

UNITED STATES DEPARTMENT OF THE INTERIOR
INDIAN AFFAIRS

TRIBAL CONSULTATION 25 CFR PART 151
LAND ACQUISITIONS

Phoenix, Arizona

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9:00 AM (MT)

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

2 (9:00 a.m.)

3 **MR. NEWLAND:** All right. Good morning,
4 everybody. We're going to get started with our
5 government-to-government consultation. Glad to be
6 here in person doing these consultations, and
7 we're going to continue to try to mix virtual and
8 in-person consultations as we move forward.

9 My name is Bryan Newland. I am a citizen of
10 the Bay Mills Indian community, long-suffering
11 Detroit Lions fan, as many of you know. We beat
12 the Packers last week, so I'm excited about that.
13 And probably more importantly and more of interest
14 to all of you, I also have the privilege of
15 serving as Assistant Secretary for Indian Affairs.
16 And we typically try to begin these consultations
17 with a prayer or a blessing. We don't have
18 anybody to do that today. So, if there are no
19 objections, we can proceed with the consultation.
20 So I want to make sure you all know also that
21 we've got a wonderful team of folks from Indian
22 Affairs here. I'll call out our policy team by

1 name over here, but on the far end we have our
2 Senior Policy Counselor Sam Kohn. We have our
3 other Senior Policy Counselor Rose Petoskey, and
4 then also Senior Policy Counselor Stephanie
5 Sfiridis, and our Policy Advisor in our shop
6 Joaquin Gallegos. And I will let Katherine
7 introduce herself.

8 MS. ISOM- CLAUSE: Thank you. Hello. I'm
9 Katherine Isom-Clause. I am Taos Pueblo and I
10 serve as the Deputy Assistant Secretary for Policy
11 and Economic Development at Indian Affairs. It's
12 a pleasure to work with this wonderful team that
13 we have here today and back with us at our
14 offices. I'm really pleased to be here today.
15 Thank you for coming out in person. We were doing
16 so many virtual consultations. It's really nice
17 to see faces and actually interact directly. So
18 we really appreciate you being here and look
19 forward to the discussion.

20 MR. NEWLAND: Thank you, Katherine. So a
21 couple of housekeeping items. We also have Oliver
22 Whaley, who's the head of our Regulatory Affairs

1 and Collaborative Action. Oliver is the one
2 responsible for putting together these
3 consultations and organizing. And we're going to
4 do just a very brief, and I promise it will be
5 brief, PowerPoint to go over the highlights of the
6 proposed land in trust regulations.

7 Since this is a government-to-government
8 consultation, we are also making a record with our
9 transcription specialist Ashleigh. So to help us
10 make a record, when you take the microphone and
11 wish to speak, we ask that you very clearly
12 introduce yourself and who you're here
13 representing so we have that to refer back to,
14 because we do take your comments back with us to
15 the drawing board when we're considering edits and
16 revisions to the proposed regulation.

17 So with that, Oliver, let's jump into the
18 PowerPoint. Then we'll open it up and we'll call
19 on folks as I see you raise your hand, and we'll
20 go around the room. We've got three hours
21 scheduled for this morning. Then we'll take a
22 break. And we're doing a consultation this

1 afternoon on our gaming compact regulation. So
2 let's keep this on the land and the trust piece.

3 You see here our consultation schedule. We
4 have this one in person. We also have a virtual
5 consultation next week and a final virtual
6 consultation at the end of the month. We are
7 looking to receive your written comments by March
8 1. It is our aim to finalize these regulations
9 this year. I know oftentimes folks ask for
10 extensions in the comment period or the
11 consultation period. We will, of course, consider
12 those, but I just -- I know there are a lot of
13 attorneys here in the room, and you've all seen
14 the federal rulemaking process. It does take
15 time. So, even though we're sitting here in early
16 January with a proposed rule, we've got to take
17 the public comments. We've got to take the tribal
18 comments. We've got to dispense with each comment
19 and question, draft the preamble and get it
20 through the interagency process. So it actually
21 is a fairly tight timeline. So we encourage you
22 to get your written comments to us before that

1 deadline.

2 Next slide. So you see here the proposed
3 revision to our land in trust regulations will do
4 a number of things differently. Most notably, I
5 think, is it will attempt to codify the standards
6 that the department uses to determine whether a
7 tribe was under federal jurisdiction and make it
8 easier for our Bureau of Indian Affairs field
9 staff who process these applications to make these
10 decisions without lengthy legal review. The
11 regulations will also identify the documents
12 needed for a complete trust application package,
13 and then impose a decision deadline on ourselves
14 of 120 days. The regulations also -- this is one
15 of my favorite parts -- articulated very clear
16 policy on behalf of the secretary that land
17 acquisition is to strengthen self-determination
18 and sovereignty. And it's also a very explicit
19 articulation that every federally-recognized tribe
20 has a right to a protected homelands where its
21 citizens can maintain their tribal existence and
22 way of life, and that it is the department's

1 policy to consolidate land ownership and
2 strengthen tribal governance over reservation
3 lands and reduce checker boarding. That hasn't
4 been a clearly articulated policy for the
5 department in regulation. So we believe it is
6 important to add that in. The proposed regulation
7 also establishes criteria, a waiting criteria when
8 it comes to establishing a tribal land base or
9 protected homelands, particularly for
10 on-reservation applications in an effort to speed
11 up that process. I know that there's a lot of --
12 there are a lot of questions, and we've gotten a
13 lot of comments on that point as we've gotten
14 through this process. One thing I just want to
15 emphasize is that, as we try to wait and
16 accelerate on-reservation applications, that makes
17 it easier for our realty staff across the BIA to
18 process those applications and free up their time
19 and resources also to work on other applications
20 as well. And so that's -- we've done that with an
21 eye toward our own resources and staffing within
22 the BIA to make sure that we're working on

1 on-reservation applications, off-reservation
2 applications, the contiguous ones and the initial
3 application.

4 Oliver, can you go to the next one?

5 There we go. The first bullet is what I
6 just talked about. The second bullet says that
7 we're going to presume that on-reservation
8 contiguous and initial applications or acquisition
9 for landless tribes should be approved, and that
10 tribal communities will benefit from proposed
11 acquisitions without regard to distance from their
12 reservation.

13 We also address in the proposed rule
14 concerns from state and local governments, and the
15 process we use to request their comments on issues
16 like jurisdiction and property taxes, but we also
17 clarify that, when it comes to applications for
18 parcels within existing reservations, that we are
19 not going to explicitly request local government
20 comment because they're likely to have few or no
21 impacts on the governance of municipal entities.

22 And also we are proposing to reduce expenses

1 by clarifying when environmental studies and
2 reports need to be updated. As many of you know,
3 this is one of the challenging parts of the
4 existing land in trust process, those phase-one
5 environmental site assessments that have to be
6 refreshed all the time. And you should also know,
7 as a corresponding effort outside of this process,
8 we are having conversations at the department
9 about how to improve and tailor the environmental
10 requirements for land acquisitions at the
11 department to tribal land acquisitions, because we
12 all know they're unique and different in nature
13 from other acquisitions the department makes.

14 So, again, our written comments are due by
15 March 1 at midnight. You can send those to
16 consultation@bia.gov. If you have questions,
17 particularly on, you know, the technical aspects
18 and the wording of the proposed regulation, you
19 can e-mail Maria Wiseman, who's not present with
20 us today, but she is certainly engaged in this.
21 We've got a large policy team as well working on
22 this. And you can find our folks here on the

1 breaks. We'll take a couple of breaks throughout
2 the session this morning.

