

Virtual Tribe Consultation Session

Virtual Meeting

Part 151 and Part 293 Tribal Consultation

January 30, 2023

Attended Via Zoom

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Page 1 - 57

Reported by Julianne Flutie

1	C O N T E N T S	
2		PAGE
3	Consultation Session	3
4	Adjourned	57
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		

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

2 **OLIVER WHALEY:** Good afternoon, everyone.

3 Thanks for joining the consultation. I'm just
4 going to give it one second here to allow everyone
5 to connect and get their audio going. All right.
6 It looks like we've got everybody logged in, audio
7 connected. We ask that you keep your microphone
8 on mute until the specified time for comments. If
9 you could also please take a moment to add your
10 title and affiliation to your name in Zoom, that
11 would be wonderful. To do this, click on the
12 participant list, find your name, click on the
13 blue more next to your name and choose rename.

14 As a reminder, this is a government-to-
15 government consultation. Consequently, this
16 consultation is closed to the press. So, if you
17 are a member of the press, we do ask that you
18 disconnect at this time.

19 Additionally, this session is being
20 recorded and transcripts will be created. So, if
21 you do not consent to being recorded, we also ask
22 that you disconnect at this time.

1 When we get to the comment portion of
2 today's consultation, we do welcome your comments.
3 If you would like to make a verbal comment, please
4 raise your hand by going to the reaction section,
5 select raise hand, and we'll call on individuals
6 to speak. If you are unable to raise your virtual
7 hand, please type your comment in the chat box.
8 We'll be monitoring that, and when you are called
9 upon to provide a verbal comment, please provide
10 your name, title, and tribe.

11 For those of you that are joining us via
12 toll-free telephone number, please use *9 to raise
13 your hand and *6 to mute and unmute yourself.

14 Additionally, if you're in need of closed
15 captioning services, you can access that by going
16 to the bottom of your screen, click onto the up
17 arrow next to closed caption, and choose
18 subtitles. And if you're not able to access it
19 that way, we will also put a link into the chat.

20 At this time, I will turn it over to the
21 Assistant Secretary for Indian Affairs, Bryan
22 Newland.

1 **BRYAN NEWLAND:** Thank you so much,
2 Oliver. [Greeting in foreign language] everybody.
3 My name is Bryan Newland, and I have the privilege
4 and honor of serving as the Assistant Secretary
5 for Indian Affairs here at the Department of the
6 Interior, and I want to welcome all of you to join
7 us today, this afternoon here on the east coast --
8 it's still morning out on the west coast and in
9 Alaska -- for our Tribal or government-to-
10 government consultation on our proposed land into
11 trust regulations as well as our proposed Tribal
12 State Gaming Compact Regulations.

13 Before we begin today, we always want to
14 make sure that we are offering a space for prayer
15 and silence and reflection so that we can start
16 these consultations in an appropriate way. Since
17 we don't have anybody identified here today to
18 provide us with a blessing, we'll take a few
19 moments of silence to let everyone pray in your
20 own way or just reflect and then we'll be
21 underway.

22 [A few moments of silence.]

1 All right. Thank you so much. So, as I
2 said, my name is Bryan Newland. I work here at
3 the Department of the Interior and I'm also a
4 citizen of the Bay Mills Indian Community in
5 Northern Michigan. We've got a wonderful team
6 here at the Department of the Interior who assist
7 us with all of these polices and these draft
8 regulations. So, I just want to take a brief
9 moment to introduce some of them to you now, and
10 if they want to turn on their cameras, that will
11 be their choice.

12 But we have our Senior Policy Advisor for
13 Climate and Environment, Maria Wiseman here. We
14 also have our Senior Policy Counselor, Stephanie
15 Sfridis. I'm not sure that we have her today, but
16 Deputy Assistant Secretary Kathryn Isom-Clause has
17 been --

18 KATHRYN ISOM-CLAUSE: I'm here.

19 **BRYAN NEWLAND:** Oh, there you are. Okay.
20 Deputy Assistant Secretary Kathryn Isom-Clause has
21 been instrumental. As always, Oliver Whaley, from
22 our Office of Regulatory Affairs and Collaborative

1 Action helps to organize all these consultations.

2 When we get to the Gaming Compact
3 Regulations, I'll make sure I acknowledge the
4 additional folks that have been involved there.

5 So, I'll just briefly walk through a
6 couple of points here and then we'll open the
7 floor to leaders and representatives from across
8 Indian country.

