than protection from state licensed commercial gaming, i.e., exclusivity for
which a tribe could make a revenue sharing payment. How would such provision effect compact negotiations?

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

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

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

And I see Mr. Robert Porter.

MR. PORTER: Good afternoon, Mr. Principal Deputy Assistant Secretary. Hope all is well. I've got a few questions or really comments as it relates to the regulations, the draft regulations representing the Peruvian Padawataby (phonetic) nation. The overall comments in
relation to these improvements are excellent.
They cover a lot of different areas for which over
the years many of us who have been observing how
gaming regulation has occurred, you know, have
just had some holes and some issues that were
unanticipated and so overall they're really
excellent. We look forward to commenting in
writing on a number of these as well.

A couple of comments in relation to -- I
see a little bit of further work and this relates
to the definition of an amendment that's being
proposed. The language under proposed 293.4
appropriately expands and I think is a really good
way of defining what an amendment is in terms of
covering other agreements, dispute resolution,
settlement agreements, and arbitration decisions
because as we have seen that has had the effect of
changing the underlying economics and legal
relationship of compacting parties as time has
gone on. As it relates to acknowledging that each
of the two parties to the compact has the right to
submit, you know, for Interior review for what an
amendment is -- that's excellent improvement to
the existing regulations. I would invite a
further refinement of the language as it relates
to 293.6 because 293.6 really just restates the
same language, but it doesn't really tie back to
the proposed change in 293.4(a) and if you read
that in relation to the definition of amendment
that's being proposed that are 293.2(a) where
amendment means a change, it might be the place in
that section to track the same language that's
being put forth in 293.4(a) in terms of what that
change means. I think I know what it means and I
think 9 out of 10 people think, you know, would
agree with me, but the worst case scenario is some
judge somewhere doesn't know what it means and I
think the language could be a little tighter there
in terms of tying those sections together.

The second point relates to 293.190
assessed costs, issue with the states. The
language speaks to including the opportunity for
recovery of actual and reasonable costs and if the
state is unable to show the actual expenses, then
that could be evidence of bad faith. One of the problems is that -- what's the enforceability of that if you will of what's actual and reasonable? Ideally the parties inside their compact would have some ability to define that more carefully, but I think from a regulatory perspective, you know, the way in which states I think can definitely take advantage of that provision because an actual expense could be actual, but it could be pretty excessive and not really defendable in which the check and balance from a regulatory perspective to ensure those costs are reasonable and not just an opportunity for the state to sort of back door some kind of revenue sharing if you will in terms of that underlying compact, but overall those are just a couple of points that came out. I will study this more carefully and get you more comments in writing, but thanks again to you and your staff for a really great job in putting these draft comments and regulations together.

MR. GARRIOTT: Thank you. I appreciate
that and we're really looking forward to the
written comments as well. Bryan takes notes as
best he can, but we know the written comments will
be on point. Mr. Will Micklin.

MR. MICKLIN: Thank you, Mr. Garriott.

Will Micklin and here I'm speaking for the Tlingit
and Haida Indians. So of course from our detailed
written comments, there are a couple of
observations. One is that and this is a question
and sense that the Department's need to evaluate
contacts presented to them, many tribes are not in
a position to negotiate effectively with the state
and the governor and of course ratification by the
legislature if required. So it is an uneven
contest in that regard and so the question arises
of how to protect tribe's interest in this contest
of parties with uneven weight in trying to achieve
their goals.

One of those areas where this manifests
is in the state's determination to require
intergovernmental agreements between a tribe and
subdivisions of state government, local
government, whether it's county or municipality or what have you. The apparent trend is states insist that tribes have an agreement with the local government and most of those agreements either imply or require a transfer of funds, payments which we see as a tax on the tribal enterprise. And so it's difficult for tribes to contest, particularly tribes that don't have an initial gaming enterprise or have a small to medium size gaming enterprise difficult to contest the power of the state in this regard so terms that are submitted in compacts that they have these agreements and I think you are aware doesn't necessarily mean that tribes agree that this is just or accorded by a (inaudible), but it is an imposition of the power and will of the state to provide for such agreements. This is along with the second predominant category is the definition of projects and what constitutes the gaming enterprise and therefore subject to these agreements and the more
there is the more control that they have and the
more likely there could be an intergovernmental
agreement and a transfer of payments from tribe to
local government. So those are extremely
important, but again the contest of wills and
weight between tribes and states is difficult for
many tribes.

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

So there again my major concerns and yet
when tribes submit a compact it is often a long
process in negotiation and the tribal interests
are harmed by continued delay and not earning the
revenues that it could earn if in fact the compact were approved and the enterprise were established. So there you have where tribes can manage to agree to presented to the Department and the question of how the Department can best agree with the government in either being approved by not taking action or affirmatively approving the compact when there are questionable provisions in it and yet the tribe has agreed to it because in many cases it must to protect its interests.

Our recommendation is that there be specific provisions in the regulation that speak to the prohibition of taxation through mandated intergovernmental agreements which would be helpful in that contest of unequal parties to a negotiation and at least the threat of that which would be definitive if litigated even though tribes in many instances are not in a position to litigate, but the threat of that would be helpful in moderating the appetite of the state in asserting these intergovernmental agreements which come at great cost to tribes and the environmental
provisions they apply to ever more -- ever larger
definitions of what a project is that come under
the environmental scrutiny and the
intergovernmental agreements.

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

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

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

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

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

* * * * *
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