3 So those are the highlights. We want to
4 stop talking now from the federal side and make
5 sure we're hearing from you. And we're just going
6 to call on folks. I will open the floor, call on
7 folks in the order you all raise your hands. I
8 would just ask that before you speak a second or a
9 third time, just take a look around first to make
10 sure there's not somebody raising their hands who
11 hasn't had a chance to speak yet. Oliver will
12 help with the mic. Again, we need to make sure we
13 have a mic in your hand so we can get a good
14 transcription.

15 Anybody have any comments at this time?

16 **MR. JAMES:** So good morning, everybody. My
17 name is Jim James, I am legal counsel for Pueblo
18 Tesuque in New Mexico. So I have two related
19 comments regarding 151.11, which is offer as
20 acquisitions. And this is historical, I think,
21 that the regulations have always identified the
22 need to consult with local and state governments,

1 but there's no mention in the regs, there never
2 has been, about consultation with tribal
3 governments that might be impacted by
4 off-reservation acquisitions. So I think it's
5 important for us to include that, or at least
6 identify the definitions that local communities
7 include tribes.

8 The second comment that I have is with
9 respect to acquisitions maybe by tribal
10 consortiums or coalitions. There isn't anything
11 referenced in there, but I know that as we move
12 forward there are currently a number of multiple
13 tribal entities or organizations that are seeking
14 to acquire land either off reservation -- mostly
15 off reservation. And I know I've received some
16 inquiries from congressional staffers regarding
17 how you do that. And I know recently that many of
18 these trust acquisitions, especially for new
19 tribal lands, have run through Congress and not
20 run through this process because of the length of
21 time it takes.

22 So I'm glad to see that the department is

1 making an effort to streamline the process. I
2 hope it actually holds true. We have a federal
3 120-day kind of timeline. To me what's lacking in
4 the regs and perhaps will be in the policy is
5 going to be some timelines for responses back and
6 forth, and, you know, not making the tribes start
7 all over. The tribes wouldn't be applying to take
8 land in the trust if they weren't serious about
9 doing it and it didn't have a purpose to the
10 tribe.

11 So those are my two minor comments. Thank
12 you.

13 **MR. NEWLAND:** Thank you, Jim, for those
14 comments. I just want to make sure -- this is
15 more for your informational purposes. One of the
16 many things that we're doing is trying to improve
17 the mechanics of how the BIA does this outside of
18 pairing it up with our regulatory effort that
19 includes looking at our trust handbook, as you all
20 know, the famous 15-steps process, try to reduce
21 those, the number of steps. We've also undertaken
22 a process to reform our appeals regulations under

1 Part Two so that when decisions are made at the
2 regional office level, we've got an appeals
3 process at the beginning stage that works. That's
4 done with the land in the trust process in mind.
5 And I believe the Department of the Interior's
6 Office of Hearings and Appeals is also considering
7 regulatory changes as well for the general
8 administrative regulatory appeals process through
9 the Interior Board of Indian Appeals. So we're
10 looking at the mechanics of this as well as the
11 policy of these regulations. Thank you.

12 MS. CHARLES-NEWTON: Thank you. And good
13 morning, Assistant Secretary Newland. It's great
14 to have you here in the great State of Arizona.
15 We appreciate you coming out to listen to the
16 concerns brought forth regarding 25 CFR Part 151.
17 I was just reading the proposed changes that you
18 have listed here.

19 MR. NEWLAND: I'm sorry. Can you introduce
20 yourself?

21 MS. CHARLES-NEWTON: Sorry. Sorry. You
22 know me, but I forgot to introduce myself. You

1 are correct. My name is Eugenia Charles-Newton.
2 I'm serving on the 25th Navajo Nation Council. We
3 just got inaugurated on Tuesday. I was also a
4 council delegate in the 24th Navajo Nation
5 Council. So thank you for welcoming me here. I
6 represent the community of Shiprock, New Mexico.
7 We are the largest community on the Navajo Nation.
8 We're located in New Mexico. But I do appreciate
9 the invitation to come out and to speak on behalf
10 of Navajo. With me I do have our speaker of the
11 25th Appalachian Council, Mr. Otto Tso, and also
12 my colleague and Delegate Casey Johnson who was
13 here with me as well. So thank you so much.

14 I was just now reading your proposed
15 changes. On the second to the last bullet, you do
16 have consider the concerns of state and local
17 government by notifying them and requesting
18 comments on regulatory jurisdiction, real property
19 taxes, except that no comment will be requested
20 for on-reservation acquisitions because they're
21 likely to have very few or no impacts on these
22 governments, and you have see Section 15.10 to 12.

1 Well, I'm here on behalf of the Navajo Nation to
2 ask that in terms of notifying parties that may be
3 affected by this, by these new rule changes or
4 even with the process in terms of land
5 acquisition, I'd like to request that the BIA also
6 give notice to neighboring tribes when a fee to
7 trust application affects the neighboring tribes.
8 This concern was not addressed in the December 5,
9 2022 proposed rules. So I think if you're going
10 to ask that notice be given to other jurisdictions
11 that that same notification also be given to
12 tribes as well as a means of respect to all the
13 tribes who may be affected from the land
14 acquisition.

15 By giving notice, we mean that when a fee to
16 trust application involves land next to a
17 neighboring tribe that the BIA should give that
18 neighboring tribe notice of the application.
19 Navajo Nation, we believe that the BIA should be
20 giving notice to neighboring tribes when a fee to
21 trust application involves land where the
22 neighboring tribe has a legal interest, such as an

1 easement or a right of way.

2 While Section 151.7 includes a consent
3 requirement for a neighboring tribe, this
4 requirement is limited to the on-reservation land
5 of the neighboring tribe, and past practice
6 suggests the department does not apply section
7 151.7 to lands that are adjacent or contiguous to
8 another tribe's trust land. Again, the Navajo
9 Nation does believe that notice to the neighboring
10 tribe should specifically apply to all categories
11 of land described in the proposed revision of Part
12 151 and in other circumstances when land is taken
13 into trust.

14 The Navajo Nation's request does not involve
15 a hypothetical situation, as the BIA took land
16 into trust for another tribe and that land is
17 contiguous to the Navajo Nation Reservation. In
18 addition, the Navajo Nation holds an easement in
19 the land taken into trust, and other tribes now
20 claims jurisdiction over that easement. This
21 situation has onerously impacted the Navajo Nation
22 in a negative way. The Navajo Nation and its

1 gaming enterprises were not given notice by the
2 BIA when it took this land into trust, and we have
3 been forced to litigate this action after the
4 fact. And I think that we can say that because it
5 has happened that there's a likelihood that this
6 will continue to happen and may affect the tribes
7 who are currently part of this consultation.

8 The Navajo Nation believes that the
9 situation could have been resolved if the BIA had
10 given the Navajo Nation and its gaming enterprise
11 notice of the fee to trust application prior to
12 acquiring and transferring the land into trust.
13 Both tribes could have met with the BIA to resolve
14 any misunderstandings related to jurisdiction over
15 the Navajo Nation's easement well before taking
16 the land into trust. Had you given us notice, we
17 would have been happy to sit down with the tribe
18 with the BIA to talk about this land acquisition
19 and how it would affect both tribes.

