

UNITED STATES DEPARTMENT OF THE INTERIOR

BUREAU OF INDIAN AFFAIRS

TRIBAL CONSULTATION ON THE LIST OF PROGRAMS  
ELIGIBLE FOR INCLUSION IN FUNDING AGREEMENTS  
NEGOTIATED WITH SELF-GOVERNANCE TRIBES BY INTERIOR  
BUREAUS OTHER THAN THE BUREAU OF INDIAN AFFAIRS  
(BIA)

Washington, D.C.

Friday, January 20, 2023

## 1 PARTICIPANTS:

2 KATE KELLY

Principal Deputy to the Assistant Secretary Bryan

3 Newland

Deputy Chief of Staff for Policy

4 United States Department of the Interior

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6 Office of Regulatory Affairs and Collaborative  
Action7 Office of the Assistant Secretary of Indian  
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8

ROSE PETOSKEY

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SANDRA "SANDY" SAMPSON

11 Confederated Tribes of Umatilla Treasury

12 CURTIS VANDERMOLEN

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

2 (2:04 p.m.)

3 MR. WHALEY: Hello, everyone. Welcome  
4 to the consultation. I'm just going to give  
5 everybody a second to get joined in and have their  
6 audio connected. We appreciate your patience.

7 Okay. It looks like we've got everybody  
8 in. You've all been placed into the consultation.  
9 Please ensure that your mic remains on mute until  
10 the specified time for comments.

11 And if you could also just take a moment  
12 to add your title and affiliation to your name and  
13 Zoom. You can do this by clicking on the  
14 participant list. Just find your name, click on  
15 the blue "more" next to your name, and choose  
16 "rename."

17 As a reminder, this is a  
18 government-to-government consultation.  
19 Consequently, this consultation is closed to the  
20 press. So, if you are a member of the press, we  
21 do ask that you disconnect at this time.  
22 Additionally, this session is being recorded, and

1 transcripts will be created. So, if you do not  
2 consent to being recorded, we also ask that you  
3 disconnect at this time.

4 We have closed-captioning services  
5 today. If you need those, to access closed  
6 captioning, click on the up arrow next to the  
7 closed-caption box at the bottom of your screen  
8 and choose subtitle. And if you have issues with  
9 that, you can also follow the link that I will put  
10 into the chat message. I will also put a link to  
11 the Dear Tribal Leader letter and the consultation  
12 web page in the chat session as well.

13 When we get to the comment portion of  
14 today's session, we welcome your comments. If you  
15 would like to make a verbal comment, please raise  
16 your virtual hand by going down to the reactions  
17 button at the bottom of your screen. Select raise  
18 hand, and we will call on individuals to speak.  
19 If you're unable to raise your virtual hand,  
20 please type your comment in the chat box. And  
21 when you are called upon to provide a comment,  
22 please provide your name, title, and Tribe.

1                   And with that, I'm going to turn the  
2                   time over to Kate Kelly, who is the deputy chief  
3                   of staff for Policy for Secretary Haaland and the  
4                   Department of Interior. She is here with us today  
5                   because Assistant Secretary Bryan Newland is on  
6                   the road to healing, BIA initiative with the  
7                   Secretary in Arizona. So, we appreciate her being  
8                   here today. Thank you.

9                   MS. KELLY: Great. Thank you, Oliver.  
10                  Appreciate that introduction. And thank you,  
11                  everybody, for joining. Welcome to this  
12                  consultation on the list of programs eligible for  
13                  inclusion in funding agreements negotiated with  
14                  Self- Governance Tribes by interiors bureaus other  
15                  than Bureau of Indian Affairs. This list is  
16                  prepared annually pursuant to Section 412(c) of  
17                  the Indian Self-Determination and Education  
18                  Assistance Act, or ISDEAA.

19                  As Oliver said, my name is Kate Kelly.  
20                  I am the deputy chief of staff for policy at the  
21                  Interior Department. I am honored to work for  
22                  Secretary Haaland and work closely with Bryan

1       Newland, the assistant secretary of Indian  
2       Affairs.

3               Before we get started, I want to make  
4       sure that we start this consultation off on the  
5       right foot by calling for a blessing. We do not  
6       have someone selected to offer a prayer, so we  
7       will take a moment of silence for everyone to find  
8       their own way to give thanks and set intentions  
9       for this consultation. So, please join me in a  
10      brief moment of silence.