9 You see here our consultation schedule.
10 This is the last scheduled government-to-
11 government consultation for these regulations.
12 Those of you who have been tracking this issue may
13 recall that we did a round of consultations last
14 year on draft regulations followed by revisions,
15 and then a proposed rulemaking, and now this
16 series of consultations.

17 So if you know somebody who hasn't been
18 able to participate in any of these sessions, fret
19 not, because we will accept written comments all
20 the way through midnight on March 1st. Next
21 slide.

22 So we have proposed a lot of changes to

1 our land and the trust regulations 25 C.F.R. Part
2 151. I'm not going to read through every section
3 of the rules thankfully today, but I'm going to
4 just hit some highlights, and, of course, those of
5 you who want to see the text can look at the rule
6 -- the proposed rule, which is up on our website.

7 But our proposed regulations are going to
8 implement the Supreme Court's criteria decision in
9 a way that provides clarity and certainty with
10 respect to how the Secretary exercises her
11 authority to take land into trust for Tribes, and
12 that's going to include spelling out with some
13 particularity when the government will determine
14 that a Tribe was under federal jurisdiction in
15 1934.

16 The regulations, we also expect, would
17 reduce processing time and uncertainty by
18 publishing the documents that we need for a
19 complete application and then set a deadline for
20 ourselves to make a decision within 120 days.

21 The proposed regulations will articulate
22 a very clear land acquisition policy on behalf of

1 the Secretary to strengthen self-determination and
2 sovereignty and ensure that every federally
3 recognized Tribe has protected homelands where its
4 citizens can maintain their existence and way of
5 life and to consolidate land ownership that
6 strengthens Tribal governments over their
7 reservations and reduces checkerboarding. That
8 would be a significant change and a way to embed
9 the policy objectives of the Department of the
10 Interior.

11 We'll also establish a waiting system for
12 consideration of fee-to-trust applications based
13 on the factors that you see here. Next slide.

14 Okay. The proposed regulations at
15 Sections 151.9-12 would also increase our
16 efficiency to analyze applications as either on-
17 reservation, contiguous applications, or off-
18 reservation, and a new category for the initial
19 acquisition of land in the trust for landless
20 Tribes.

21 We'll also establish criteria that
22 presumes that on-reservation, contiguous, and

1 initial acquisitions will be approved and that
2 Tribal communities will benefit from the proposed
3 acquisitions without regard to distance from their
4 reservation.

5 The proposed rule would also consider the
6 viewpoints of state and local governments by
7 notifying them and requesting comments on
8 regulatory jurisdiction and real property taxes,
9 except we are not going to explicitly request
10 comments for on-reservation acquisitions because
11 in our view, the proposed regulation -- under the
12 proposed regulations, those units of government
13 would be less likely to be impacted by a fee-to-
14 trust acquisition since it will be on-reservation.

15 And these proposed regulations would also
16 reduce expenses by clarifying when environmental
17 studies and reports need to be updated and
18 eliminate the dreaded updates to phase 1
19 environmental site assessments. Next slide.

20 So, as I mentioned earlier, written
21 comments will be due at midnight on march 1st. We
22 have no more upcoming consultations scheduled for

1 these regulations, and if you have specific
2 questions, you can E-mail Maria, who we just
3 introduced earlier. Her E-mail address is
4 included here.

5 Okay. So, with that, that's enough
6 hearing from me. We're going to open the floor to
7 all of you to hear from you and register your
8 viewpoints and take them into consideration as we
9 move toward a final ruling for land-into-trust
10 regulations.

11 If you wish to speak, you can use the
12 reactions button at the bottom of your screen and
13 raise your hand. I'm just going to call on
14 elected Tribal leaders first in the order that
15 they raise their hands and then Tribal
16 representatives and Inter-Tribal organizations.
17 Those of you joining by phone, you can raise your
18 hand by pressing *9 and when we call on you, you
19 will need to unmute yourself by pressing *6.

20 So, with that, I will first turn to Will
21 Micklin from Tlingit and Haida and then Vice
22 President Shelley Buck from Prairie Island. Mr.

1 Micklin.

2 **WILL MICKLIN:** [Speaking in foreign
3 language.] My Tlingit name is [speaking in
4 foreign language]. Will Micklin is my English
5 name and I'm Vice President Central Council of
6 Tlingit and Haida Indian Tribes of Alaska.
7 Richard J. Peterson is our President. Mr.
8 Peterson sends his apologies. His schedule is
9 committed today, so I'm representing president
10 Peterson in this consultation.