20 So at this time, those are the comments that
21 we are making. We did also send at the US
22 Department of Interior on December 5, 2022 our

1 letter -- I'm sorry. We did send on June 30, 2022
2 our comments regarding 25 CFR Part 151 land
3 acquisition, and within the letter it also states
4 the talking points that I just currently delivered
5 to the Bureau of Indian Affairs. So, again, our
6 request is that in addition to notifying states
7 and other jurisdictions that you notify the other
8 tribes in addition. Thank you.

9 **MR. NEWLAND:** Thank you, Madam Delegate.
10 It's also -- I appreciate your comments. I also
11 and our team also really appreciates the clear
12 standards that you and the Navajo Nation proposed
13 for how that would be done. This is a comment
14 that has come up, of course, in our consultations
15 on the proposed rule and the standards for when an
16 application would trigger notification of other
17 tribes is something that we've wrestled with from
18 a policy standpoint. In Indian country many
19 tribes' traditional homelands overlap. Ceded
20 territories, treaty-ceded territories overlap or
21 butt up against one another. And so having some
22 standards for consideration is very helpful.

1 Thank you.

2 **MR. CROWELL:** Thank you. Please bear with
3 me. I'm Scott Crowell. I'm a tribal attorney.
4 I'm speaking on behalf of Rincon Band of Luiseno
5 Indians. Tishmall Turner, Vice Chair of the
6 Rincon Band, had planned to be here to provide the
7 statement this morning, and she couldn't make it,
8 so just a half an hour ago I received her
9 statement and was asked to read it on her behalf.

10 Rincon thanks the tribes of the Odom Peoples
11 for the opportunity to have this important hearing
12 on their aboriginal lands. Vice Chairman Turner
13 wanted to preface her comments -- these are her
14 words -- by acknowledging Bryan's appointment and
15 services as the Secretary of Indian Affairs. You
16 bring specialized expertise to this position with
17 your perspective of an attorney, a former
18 counselor and policy adviser to the Assistant
19 Secretary of Indian Affairs, and the citizen,
20 former judge and Tribal President of Bay Mills
21 Indian community. Indian country will benefit
22 from your deep understanding of federal Indian law

1 and policy and your dedication to improving the
2 duty and protection that the United States owes to
3 Indian tribes. Those are her words, but I
4 obviously agree with them.

5 The Rincon Band will submit more detailed
6 comments, but overall Rincon commends the
7 department for its efforts to improve the fee to
8 trust process and strongly supports the proposed
9 amendments. There is no question that the
10 existing regulations and the interpretation of
11 them by previous administrations has made fee to
12 trust acquisitions a lengthy and uncertain process
13 that is costly for tribal governments.

14 Rincon appreciates, one, the proposal to
15 define tribes as federally-recognized tribes by
16 the List Act. This eliminates uncertainty and
17 provides greater clarity by naming a
18 readily-available source of information to confirm
19 federal recognition of applicants; two, the
20 conclusive, presumptive and probative evidence
21 standards for addressing the impacts of
22 (inaudible) charity in the evaluation of

1 congressional privacy over the executive and
2 judicial branches of the federal government and
3 provides greater protection for tribal lands;
4 three, the amendments designed to prevent counties
5 and states from having a voice over on-reservation
6 acquisitions with respect to impacts on taxation
7 and land use also enhances the Federal Trust's
8 responsibility, expedites the application process
9 and reduces costs incurred to the tribes by
10 eliminating the need for written responses and
11 comments; four, the proposed presumption of need
12 to protect tribal homelands within a reservation
13 is also a significant improvement.

14 Rincon feels strongly that abandonment of
15 the unworkable distance rule from the reservation
16 for off-reservation acquisitions to the holistic
17 approach provides tribes with more certainty,
18 better protects tribal homelands and affirms
19 tribal self-governance.

20 We appreciate the trust the proposed
21 regulations place in tribal governments. Tribal
22 governments are rational actors that make

1 thoughtful decisions based on careful planning to
2 allocate limited tribal resources.

3 Thank you.

4 **MR. NEWLAND:** Thank you, Scott. Appreciate
5 that. Appreciate your kind words as well.

6 All right. Additional comments?

7 **MR. DERRY:** Good morning. I'm Michael Derry
8 from the Guidiville Indian Rancheria. We're a
9 tribe in Northern California. We consider
10 ourselves landless. Our reservation was
11 terminated when the tribe was terminated in the
12 Sixties. We were restored to federal recognition
13 in 1991. And one of the weird things about our
14 settlement agreement with the United States and we
15 don't really know the history of why, but we're
16 not allowed to restore the old boundaries of our
17 old reservation. And so we're in this process
18 where, I guess, it leads to the question what does
19 the Bureau consider to be a landless tribe; what
20 does that mean. We were able to get a piece of
21 land into trust in around 2000 for some housing,
22 but that's the extent of our land restoration

1 efforts to date. And I'm wondering if, you know,
2 just thinking about the regulations, are we in the
3 category of a landless tribe, or are we in the
4 category of a tribe that does have land, trust
5 land. But we haven't done reservation
6 proclamation on the trust land that we did get.
7 We thought we were done, that we were done
8 requiring all the land that we need to restore the
9 tribe's land base eventually. We would then do a
10 reservation proclamation. So, I guess,
11 automatically they think we're in the
12 off-reservation category. We're just trying to
13 figure out what category we're in.

14 **MR. NEWLAND:** I don't have answers to those
15 questions today, but if you have -- and thank you
16 for being here. If you have language you would
17 want to propose to provide some guidance on that
18 clarity you're seeking, we would be happy to
19 review it and see if it's workable for the
20 regulations.

21 **MR. DERRY:** We'll put it in our comments and
22 things like that. I was just wondering if you had

1 an answer off the top of your head.

2 **MR. BOURGOIS:** Good morning. I'm Peter
3 Bourgois. I'm from the Yavapai Prescott Indian
4 Tribe about an hour and a half up the road, very
5 close. Thank you for having this session. We
6 appreciate it, and we're glad to see an effort to
7 streamline the process because we've been involved
8 in one for about 12 years now. Hopefully, it's
9 coming to conclusion very, very soon.

10 Just a quick comment, and perhaps it gets to
11 what you said about the mechanics of making an
12 application and the back and forth that goes on.
13 Anything that can be done to streamline that would
14 be helpful, and determining what a complete
15 application is because seeing the 120-day deadline
16 is great, but we need to get to a complete
17 application, and I know that can take time. So
18 any clarity on what needs to be put in those
19 applications would be very, very helpful.

20 **MR. NEWLAND:** Thank you, Peter. The
21 regulation itself as proposed contains a lot of
22 those factors. I don't have the language up here,

1 but we tried both in the draft and the proposed
2 rule to articulate the exact things that would be
3 needed for a complete application, so that will
4 come out of the handbook and be built into the
5 regulation. I have my own experience working
6 with, you know, this process outside the
7 department where sometimes there are local
8 practices that don't match up neatly with rules.
9 So one of the things we've been trying to do is to
10 clarify in the regulations themselves so there's
11 no ambiguity about what you need and what you
12 don't for application. But if you think we've
13 missed the mark there, or there are items that
14 should be added to that or taken out, it would be
15 helpful for us to know. We can come back to you
16 if you want to look at it more, or, of course,
17 take written comments on that. Thank you.