11              Thank you. So, now, we'll begin the  
12      consultation. And I want to start by introducing  
13      the other federal officials that are joining  
14      today. You've heard from Oliver, but I would also  
15      like to introduce Rose, if you could introduce  
16      yourself.

17              MS. PETOSKEY: Hello. Thanks, Kate.  
18      Good afternoon, everyone. My name is Rose  
19      Petosky, and I serve as senior counselor to  
20      assistant secretary of Indian Affairs, Bryan  
21      Newland. Thank you all for joining us today, and  
22      I will pass it over to Sharee.

1 MS. FREEMAN: Good morning for some,  
2 good afternoon for others. Always a pleasure to  
3 be with you. My name is Sharee Freeman. I'm the  
4 director of the Office of Self- Governance in the  
5 Department of Interior. And I'm normally the  
6 person who works to get this non-BIA list out,  
7 working with the other non-BIA bureaus every year.

8 MS. KELLY: Thank you, Sharee. All  
9 right. I think, with that, we are ready to get  
10 into the consultation. We will start with a brief  
11 presentation, a PowerPoint, just to ensure that  
12 folks have shared background and a sense of the  
13 questions upon which we are consulting on. And  
14 then we have two hours set aside to hear from you  
15 all on this topic. So, I think Oliver is going to  
16 pull up a short PowerPoint, and we will begin.

17 Thank you, Oliver. So, today's topic  
18 for consultation is, again, the list of programs  
19 eligible for inclusion in funding agreements  
20 negotiated for self-governance Tribes other than  
21 BIA bureaus. And this is prepared, as Sharee  
22 said, annually, pursuant to ISDEAA. Next slide,

1       please.

2               Prior versions of this annual list have  
3       included non-BIA programs or portions of programs  
4       that are eligible for inclusion in self-governance  
5       funding agreements with Tribes. Past lists have  
6       also included fiscal year programmatic targets for  
7       non-BIA bureaus under Title IV of ISDEAA. This  
8       list is not a definitive list of all potentially  
9       contractable programs, and there may be many more  
10      that have yet to be identified. Next slide,  
11      please.

12             Part of our motivation for this  
13      consultation and this work to re-examine the  
14      annual list is motivated by Secretarial Order  
15      3403, which directs interiors bureaus to enter  
16      into co-stewardship agreements with Indian Tribes  
17      on the management of lands and waters under the  
18      department's jurisdiction. This is a joint  
19      secretarial order entered into by Departments of  
20      Interior and USDA, and we are now on our second  
21      year of implementation to advance co-stewardship  
22      in a meaningful way across the department. And



1 the department views ISDEAA as a really critical  
2 and important means for fulfilling the goals of  
3 that secretarial order, that the list is a  
4 valuable resource for Tribes who are seeking to  
5 develop those arrangements and formal agreements  
6 on co-stewardship with federal lands and waters.  
7 Next slide, please.

8 In August, Interior Department  
9 leadership participated in a listening session on  
10 this topic at the Self- Governance Conference. It  
11 was well attended, and non-BIA program staff were  
12 available to answer questions-and-answers. Given  
13 the interest and the complexity of the issues it  
14 indicated, we determined that additional  
15 consultation would be valuable on this topic and  
16 the content of the list. And so, this is the last  
17 of the consultation sessions on this topic. And  
18 we, again, are appreciative of you joining. Next  
19 slide.

20 There are three main topics that we are  
21 hoping to hear from you all on related to the  
22 annual list. First would be the value of the

1 current format of the list for Indian Tribes  
2 seeking contracting, self-governance agreements,  
3 or compacting under ISDEAA. Second is whether  
4 adding to the list of all contracts -- sorry,  
5 adding to the list -- a list of all contracts,  
6 self-governance agreements and/or compacts entered  
7 into by department bureaus other than BIA would be  
8 helpful for Tribes seeking to contract or compact.

9 And third, we are seeking general  
10 guidance on the principles governing contracting  
11 self-governance agreements or compacting under  
12 ISDEAA, and whether they should be included in the  
13 list when it's published. I believe that's the  
14 last slide, Oliver.