11 First off, I do wish to express some
12 appreciation for President Peterson and all of the
13 Tlingit and Haida, the regional Tribe for
14 Southeast Alaska. We have 35,000-plus Tribal
15 citizens and I wish to express all of our
16 gratitude for the department's approval of our
17 fee-to-trust application, the initial of our
18 submissions, and thank you for that -- that it's a
19 privilege and an honor and we thank you for the
20 efforts of the department. I think these were
21 initially submitted in 2010 and a lot has
22 transpired, but Assistant Secretary Newland, you

1 are unique in that you have brought this to a
2 decision point and approval.

3 And I've been in this fee-to-trust
4 application business long enough to appreciate a
5 decision beyond just approval or disapproval but
6 decisions are valuable and that it's an approval
7 that is evermore appreciated. So, thank you,
8 Assistant Secretary Newland.

9 My remarks today, I'll keep them brief.
10 What we really will look at by our next submission
11 of written comments is what items, what provisions
12 in the regulations could potentially lead to long
13 delays in processing or inadvertent disapprovals,
14 and it really falls in a couple of categories.

15 One is on what is tied up in the question
16 of interested party and administrative appeal, and
17 our -- there's a lot that goes to this. I'll
18 limit my remarks to simply that we will have a
19 recommendation in writing that the provisions of
20 25 C.F.R. Section 2 and 2.101 and 2.212 be either
21 cited by reference or included in a recital of the
22 essential terms for interested party, legally

1 protected interest, and how these are identified
2 and what is required for the legally protected
3 interest.

4 These are very specific and go to the
5 question of legal rights and privileges, concrete
6 injuries, the protective zones of interest, and
7 that the opposition cannot be purely economic. I
8 think you'll recognize these terms and our
9 longstanding concern is that what is included
10 specifically in 25 C.F.R. 2 and 43 C.F.R.
11 particularly 4.21 are not utilized in the fee-to-
12 trust process and therefore, administrative review
13 has been abused to delay applications that are
14 provided by appellants that clearly, in our view,
15 have no standing and cannot prove standing, and
16 yet in the administrative review and particularly
17 in the IBIA, the court does not review standing in
18 its -- in its decisions. And therefore, folks
19 with entities without standing proceed to
20 repeatedly delay our projects. So, we have
21 material for this that we think will be helpful.

22 The other categories that are the subject

1 of delay, it's just in the processing, and that's
2 in the checklist for fee-to-trust applications
3 that is sequential. There's no reason for this to
4 be sequential. Many of these items can be
5 conducted concurrently. We are concerned that the
6 CFED is replaced by the RLDR and that these title
7 examinations are -- reviews of title are conducted
8 by an ineffective process that leaves potential
9 defects to later in the process, which could
10 significantly cause delays when they can be
11 readily cured at the -- at the beginning of the
12 process.

13 So, this whole question around the
14 process under realty modifications and its use or
15 not effective use of electronics documents will be
16 the subject of specific recommendations and I
17 think those are the -- the primary areas where we
18 think would go toward eliminating delay and really
19 that's been the big issue in the problems with
20 fee-to-trust applications that go on and on is if
21 there was an effective administrative review that
22 precludes abuse of non-meritorious appeals and a

1 process that makes final application within a
2 reasonable time by effective method.

3 Then I think that everything that you've
4 suggested in the revisions to 151 are going to be
5 incredibly helpful and particularly in 151.8, the
6 commitment to render a decision within 120 days of
7 a complete application is most important, but you
8 have to get to that complete application and then
9 you have to navigate the appeal process both in
10 administrative appeal internally to the IBIA and
11 then federal litigation.

12 We are hopeful that although the Klingit
13 Haida approval had conveyance of title before the
14 state submitted its litigation claim in federal
15 court that even if that litigation had proceeded
16 before conveyance of title, under the
17 [indiscernible] revision where they have the zone
18 of interest for up to six years, that title would
19 have been conveyed. I am still concerned that in
20 the BIA Handbook, there are calls for requirements
21 of suspension of the process during the
22 administrative appeal process or federal

1 litigation and that should not be so. The process
2 should go to completion while the merits of those
3 appeals and litigations proceed to its own
4 conclusions.

5 So again, I thank you, Klingit and Haida
6 thanks you, and we are extremely excited that the
7 improvements to the 151 regulation will be
8 significant. [Speaking in foreign language.]