18 **MS. SIMMONS:** So one quick followup question
19 on behalf of the Yavapai Prescott. My name is
20 Nicole Simmons. I'm external counsel is what I
21 call myself. Do you have an expectation for the
22 handbook, the revised handbook, which obviously

1 would set forth, you know, in detail the
2 requirements for an application? You know, as my
3 colleague was mentioning, as we know, you have
4 regulations, but sometimes the handbook comes out
5 and suddenly there's gray areas. There's a few
6 more requirements that may get stuck in there. So
7 it would be helpful to see that, you know, set out
8 a little more clearly.

9 **MR. NEWLAND:** We don't have anything for you
10 today on the handbook. We're trying to -- just
11 for awareness in order of operations, you know,
12 regulations, of course, have the force of law.
13 They interpret our statutory authority and set our
14 policy, so that's the primary effort. And then
15 stepping -- we want to get these rules finalized
16 so that we can use them in this administration.
17 And we want to then step it down and look at
18 things like the departmental manuals,
19 environmental process, BIA's handbook. I would
20 love to, you know, get down from 15 steps to, you
21 know, like a small handful just for clarity and
22 speed. But I don't have that information for you

1 today.

2 **MS. SIMMONS:** Thanks. I just wanted to also
3 emphasize that, while we have to go through this
4 process for the regs and we can't implement these
5 until they're finished, that's why we go through
6 this process of refining and making sure they're
7 as good as can be, we're also trying to be as
8 efficient as we can in the meantime. That's
9 something the assistant secretary always
10 emphasizes is this is our top priority, that field
11 offices should be working with you in a way that
12 is very helpful and efficient and doing the best
13 that they can make this work as we currently have
14 it on the regs. So we will be changing over to
15 this new approach, but right now we're also doing
16 our best to be quicker and bear with everyone.

17 **MR. NEWLAND:** Let me just say while we wait
18 for another comment, you know, with this
19 rulemaking process we tried to identify the
20 bottlenecks, where the big time-sucks are in this
21 process. You know, our average time to decision
22 on these on each application is about three years.

1 If you look at where the big blocks of time are in
2 that process, one of the initial big blocks of
3 time is that legal review for whether a tribe was
4 under federal jurisdiction. And, as many of you
5 know, even for tribes that are very clearly under
6 federal jurisdiction, we have to undertake that
7 legal review. And so there's a limited number of
8 attorneys at the Department of the Interior. I
9 know it doesn't seem like that sometimes. But
10 that takes a big block of time. Then there's the
11 title standards process and getting the property
12 description. For a long time that function was
13 Bureau of Land Management. And so, you know, now
14 you've got a BIA process that is depending on an
15 agency that we're not the boss of. And so,
16 outside of this regulatory process, we pulled
17 those functions back into the BIA so that we
18 control that. Another part is the environmental
19 process, which we're trying to also address
20 through the regulations. And so what we're trying
21 to do both with the proposed land and the trust
22 regulations in Part 151 and also the mechanics of

1 this is to triage the process, where are the big
2 time-sucks, the big bottlenecks here, and see what
3 we can do to eliminate those and work down that
4 order. And that's one of the things that this
5 proposal is aimed to do is to help address a
6 number of those things. So, for example, the
7 under federal jurisdiction piece, you know, is
8 aimed so that our realty staff can look at these
9 criteria and make decisions without having to get
10 in the line at the door of the regional
11 solicitor's office and wait for a legal memo,
12 which can take many months, not because people
13 aren't paying attention, but because there's just
14 a long line. And the presumptions we've tried to
15 build it for on-reservation acquisitions means
16 that our realty staff, we hope, will then be able
17 to spend more time doing the evaluations for some
18 of the other applications that don't have those
19 heightened presumptions, so it's an effort on our
20 part to allocate resources. So these are --
21 that's what we're trying to do here. Of course we
22 welcome -- we don't profess to be all-knowing or

1 to be perfect. And so if, in your experience,
2 we've missed the mark on some of this, we really
3 want to hear from you and especially see proposed
4 language that we can use.

5 MS. CHARLES-NEWTON: Thank you. I was just
6 making sure nobody else had their hands up.
7 Again, thank you for listening to our concerns.
8 I'm looking back over the proposed following
9 changes, and I did notice that under the tab or
10 the -- like I said, the second bullet point, you
11 have that you will be issuing decisions in 120
12 days. Our experience with timelines with BIA and
13 other federal agencies is that many times these
14 timelines are never abided by. A prime example is
15 currently a right of way. I believe that the
16 right of way is supposed to be 45 days. That's
17 what we were told at the Tribal Transportation
18 Summit in Albuquerque held a few months ago.
19 However, that right of way now the process is six
20 years. And the problem is that the federal
21 government doesn't suffer from that time
22 extension, nor does BIA. Who suffers is our

1 people, our people who are waiting, and in that
2 case with right of way, right of way approval to
3 get water to many of these homes, to get
4 electricity to many of these homes. So every time
5 I see BIA proposing timelines, you know, for me,
6 on the one hand it's good, but realistically we
7 don't see that timeline being abided by. And
8 there's all of these issues that come out, and we
9 usually hear the same response from BIA, which is,
10 well, that wasn't anticipated for, or that wasn't
11 something that we thought was going to happen.

12 You just now spoke about some of the issues
13 that are happening right now with the big blocks
14 of time regarding legal review for tribes. That's
15 something that you guys are taking into
16 consideration. However, with the timelines, it is
17 a concern. And what I would like to ask is would
18 it be possible for BIA to include in that that if
19 the BIA or any of the federal agencies go past the
20 timeline indicated within 25 CFR that it would
21 benefit the tribes, and that in these cases, if
22 there's not a decision made, then whatever the

1 tribe is requesting that it go in their favor.
2 And the reason why I'm asking that is because, as
3 you state within your bullet points here, a lot of
4 the recommendations or the ideas that are being
5 put forth today that require consultation is to
6 state -- you know, it's to give -- it's to give
7 weight to tribes to protect tribal homelands, to
8 protect sacred sites, cultural resources and
9 practicing -- I'm looking at the fourth bullet
10 point, by the way. I'm reading directly from the
11 document that you submitted here to us. But
12 really in terms of what you're trying to do today
13 is to strengthen tribal sovereignty. And a lot of
14 times tribes are waiting because these timelines
15 are not being followed. So I would like to
16 suggest that, in addition to what you have here,
17 that it states that if these timelines are not
18 followed by the BIA that it goes in favor of what
19 the tribes requests are, because, again, the
20 tribes are the ones who suffer when the timelines
21 are not being followed.

22 The other request that I'd like to also make

1 is, in instances where there was a disagreement
2 among tribes and the BIA may be at fault, in those
3 situations that litigation costs should be
4 reimbursed to those tribes, and in this case with
5 a notification because tribes were not being
6 notified of the land acquisition, that the BIA be
7 the ones who cover the litigation costs, because
8 now you have two tribes who are going forward
9 litigating a case that the BIA was responsible
10 for, and two tribes are losing funds as a result
11 of that. And we all know what litigation costs,
12 what they look like, how much -- you know, what
13 we're -- what we're spending in those cases. But
14 with non-notification resulting in litigation with
15 tribes, perhaps BIA can front the litigation costs
16 in those cases since they are the ones who
17 technically should be the ones making sure that
18 tribes are sitting down talking to each other.
19 Your responsibility is to strengthen tribal
20 sovereignty and, as was earlier stated, to enhance
21 that federal trust responsibility. And I believe
22 sometimes BIA has to play referee between two

1 tribes. I think we all know that that is true.
2 But in those instances, you know, where BIA, maybe
3 they have caused the issue between the two tribes,
4 that you guys take responsibility and help with a
5 lot of that cost. Thank you.