15 Oh, no. Importantly, information on how  
16 you can continue to provide feedback on  
17 consultation closes -- those written comments are  
18 due in approximately a month, February 20th. And  
19 so, that is the email address, and we can drop it  
20 in the chat as well where you can provide  
21 feedback. And if you have any questions, Sam  
22 Kohn, in our Office of the Assistant Secretary of

1 Indian Affairs, his email address is listed there  
2 as well.

3 All right. I believe we are at the best  
4 part of the consultation where I stop presenting  
5 and talking and get to the listening part. And  
6 so, Oliver, I don't know if you want to remind  
7 people how to offer questions, comments, and  
8 feedback, but I believe you're able to raise your  
9 hand or to drop feedback in the chat. So, Oliver,  
10 let me know if I dropped -- missed anything.  
11 Otherwise, we'll start the listening.

12 MR. WHALEY: Yes. So, if you are on the  
13 Zoom call, again, you can raise your virtual hand  
14 by going to the reactions page, select raise hand.  
15 If you're joining us via a toll-free number,  
16 please hit star 9 to raise your hand and star 6 to  
17 mute and unmute yourself. And then, of course, if  
18 none of those options work or are available for  
19 you, you can put your question or comment in the  
20 chat, and those will be captured as well. And  
21 then we'll try to -- if there are any questions in  
22 the chat, we'll try to get to those as well.

1                   MS. KELLY: Thank you, Oliver. I  
2           appreciate everybody's time is incredibly  
3           valuable. And as Tribal Leaders, I appreciate you  
4           making the time to join us for this consultation.  
5           I want to make sure that if anybody has a comment  
6           to make, that we certainly provide the time and  
7           space for that to happen. So, we'll continue to  
8           --

9                   MS. SAMPSON: I got my hand up.

10                  MS. KELLY: Sandra. There we go. Is  
11           that you?

12                  MS. SAMPSON: Yeah.

13                  MS. KELLY: All right. I hear you.

14                  MS. SAMPSON: Thank you. Sandy Sampson,  
15           I am the treasurer for the Confederated Tribes of  
16           the Umatilla Indian Reservation. And you had  
17           talked about some non-BIA programs and a listing  
18           that could help or enhance, maybe identify  
19           different programmatic type of self-governance,  
20           compacting, contracting, whatever a Tribe would  
21           want to do. Where would I find that list? And --  
22           because I remember just seeing something on the --

1       on some of the scenic byways in our seated area.  
2       So, they received funding, but where would I find  
3       that information out and to move forward? I know  
4       we still have until February 20th to provide more  
5       feedback, but I guess just trying to understand  
6       your presentation and those programmatic targets  
7       on how to identify those. Thank you.

8               MS. KELLY: Yeah, thank you. That's a  
9       great question, Sandy. And I will respond by  
10      saying -- so this list is published annually in  
11      the Federal Registry Notice. And so, I think Rose  
12      is working to drop that list, the most recent  
13      list, in the chat here, so you are able to review  
14      it and have a sense of what we are talking about.  
15      I think you'll note that the list is often divided  
16      by the non-BIA bureaus such as Fish and Wildlife  
17      Service, National Park Service, and BLM, and  
18      identifies the functions by which these bureaus  
19      may approach these self-governance agreements, or  
20      sometimes, they are identified by, like, specific  
21      land management units. So, it's worth taking a  
22      look. And that should be available for all of you

1       now in the chat. Thank you, Rose, for doing that.

2               MS. SAMPSON: Yeah. I know we do some  
3       BIA realty- type compacts, but I'm just  
4       considering other type -- BLM and other type of  
5       different scenarios that may be available to  
6       Tribes, you know, whether it's co-managing,  
7       co-stewardship, you know, that type of thing. So,  
8       thank you.

9               MS. KELLY: Yes, thank you. And I think  
10       we are in a similar place of wanting to know the  
11       real possibilities here when it comes to  
12       self-governance contracts with non-BIA bureaus.  
13       So, appreciate your comment there.

14              In case it's useful for me to repeat the  
15       main questions for consultation, I'll do so. And  
16       if that inspires -- Oh, I see -- Curtis, are you  
17       coming on to offer a comment?

18              MR. VANDERMOLEN: I do have a comment or  
19       a question, but I --

20              MS. KELLY: Okay.

21              MR. VANDERMOLEN: Please, you know,  
22       finish your recital, and maybe it will prompt

1 others after me.

2 MS. KELLY: Sure. Okay. The three  
3 areas of inquiry identified in the consultation  
4 notice are related to, first, the value of the  
5 current format of the list. The second is whether  
6 adding to the list -- a list of all contracts,  
7 agreements, or compacts would be helpful for other  
8 Tribes to have access to. And third is whether  
9 developing guidance on the principles governing  
10 contract should be included in the list when it is  
11 published. Thank you for pulling that up there.  
12 All right. Over to you, Curtis.