9 **BRYAN NEWLAND:** Thank you, Vice President
10 Micklin, and I appreciate you identifying the
11 intersection between the fee-to-trust process as
12 well as the administrative appeals process.
13 That's another area that we are working on here at
14 the department just to make sure everybody here is
15 aware in case they are not.

16 We have our also proposed amendments to
17 25 C.F.R. Part 2. That comment period is also
18 open until March 1st, so concurrent with these
19 regulations, and we are also doing work with our
20 partners across the department on the
21 administrative appeals process generally because
22 we know it does have a big impact on the land and

1 the trust process as well.

2 And thank you also for highlighting the
3 Fee-to-Trust Handbook. That's something that we
4 want to make sure that we're being mindful of as
5 we go forward with this rulemaking.

6 So, thank you. It's always great to hear
7 from you. I appreciate your comments.

8 Next, we'll go to Vice President Buck.

9 **SHELLEY BUCK:** [Speaking in foreign
10 language.] Hello, my relatives. I greet you with
11 a good heart and handshake. My name is Shelley
12 Buck. I'm the Vice President of the Prairie
13 Island Indian Community in Minnesota.

14 I want to first thank you for holding
15 this consultation sessions. It's really
16 important. Prairie Island appreciates that in
17 proposed Section 151.3 B3, the Interior has
18 expanded the list of reasons that justify putting
19 land into trust, but this list is missing a reason
20 that is vitally important to our Tribe.

21 For Tribes like ours, federally licensed
22 infrastructure that benefits non-Indians has

1 ruined and compromised existing trust lands. The
2 current version of Section 151.3 B3 fails to
3 directly acknowledge or address this situation.

4 In our case at Prairie Island, for nearly
5 a century, our lands have been negatively impacted
6 by various federal infrastructure projects.

7 In the 1930s, Interior illegally
8 authorized the Army Corp of Engineers to flood our
9 small reservation for the benefit of non-Indians
10 living upstream and downstream on the Mississippi
11 River. Ever since, this federal dam routinely
12 floods our reservation, has destroyed homes and
13 burial mounds, and continues to threaten our
14 livelihood.

15 The situation was worsened over time as
16 the result of climate change. Making matters
17 worse, on the same island where our small
18 reservation is located, the federal government has
19 licensed the operation of a nuclear power plant
20 and the storage of more than 1,000 tons of nuclear
21 waste just 700 yards from our government center,
22 our homes, and our businesses. These pose an

1 ongoing threat to the health and safety of our
2 people.

3 For these reasons, we urge the Interior
4 to amend Section 151.3 B3 of the proposed
5 regulations to recognize and prioritize taking
6 land interest for Tribes whose existing
7 reservations and trust lands have been negatively
8 impacted by federally approved infrastructure
9 projects. This must be a fundamental part of the
10 Biden administration's commitment to addressing
11 longstanding, unresolved environmental justice
12 issues for Tribes.

13 [Speaking in foreign language]. Thank
14 you for your time and holding this session.

15 **BRYAN NEWLAND:** Thank you, Vice President
16 Buck, and it's great to see you, and I appreciate
17 your comments. If I can hold you here for just
18 one more moment. Do you plan to submit written
19 comments with draft language along with that or do
20 you have language in mind that the department can
21 consider?

22 **SHELLEY BUCK:** I'm sure with the amazing

1 staff we have, we can surely get you some.

2 **BRYAN NEWLAND:** Okay. Thank you so much.

3 **SHELLEY BUCK:** Um-hum, thank you.

4 [Speaking in foreign language.]

5 **BRYAN NEWLAND:** Take care.

6 **SHELLEY BUCK:** You too.

7 **BRYAN NEWLAND:** Our next speaker is
8 Chairwoman Cheryl Andrews-Maltais.

9 **CHERYL ANDREWS-MALTAIS:** Good afternoon.
10 Yes, it is afternoon. And thanks again for the
11 continuation of allowing us the opportunity to
12 weigh in and comment on these new regulations, and
13 we are so looking forward to their passage.

14 I did want to check on when, AS Newland,
15 when you had mentioned about the different
16 categories of land, whether they're on-island,
17 off-island -- on-island -- on-reservation or off-
18 reservation, and contiguous and initial
19 reservation. I was wondering if there had been
20 consideration deliberated and/or determined to be
21 useful or not for sacred sites or cultural sites
22 as another category, which would provide a

1 different and maybe more expedited road map or
2 process through which the agency would be able to
3 put this land into trust.