6 **MR. NEWLAND:** Thank you for those comments.

7 **MR. VILLANUEVA:** Hello. My name is Jordan
8 Romero Villanueva and I'm an attorney on behalf of
9 the Oglala Sioux Tribe. The Oglala Sioux Tribe is
10 very interested in the proposed changes to the
11 Part 151 regulations and will be submitting
12 comments in writing at a later time before the
13 deadline.

14 At this time, however, the tribe wanted me
15 to express an overarching policy issue. The
16 tribe's view is that the only way for the feeder
17 trust process to really work is for the Department
18 of Interior to ensure that it has enough staff to
19 process the applications that it receives. While
20 the proposed changes to streamline and improve the
21 process have definitely needed and much
22 appreciated, the tribe wants to make sure that the

1 department does not forego the need to make sure
2 that it has adequate staff in order to implement
3 the regulations.

4 Again, the tribe will provide additional
5 comments, which it plans to submit in writing.
6 Thank you.

7 **MR. NEWLAND:** Thank you, Jordan. I
8 appreciate that, and that's -- that's a top-line
9 concern of ours as well is our capacity. Not to
10 make light of it, we have a lot of job postings
11 across the BIA, realty and law enforcement and
12 other areas that we are doing our best to
13 emphasize, and we would welcome really talented
14 people from across Indian country to apply for
15 those jobs and to come on board for these exact
16 reasons. So thank you.

17 **MR. BERGIN:** Good morning. My name is
18 Patrick Bergin. I'm an attorney representing
19 tribes. I'm here today on behalf of a few tribes,
20 including Scotts Valley Band of Pomo Indians, Big
21 Sandy Rancheria and the Modoc Nation of Oklahoma.

22 I do have a couple of quick points. I

1 wanted to talk about the 20-day timeline in
2 Section 151.8 and just suggest that you create
3 more certainty in the process, that we give that
4 some teeth. And by that I mean let's have that
5 after the 120-day period has elapsed that it's
6 deemed approved if no action is taken by the
7 secretary.

8 I think in that same vein, on the earlier
9 section regarding the 30-day notice of application
10 is complete, perhaps that could be revised to say
11 within 30 days the department will also -- after
12 receipt of the application, the department will
13 notify the tribe of any deficiencies in their
14 application. And then, once the application is
15 complete, let's give them 30 days to notify the
16 tribe.

17 **MR. NEWLAND:** What section is that?

18 **MR. BERGIN:** It's 151.8B. It's B1 and B2, I
19 think.

20 And then in another area, on a different
21 note, I'm looking at 151.4 where we have kind of
22 the criteria, and there's a potential ambiguity

1 that I think is illustrative of what the
2 department should do overall. And that is you
3 have these requirements that the tribe will be
4 able to demonstrate that an executive order or a
5 treaty was in effect as of 1934 so that the tribe
6 could establish they were under federal
7 jurisdiction. That could be a disputed point as
8 to whether something was in effect at the time.
9 And so I think an overarching policy of the
10 department would be to apply Indian canons of
11 construction to the evaluation of any evidence
12 that's presented by the tribe so that, if there is
13 an ambiguity, that it's weighed in favor of the
14 tribe. I mean, after all, if you consider, you
15 know, those treaties and executive orders, the
16 government wrote the treaty. They asked the tribe
17 to sign the treaty. They asked for the land to be
18 ceded under the treaty. It told the tribe where
19 to go to get their provisions or rations under the
20 treaty. And, in many cases, they read the treaty
21 to the tribe. So why shouldn't those ambiguities
22 be weighed in favor of a tribe?

1 Thank you.

2 **MR. NEWLAND:** Thank you, Patrick. That is
3 a -- so just on your last point on the canons of
4 construction, I'm sure you understand that I'll
5 tread carefully for many reasons there, but what I
6 will say is that, as a general policy issue, that
7 is something that we have had discussions about at
8 the department with respect to how do we make sure
9 we're doing our job as trustee to breathe life
10 into and support the basic legal standards that
11 apply in Indian law including the canons of
12 construction. You know our self-governance
13 regulations have mentioned that the canons of
14 construction apply in the self-governance context.
15 So these are -- these are things that were
16 discussed. But I appreciate you highlighting
17 those ambiguities because that particular section
18 151.4 is an area where we are trying to remove
19 ambiguity to eliminate the need for lengthy legal
20 review. So, again, I know I sound like a broken
21 record. If you have specific language you'd like
22 us -- you know, we've still got time. We'd

1 welcome that here, or, if you want to submit it in
2 writing, we'd love to take a look at it.

3 **MR. BOURGOIS:** Peter Bourgois, Yavapai
4 Prescott Indian Tribe. You may have answered
5 this, or you may have outlined this already. My
6 apologies if I wasn't listening closely. But
7 what's the timeline for the proposed changes, or
8 is there a timeline?

9 **MR. NEWLAND:** The timeline, you know, is
10 impacted by how many comments we receive, both
11 public comments and tribal comments, because we
12 have to -- we have to review each one and dispose
13 of it and respond to it, get a preamble and put
14 that together. Then there's an interagency review
15 process that may or may not occur, depending on
16 the views of other agencies. So the comment
17 period ends on March 1, and we take it from there,
18 review the comments. A lot of the folks who are
19 here in the room sit down and go over those with
20 our BIA staff and our solicitor's office, do any
21 revisions necessary. Then, of course, you know
22 the preamble we have to explain any changes we

1 make from the proposed rule and where in the
2 record we have support for that, which is all to
3 say it depends. There's no clear deadline. What
4 I will say is that our goal has always been to
5 complete this rulemaking in President Biden's
6 first term so that we can begin to implement these
7 regulations, because that is also an important
8 part of how this works is the initial precedent
9 that gets set how these regulations are
10 interpreted and applied, you know, becomes
11 practice for the department, for the BIA going
12 forward, and we want to make sure we're playing a
13 role in that too. Clear as mud.

14 Additional comments?

15 **MR. VILLANUEVA:** If nobody else is, no one
16 else is coming up, just more of an idea than a
17 comment, and that is that, you know, the
18 California Indian -- or the California
19 Fee-to-Trust Consortium has really worked well.
20 We've talked about staffing in California for land
21 acquisitions. Is that a program that can be done
22 nationwide, or are you guys -- can that model work

1 elsewhere?

2 **MR. NEWLAND:** I agree with your assessment
3 on how helpful the Fee-To-Trust Consortium has
4 been. I don't know that there -- I don't know
5 that there has been interest in other places for
6 tribes to band together and create something like
7 that. Intertribal cooperation on these issues is
8 important to put that model together. But that's
9 something -- we want to be open-minded to
10 solutions here. And I will just note on the
11 capacity piece, you know, you may have seen in
12 November we acquired land in trust for the Tlingit
13 and Haida Tribe in Alaska, and we have a number of
14 fee-to-trust applications from tribes in Alaska
15 where the BIA historically has not had a large
16 realty team, as folks know. So, as we review
17 those, we're going to have additional capacity
18 issues because we want to make sure we're giving
19 attention there as well. We'll have to coordinate
20 that across the BIA. So we are -- that's all to
21 say we are open to all manner of ideas to make
22 this process work efficiently. And I know how

1 maddening it is to wait three, five, 12 years to
2 get a decision on an application, and then
3 sometimes maybe, you know, you have somebody
4 challenges that before the IBIA and you can tack
5 on more years to that. So we're trying to bend
6 that time curve back under a year on an average
7 basis. That's our goal.