13 MR. VANDERMOLLEN: Thank you. My name is  
14 Curtis Vandermolen, and I work for the firm  
15 Peebles Kidder. And we represent Tribal clients  
16 and Tribal governments. We have a number of  
17 clients that are interested in 477 compacts in  
18 particular. And I understand this is under  
19 ISDEAA, which is somewhat a different program.  
20 But it would be really helpful, I think, if, in  
21 the list, you can kind of cross-reference or  
22 identify which of those are eligible for 638

1       contracting and which are eligible for the 477  
2       block grant.

3               MS. KELLY: Thank you. I appreciate  
4       that comment.

5               MS. PETOSKEY: I might just add here in  
6       response to Curtis' comment. Sorry, I turned off  
7       my camera. The sun is blinding me right now, but  
8       --

9               MS. KELLY: Oh, yes. Please go in --  
10      please jump in, Rose.

11              MS. PETOSKEY: I just wanted to say I --  
12      so, Sam Cohn, who couldn't be here, is sort of our  
13      477 expert from the Asia office. And I just  
14      wanted to add that one of the things we are  
15      thinking about, certainly with expanding the list,  
16      is how we can incorporate 477 or model 477 with  
17      ISDEAA because 477 is just -- it's a great model,  
18      and definitely something that we're thinking about  
19      too, Curtis. So, I just wanted to add that.

20              MS. KELLY: Thank you, Rose. Other  
21      comments or questions? Great. I'll pause for a  
22      few more minutes to make sure that if there are



1       any thoughts that are formulating or questions  
2       that you may have, I want to make the most of your  
3       time. And I think consultation is one of the most  
4       important things we do. So, definitely don't want  
5       to cut short any comments or questions while we  
6       have the time.

7               All right. I'll offer, again, just a  
8       reminder of the questions we're seeking feedback  
9       on. And also note that if you would prefer to  
10      offer comments via -- in writing, that those are  
11      welcomed by February 20th at the email that is in  
12      the chat box. But if you would like to offer a  
13      comment on this consultation, we are seeking  
14      feedback on the value of the current list and its  
15      format to Tribes, you know, whether adding a list  
16      of all contracts, agreements or compacts would be  
17      helpful for Tribes, and then whether general  
18      guidance on the principles governing contracting  
19      agreements or compacting should be included in  
20      publication of the annual list. So, I'll just  
21      give it maybe one or two more minutes and make  
22      sure that we provided opportunity to gather your

1 thoughts and feedback.

2 All right. Well, I want to thank  
3 everybody who has joined us today and thank  
4 everybody who offered comments and questions. I  
5 really appreciate your time. I know you're all  
6 incredibly busy and important people, and have  
7 many things to do on a Friday afternoon. So,  
8 appreciate your time.

9 Again, please don't hesitate to offer  
10 written comments by February 20th. And based on  
11 the questions and the comments that we receive  
12 through this consultation and in writing, we  
13 anticipate making -- being able to perfect and  
14 make changes to the annual list that is published  
15 through ISDEAA. Rose, Sharee, is there anything  
16 else you'd like to add at this point?

17 MS. FREEMAN: I don't have anything  
18 else.

19 MS. PETOSKEY: Yeah, they're just --  
20 thank you, everybody, for joining and we look  
21 forward to reviewing written comments on the 20th.  
22 Thank you.

1 MS. KELLY: Thank you all. Have a nice  
2 day.

3 (Whereupon, at 2:28 p.m., the  
4 PROCEEDINGS were adjourned.)

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## 1 CERTIFICATE OF NOTARY PUBLIC

## 2 DISTRICT OF COLUMBIA

3 I, Kendra Hammer, notary public in and  
4 for the District of Columbia, do hereby certify  
5 that the forgoing PROCEEDING was duly recorded and  
6 thereafter reduced to print under my direction;  
7 that the witnesses were sworn to tell the truth  
8 under penalty of perjury; that said transcript is a  
9 true record of the testimony given by witnesses;  
10 that I am neither counsel for, related to, nor  
11 employed by any of the parties to the action in  
12 which this proceeding was called; and, furthermore,  
13 that I am not a relative or employee of any  
14 attorney or counsel employed by the parties hereto,  
15 nor financially or otherwise interested in the  
16 outcome of this action.

17

18 (Signature and Seal on File)

19 Notary Public, in and for the District of Columbia

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