4 Often times or more often than any, these
5 sites are not intended for anything except for
6 preservation and often times, they're already
7 underneath an existing preservation's -- I don't
8 even -- waiver or whatever. So, looking at having
9 a streamlined process for sacred sites, whether
10 they're contiguous or off-reservation would be
11 very helpful. Again, and streamlining that
12 process so that there's not as much of the
13 burdensome work that takes place because if it's
14 not going to change and it's not going to be used
15 for economic development or change of usage, and
16 if the Tribes are going to continue with the same
17 usage or just strict preservation, we should
18 consider having that as not only streamlined like
19 mandatory, but having an abbreviated set of
20 requirements for that to be put into trust because
21 again, the longer they stay out of trust, the more
22 vulnerable they are for destruction and/or

1 somebody else trying to come in and buy them out
2 from underneath the Tribe's nose.

3 With regard to the taking into
4 consideration the state, local, and other
5 stakeholders, I just want to make sure that when
6 we're talking about taking into consideration or
7 soliciting their comments, that there's not enough
8 weight given to that takes the opportunity for the
9 lands to be put in trust away from the Tribes.

10 We know full well that there is no --
11 there are very rare instances that a local
12 community or other entity, state or regional
13 entity, or private person is going to be that
14 supportive of land being taken into trust for
15 tribes, particularly in our area where there is so
16 little land that is available. Often times, no
17 matter what our purpose is, there's always a fight
18 to be able to get the land taken into trust. And
19 the negative comments that would come out just
20 spurs on more negativity. So, wanting to make
21 sure that while we do want to hear what those
22 concerns are, that it doesn't meet the level or

1 meet the bar to derail a Tribe being able to take
2 land into trust because, as you so duly noted,
3 every Tribe has the right to have a homeland.

4 I did want to ask if there was any
5 timeframe with regard to the initial reservation.
6 That was mentioned as part of the categories, and
7 whether or not there are timeframes that were
8 going to be established, meaning that if a Tribe
9 has to get their initial reservation within a
10 certain amount of time. And if there is, does
11 that take into effect as of the passage of these
12 new regulations or prior to? I say that because
13 there is a long span of time that during the
14 previous administrations for the past several
15 decades, there wasn't that much attention being
16 paid to initial reservation delineation or
17 designations, and I want to make sure that we're
18 protecting ourselves and other Tribes that might
19 have been in that situation that we know that that
20 opportunity has not foreclosed because of the new
21 regulations and the uncertainty that came with the
22 [indiscernible] decision.

1 And when we're talking about the 12-day
2 approval, is there any instance under which or any
3 circumstance under which the office would find
4 that a deemed approved after a certain amount of
5 days would be appropriate because we know that,
6 like anything else, we have more demand than we
7 have human resources, and at any given time,
8 because these new regulations are going into
9 place, and a lot of us have not been putting
10 anything through just because your regulations
11 were just so burdensome, that I don't want to see
12 that the department gets overwhelmed with
13 applications and then it's an undue burden on the
14 department as well as knowing that there are
15 sometimes that things can sail through because
16 they're not complicated, and others may be a
17 little bit more complicated, but yet not allowing
18 it in any circumstance to languish on the vine for
19 longer than a certain amount of time because if
20 somebody wants to challenge it, let them challenge
21 the department's decision to have it deemed
22 approved as opposed to the Tribes always having to

1 carry that burden of defending our rights and
2 defending, you know, our ability to get land into
3 trust and move forward, because it's very costly,
4 and most of us do not have those financial
5 resources.

6 With that, again, just thank you very
7 much for the time and the opportunity and all the
8 work you guys are putting in to making this
9 clearer and more streamlined so that all Tribes
10 have the ability to exercise creating a right to
11 have lands for our peoples and jurisdiction over
12 those lands. Thank you so much.

13 **BRYAN NEWLAND:** Thank you, Chairwoman.
14 It's great to see you, and I want to be responsive
15 to the questions you just asked and the points you
16 raised.