8 **MR. JAMES:** Jim James from Pueblo Tesuque
9 again. Just to sort of follow up on that comment,
10 my recollection -- and of course as I get older
11 that seems to not be as accurate as it used to
12 be -- is the consortium in California also
13 included representatives from the Bureau of Indian
14 Affairs. There was a team that was actually
15 moving these applications along, and so there was
16 a concurrent -- a concurrent analysis and
17 technical assistance effort by the Bureau as the
18 tribe, you know, made its way through the process.
19 And if you're looking for ways to reduce the
20 timeline, I would suggest that that's probably a
21 good way to do it, given, you know, the capacity
22 issue. I know that's a problem, but perhaps that

1 can also serve as an incentive to recruit folks
2 from Indian country to work with the federal
3 government or, you know, together with the federal
4 government.

5 **MR. NEWLAND:** Thanks, Jim. I don't want to
6 get us way off track, but I just want to -- one
7 thing I want to highlight on the staffing at BIA
8 in general is -- you know, one of the benefits,
9 self governance, self determination has been an
10 overwhelming success for Indian country as so many
11 tribal governments filled with -- staffed up with
12 just brilliant, talented people from across Indian
13 country, and that's the whole point of that. But
14 that means that we're no longer in the old days
15 where the BIA job and on the res is the best job.
16 And we're often competing with tribes for a lot of
17 the most talented and hardworking people across
18 Indian country. And so it makes -- it's not an
19 excuse. I view that as a good problem to have,
20 and that's the intent behind self-determination.
21 But it's a challenge we're facing on many fronts,
22 and realty is one of them. As tribes are -- this

1 is an area where tribes are growing their own
2 staff of realty functions, and that means we're
3 competing for talent. But we -- you know, I would
4 love to have Indian country's help on bolstering
5 our team at BIA to make sure we can continue to
6 perform these functions.

7 **MR. TSO:** Thank you very much, Bryan. Good
8 to see you again. My name is Otto Tso. I'm the
9 Speaker of the Navajo Nation Council.

10 One area -- back to what Delegate
11 Charles-Newton alluded to with the 120 days time
12 schedule, what I'm getting to is that if the
13 federal -- if we could include the other is that
14 it's plain and simple. If the Bureau of Indian
15 Affairs or trustee don't meet that 120 days with
16 all of the staff that they have, that land to
17 trust is fully granted a hundred percent. You had
18 120 days. And under this consultation, you can
19 determine what is the necessary number of days you
20 guys need, because you have a whole fleet. The
21 federal government's budget is so many trillions
22 of dollars. And I know you can find employees to

1 try to go to work and get these trust applications
2 from these Indian tribes to process. But if you
3 don't meet that 120 days, just grant them the
4 trust land status. That way you're not having
5 delay.

6 There's one issue on Navajo. It's not
7 benefiting the Navajo Nation, but it's allowing
8 this court case to happen, this litigation. The
9 federal government awarded state lands to another
10 tribe, our neighboring tribe, state land, and put
11 the burden on them to acquire the land into trust.
12 That allows that tribe to deal with the State of
13 Arizona. The State of Arizona is known to really
14 not work with Indian tribes. And, therefore, that
15 tribe, our neighboring tribe is having an issue to
16 get, to process the land into trust or just to get
17 the land under the Hopi Tribe's name. And the
18 federal government put statutory language in and
19 said, okay, you're going to get this land here
20 that's not mine. That's a state -- state land.
21 Therefore, the Hopi Tribe is trying to get that
22 land into trust. Now the Hopi tribe wants to put

1 the burden on the Navajo Nation. And my thinking
2 is why is Navajo Nation holding that burden while
3 the trustee is responsible to help that tribe work
4 with the State of Arizona. And with that, you
5 know, if the Bureau of Indian Affairs could help
6 them, nurture them through the process with the
7 State of Arizona, that would elude them and allow
8 this litigation that we are going in, we are in to
9 go away.

10 And then the other thing is what Madam Chair
11 alluded to is that the reimbursement while the
12 tribe is in current legal costs. And I think
13 every tribe, it's going to happen to you guys.
14 It's happening to us, you know. I just want to
15 make sure that our trustees is keeping a --
16 watching out for us, allowing, you know, for us to
17 be good Indians to stay on an Indian reservation.
18 But yes, outside the Indian reservation is our
19 aboriginal homeland, whether it's in California,
20 whether it's in Arizona, or the District of
21 Columbia. So that's something just to think about
22 and see if we could get that into the comments.

1 Thank you.

2 **MR. NEWLAND:** Thank you, Mr. Speaker.

3 Congratulations on your inauguration, all of the
4 new delegates this week. Thank you for your
5 comments.

6 Additional comments? You've got us for two
7 more hours if you want us.

8 **MS. TUELL:** Hello. Loretta Tuell. Nobody
9 puts me in the corner but myself, and I'm in the
10 corner. Good morning, Assistant Secretary, Deputy
11 Assistant Secretary. I'm not going to give any
12 specific comments. I think that folks that I
13 represent will submit some in writing, but wanted
14 to say a couple of things that this is a yeoman's
15 effort to put out a new view and perspective on
16 151, and I think it's an excellent advancement.
17 So what happens with excellence, we find the
18 flaws, even though, you know, we've got a really
19 great attempt here to clear up the divisions of on
20 contiguous and off, as well as the standards of
21 review and the shifting and trying to clean up
22 some of the administrative slowdowns, especially

1 with title commitments. I think those are all
2 great. And reflecting -- and I'm not sure whether
3 you can give some feedback. There's a couple of
4 areas that stood out to me maybe just because of
5 the years and years and years of working on these
6 and dealing with the department. The element of
7 discretion, there is the division that you created
8 between the definition of secretary being the line
9 of authority, and the Secretary of Interior being
10 the primary to clarify. What that prompted me to
11 think is, if this needs to be here or in the
12 handbook or in some other area, what are the
13 criteria that the secretary would trigger to
14 retrieve one of the applications to the
15 secretarial level. Is that by invitation of the
16 tribe, or is that because of other reasons? And
17 what those other reasons often tend to be are
18 advocacy from potentially a state official, or an
19 interested third party that may not technically
20 have standing, but have an interest. So, for me,
21 that's an area where that discretion could use
22 some guidance, if necessarily not in reg, in the

1 Fee-to-Trust Handbook.

2 Another that I think could benefit either in
3 some of the level of the purposes is when you read
4 the litany -- and I know tribes from California
5 asked to add a few more items. Pretty soon all of
6 the examples, you know, and you could just say and
7 others, but one I think that I think is important
8 for the department to reiterate in the reg is one
9 that, through the course of dealings over the last
10 probably 15 years after the Cobell legislation and
11 then the Cobell litigation, is the term trust
12 responsibility. I feel like we've left that term
13 on the floor and walk on it, but that, as you're
14 looking to build the ideas of what the purpose of
15 the IR is and what the role of the federal
16 government is with tribes specifically in the land
17 trust responsibility I hope somewhere in this reg
18 can be, you know, put in.

19 Similarly, the idea of self-governance. And
20 the reason self-governance is part of the issues
21 that tribes have are jurisdictional. And this is
22 sort of that movement from whatever the

1 jurisdiction was on the state level, local,
2 whatever to the tribes, and that's governance. So
3 a lot of times those terms could mean about
4 criminal jurisdiction in some specific states, or
5 other things that deal with the idea of
6 governance. And that's another term that we kind
7 of put in the litany of self-determination,
8 self-governance, trust responsibility, so if that
9 could grow a little more, or at least to emphasize
10 those sort of tenets of Indian law.

11 Which brings me to some other terms that
12 could be useful, and I've heard some folks already
13 talk about this trigger to create action of
14 operational law if the 120 doesn't, you know, work
15 out for the tribes. What happens with that is
16 that in these regs, in particular -- we've had
17 some timelines in the past, whether they be in
18 handbooks or not -- is that the work product gets
19 slowed down in an element that we can't control at
20 the BIA. For example, the solicitor's office. So
21 how do we deal with that? So the operational law
22 makes it difficult when you have a third party

1 actor in line of authority to finalize it. But
2 there may be a sliding scale that you could use
3 for an operation of law that could be when they're
4 on reservation and when there are no highlighted
5 environmental issues that those could have that
6 almost conclusive presumption at the 120 days so
7 there is some finality for a lot of these
8 applications that are already on reservation. And
9 there could be a shifting when it's contiguous.
10 And then, given that it's off that operation of
11 law, would it trigger right away, but that there
12 would have to be, as someone said, some alertness
13 to the deficit of what we're trying to fix to
14 create a more speedy timeline. It's just
15 something to think outside the box whether that
16 couldn't happen or not, but to try to get to the
17 goal, which is to get the land to the tribes.

18 Another area -- I just was thinking about
19 these things -- is about, again, the tenets of
20 Indian law. We've talked about canons of
21 construction, which I think in some way, shape or
22 form, like the self-governance, could be in here.

1 If you recall, the self-governance regs were a
2 negotiated rulemaking. So that meant that there
3 were a lot of tribal leaders at the table, a lot
4 of feds. It took a long time. But it embodies a
5 lot of those Indian law tenets that could be
6 useful to bring, given the standing of land is so
7 vital as well. Another is, as I said before, the
8 trust responsibility and self-governance, but is
9 there a way for you also to bring in some of the
10 flavor of the Undre (inaudible) about land and
11 purpose since the prior Biden administration
12 affirmed -- excuse me -- Obama, Obama-Biden,
13 affirmed the Undre, and we are constantly trying
14 to put some teeth in that in policy, whether it
15 would be prohibitive in some way to allude to that
16 in the regs or at least in the intent and purpose.
17 I think that would be good.

18 So, lastly, would try to get to where the
19 idea is what's policy versus law. And that brings
20 me to the Fee-To-Trust Handbook. In the handbook,
21 I'm wondering in around 2014 or 2017 -- I can't
22 recall off the top of my head -- they clarified

1 the handbook to allow for dual filing of the
2 proclamation of reservation with the fee to trust,
3 given that they were both essentially the same
4 thing. And given that there were just a lot of, I
5 would say, third-party interesters who were trying
6 to slow down the fee-to-trust applications at the
7 time using whatever means possible and created new
8 life into this proclamation of reservation as if
9 it would allow use of the land. If there's a way,
10 given the handbook, to reiterate somewhere in this
11 reg that it's dual, it can happen at the same
12 time, to clarify because some tribes get slowed
13 down and don't even know, even though there's a
14 handbook, that to proclaim it a reservation
15 creates different kinds of relationship,
16 especially if it's on. I mean, there is already a
17 presumption that if it's on it's part of the
18 reservation. But clarifying that in some way, if
19 that could be useful. If it remains on handbook,
20 that's, you know -- that's fine, too, but I just
21 think that it could be useful.

22 And then, finally, getting back to the

1 handbook, if there has been an attempt to look at
2 it in correlation to the new regs as to whether
3 there will need to be an update, and to what
4 extent if there's any you can take from there to
5 put in the reg. I don't know. I'm just sort of
6 thinking outside the box.

7 But those are just some thoughts that I had
8 that aren't necessarily comments, but just some
9 ideas. And, if you have any feedback, I'd love
10 it.

11 **MR. NEWLAND:** Thank you, Loretta. That was
12 incredibly helpful, and I appreciate the emphasis
13 on lending more support on the basic tenets of
14 Indian law. And I will say, you know, we've seen
15 a lot of these cases from Gerent (phonetic) to
16 Castor (phonetic) and Brad Keane (phonetic) and
17 others that are pending that I'll get a buzz on my
18 shock collar if I started talking about. But we
19 want to make sure that we are embedding those
20 basic things, which ultimately boil down to the
21 trust responsibility and defining it in a positive
22 way. And so I appreciate -- now that we've got

1 several comments in a record of calling for that,
2 that's something that is front of mind for me and
3 front of mind I know for the secretary to make
4 sure that when our tenures are complete at the
5 department that there are clear policies
6 articulating that the trust responsibility means
7 something tangible in this century and going
8 forward and that we've got things that Indian
9 country can point to in the law and regulations to
10 support that.

11 **MR. CROWELL:** Thank you. Scott Crowell
12 again. Loretta always gets my mind churning.
13 First, an editorial comment. I don't expect you
14 to respond. But it's frustrating. You know, I
15 hear the department's commitments to the basic
16 tenets of Indian law, and that doesn't seem to be
17 reflected, have been reflected in the DOJ's motion
18 for reconsideration in the Scotts Valley
19 litigation. But, that aside, one idea that occurs
20 to me with this idea of getting tribes to where
21 finality is, you know, over the years, I've
22 experienced situations where we actually, you

1 know, finally get to a position of decision at the
2 regional office and then we just spend years at
3 the IBIA. And unless it's changed, my
4 understanding is that decisions made at the
5 regional office are subject to IBIA review, and
6 decisions that are made at the DC office are not.
7 And it strikes me that one way to maybe get tribes
8 out of that limbo is that, if an IBIA appeal has
9 been filed and there's no decision after 90, 180
10 days, that there'd be this automatic presumption
11 that it goes to the DC office where the DC office
12 can affirm the decision of the regional office,
13 which would moot the pending IBIA appeal. That
14 might be -- I just -- you know, I'm thinking out
15 loud, which is always dangerous. But that might
16 be a mechanism in which to help avoid the
17 possibility of the IBIA limbo, especially if
18 you're looking at expanding the ability of the
19 regional offices going forward.

20 **MR. NEWLAND:** Thank you, Scott. So again
21 I'd encourage you -- those are great points and
22 things that we've given a lot of thought to, and I

1 would encourage you to look at our rulemaking
2 under Part Two. It doesn't do exactly what you're
3 describing, but some of these changes that we have
4 proposed in the Part Two regulations were done
5 with the fee-to-trust process in mind. And I will
6 encourage you, if you have questions about that,
7 Joaquin Gallegos over here and Sam Kohn have been
8 involved in that process for us and are happy to
9 explain it and answer questions about that.

10 I know we are out to consultation or we went
11 out to consultation on that. Has that comment
12 period closed, Joaquin?

13 **MR. GALLEGOS:** It'll be in a few weeks.

14 **MR. NEWLAND:** Okay. So it's still open.
15 And you can find that on our website for tribal
16 consultation as well.

17 **MR. BERGIN:** Good morning again. Patrick
18 Bergin. I'm looking at 151.17, which permits try
19 to have their application process under these new
20 regs that they have a pending application, which I
21 can see would be very beneficial given -- for
22 example, if you're a landless tribe, there is the

1 presumption that, if you do not have land, that
2 the acquisition will be approved. The question I
3 have is, or the recommendation is can we add
4 clarity to 151.17 that the application, if it's
5 processed under the new regs, will not be
6 considered a new application, or that the original
7 date still applies. And I say that because you
8 have the same consistency in the gaming
9 regulations which puts a 25-year window on
10 restored tribes; and so, for example, if you were
11 restoring in the Nineties and you have your
12 application pending since that time or since, you
13 know, that 25-year window period, you may now be
14 out of it if you want to process under the new
15 regs. So if we could add some clarity that it
16 won't affect the date of the original application,
17 that would be helpful. Thank you.

18 **MR. NEWLAND:** I'm just making a note here,
19 Patrick. Thank you for that.

20 Additional comments? What we can do is
21 let's take a very brief break for five minutes and
22 allow folks to use the restroom, stand up, stretch

1 your legs, check your e-mails -- I know many of
2 you are doing that -- and we'll come back here and
3 hear more comments.

4 (A recess was taken.)

5 **MR. NEWLAND:** So we'll go back on the record
6 at 10:36 a.m. Just before we go back to comments,
7 I had referenced the Part Two appeals regulations,
8 the comment period for those regulations closes
9 also on March 1, so we would welcome comments on
10 that. Again, that's the process by which people
11 appeal decisions that BIA makes to the Interior
12 Board of Indian Appeals. So I would encourage you
13 to -- I know we've got a lot of attorneys here. I
14 encourage you to go on our website and check out
15 those regulations as well.

16 So I think maybe, Loretta, it looks like you
17 had your hand ready to go when we took a break.

18 **MS. TUELL:** That was actually to request a
19 break.

20 **MR. NEWLAND:** All right.

21 Okay. Do we have any additional comments,
22 speakers? I don't want to make you guys sit here

1 and stare at us.

2 **MS. APPLGATE:** Hi. Good morning. Kelly
3 Applegate, I'm the Commissioner of Natural
4 Resources with the Mille Lacs Band of Ojibwe.
5 We're located in Central Minnesota. I just wanted
6 to thank you for receiving our comment letter on
7 the previous consultation opportunity. And we had
8 noticed that there were a lot of changes made
9 between then and now with some of the work that
10 that has been done towards the part 151 that
11 reflected a lot of our comments. So we appreciate
12 that.

13 And also I would like to reiterate the
14 previous comment that we also see that there are
15 staffing needs throughout the Interior, and where
16 some of those congested areas happen and staff
17 being shuffled around and moved around as needed,
18 as you're reacting to the needs of the department.
19 But we would encourage that the Department of
20 Interior really focus on getting those positions
21 staffed so that you can effectively service the
22 tribes.

1 And that's it pretty much. Thank you.

2 **MR. NEWLAND:** Kelly, thank you so much for
3 that. With respect to the consultation process
4 and the changes, what I will say is in my tenure
5 now over the last two years and back at the
6 department and working with our team, we have, I
7 think, saturated Indian country with
8 consultations. We heard some of that yesterday,
9 because we were here in this room consulting on
10 our neg regulations. And, you know, it's always a
11 delicate balance, because I know tribal officials
12 have a lot of responsibilities, and many of them
13 more important than running around at our beck and
14 call. So I do want to make sure I say that we
15 view this process as collaborative. And we try as
16 best we can within the bounds of the statutes that
17 we have to incorporate and rely on the comments
18 from tribes in these regulations. So thank you
19 for acknowledging that, because that's how we
20 think it should go. As part of our trust
21 responsibility, the rules that affect Indian
22 people should be drafted in collaboration with

1 Indian people. And so that will continue to be
2 our practice. And so as you continue to get Dear
3 Tribal Leader letter one after another from us,
4 please bear in mind that that's our effort to try
5 to make sure that we're being collaborative. And
6 what we are going to try to do is balance the
7 virtual consultations and the in-person
8 consultations, and when we do in-person
9 consultations making sure we're grouping them
10 together like we have this week where we've had
11 four different separate sets of tribal
12 consultations in this room.

13 (Off the record comments.)

14 **MS. DUNCAN:** Good morning. My name is
15 Desiree Duncan. I'm the Director of the Native
16 Lands Division at Tlingit Haida Central Council in
17 Juneau, Alaska. I'm very honored to be here, and
18 I just want to thank you, Assistant Secretary
19 Newland, for signing our notice of a decision for
20 the first parcel of land in Juneau to be taken
21 into trust. We had a deed-signing ceremony on
22 January 7 where President Peterson signed the deed

1 with the Bureau of Indian Affairs, and it was just
2 a great, great day. So I just wanted to give you
3 my thanks on behalf of the President and Tlingit
4 and Haid.

5 **MR. NEWLAND:** Thank you very much. I'm
6 really excited, and that will not be the last
7 trust acquisition in Alaska.

8 Additional comments? I'll do a look-around.
9 Maybe I'm just not seeing new folks trickling in.
10 We can do a last call. We're happy to break
11 early. I know many of you will be here this
12 afternoon for the gaming compact consultations as
13 well. So I'll do another call for comments. And
14 if we don't have any, then we can break. And, of
15 course, you've got us until the scheduled time, so
16 we'll stay as long as folks need to talk.

17 Going once. Going twice. Okay. I want to
18 thank you all for taking time with us this
19 morning, sharing your expertise, your feedback,
20 your support. This is a high priority for the
21 administration. We appreciate the collaborative
22 process.

1 Before we wrap up with this session, I just
2 want to make sure that everybody here knows that
3 we will be back in the Phoenix area next week in
4 Arizona with Secretary Haaland where she and I
5 will be hosting two stops on the Secretary's Road
6 to Healing Tour for the Boarding School Initiative
7 where we will hear from boarding school survivors
8 and their family members. The first one will be
9 next Friday at Gila River, and then, I believe,
10 Sunday up at Navajo Nation at the Many Farms
11 School. We put out a release and notice, but
12 please get the word -- help us get the word out to
13 your community members. This has been a very --
14 it's been an incredible process to be a part of
15 under Secretary Haaland's leadership, but very
16 powerful and sometimes painful and sometimes
17 uplifting process to hear from folks who went to
18 boarding school. So we'll be back here in this
19 area at Gila River next Friday with Secretary
20 Haaland, and then next Sunday up at the Navajo
21 Nation and would love to see folks from your
22 communities attend and share their stories, if

1 they so choose.

2 So with that, we will adjourn the
3 government-to-government consultation on the 25
4 CFR Part 151 regulations. We will be back in this
5 room at 1:00 for a government-to-government
6 consultation on 25 CFR Part 293. We'll have Paula
7 and Phil on their team walk us through the work
8 that we've done on those regulations at that time.
9 So thank you very much. Those of you who are
10 leaving, safe travels. We wish you well and look
11 forward to talking again.

12 (The proceedings adjourned at 10:46 a.m.)

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C E R T I F I C A T E

I, Ashleigh Simmons, Professional Reporter, certify that I was authorized to and did report the foregoing proceedings and that the transcript is a true record.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

WITNESS my hand and official seal this 20th day of January, 2023.

Ashleigh Simmons



ASHLEIGH SIMMONS

Notary Public - State of Florida

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