17 With respect to comments from local units
18 of government, you know, we're trying to make sure
19 that we're leaving in here some flexibility to
20 weigh comments and give them appropriate weight,
21 and you'll see in the text for on-reservation
22 acquisitions where there's already a declared and

1 proclaimed and recognized reservation, that the
2 Tribe's sovereign interests are going to weigh
3 heavily toward -- and existing federal policy
4 toward moving the land into trust and
5 consolidating Tribal ownership and we want to make
6 sure that the reasons that we're articulating the
7 Secretary's policy of why the department puts land
8 in a trust in a way that supports Tribal
9 sovereignty, the effective exercise of Tribal
10 jurisdiction, conservation, protection of sacred
11 sites, and the revitalization of Tribal culture.
12 And so by embedding those goals in the
13 regulations, it's our intent to make sure that BIA
14 staff have a clear scale of what the weight is of
15 federal policy toward putting land in the trust
16 versus comments the Bureau might receive from
17 states and local units of government and leaving
18 some flexibility in there to parse between
19 comments that are submitted just opposing land
20 into trust. There's a matter of force every
21 single time or unique interest that might arise on
22 a case-by-case basis.

1 With respect to a timeframe for the
2 establishment of initial reservation, that is not
3 included in the proposed rule. I know that
4 they're in the gaming regulations at Part 292.
5 There is the initial reservation exception under
6 IGRA that contemplates Tribes have a certain
7 amount of time to establish their initial
8 reservation for purposes. That's not something
9 that we've carried over into the fee-to-trust
10 regulations, nor is it something we intend to
11 carry over into the fee-to-trust regulations
12 unless Indian country provides comments that say
13 that that's something that Tribes want.

14 On the protection of sacred sites and
15 having -- and conservation and having an expedited
16 process, we do have in the proposed rule language
17 at 151.9B that directs the Bureau to give greater
18 weight to acquisitions that will protect sacred
19 sites or cultural resources or for conservation
20 purposes.

21 The NEPA process is governed under a
22 separate statute and is done separately but, as

1 you probably know, Chairwoman, and many folks here
2 know, if land is going into trust for no change in
3 use rather than for declared development purpose,
4 that does tend to speed up the environmental
5 review.

6 And I'll add that the existing land into
7 trust regulations don't clearly specify those as
8 reasons to put land into trust. They almost
9 presume that if a Tribe is going to put land into
10 trust, it will be for some sort of economic
11 development of community development and so,
12 Tribes are always having to justify their fee-to-
13 trust applications through that lens, and that
14 also bleeds over into the NEPA process.

15 So, we wanted to make sure that we were
16 embedding in the regulations a goal that we know a
17 lot of Tribal people have, which is to just
18 protect ancestral homelands, protect those places
19 sacred to Tribal people, without having to develop
20 them and build things in order to justify putting
21 them into trusts and having those reasons in the
22 regulations explicitly will also remove an

1 opportunity for the department to deny
2 applications that aren't for economic development
3 or infrastructure development.

4 And on your question about a deemed
5 approved process, we're open to considering
6 language from Indian country. We need to make
7 sure that our regulations do comply with the
8 overall obligation of all federal agencies to
9 provide due process, you know, to people within
10 the zone of interest, as Vice President Micklin
11 said. So, that's a balance we're trying to
12 strike. But if you have -- Madam Chair, if you
13 have language you want us to consider, we'd be
14 happy to consider it.

15 CHERYL ANDREWS-MALTAIS: Thank you so
16 very much.

17 **BRYAN NEWLAND:** Thank you. All right.
18 And I like your painting over your shoulder.

19 CHERYL ANDREWS-MALTAIS: It was a gift
20 from a Potlatch for a graduation of a young man's
21 high school graduation, oh my goodness, it must be
22 about 15 years ago. The colors are still vibrant

1 as they were the first day. But thank you.

2 **BRYAN NEWLAND:** Great, thank you. Okay.

3 Right now, I'm not showing any speakers in the
4 queue. If you wish to speak and comment on the
5 land-into-trust regulations, you can raise your
6 hand by hitting the reactions tab and there's a
7 raise hand function at the bottom, or if you're on
8 the phone, by pressing *9.

9 I see a hand raised from Attorney General
10 Sara Hill.

11 **SARA HILL:** Good afternoon.

12 **BRYAN NEWLAND:** Good afternoon.

13 **SARA HILL:** We appreciate the
14 department's willingness and effort to update the
15 fee-to-trust regulations at Part 151 to make the
16 process more efficient and less expensive for
17 tribes. These are welcome, laudable goals. The
18 Cherokee Nation will be providing written comments
19 on the proposed Part 151 rule and the proposed
20 Part 293 rule.

21 As you pointed out in the preamble, the
22 proposed rule reflects input and recommendations

1 from the Tribes during the spring and summer of
2 last year because of Tribal consultation, which
3 included a consultation draft of a proposed rule
4 that was sent with a Dear Tribal Leader letter,
5 and we, of course, appreciate that as well.

6 However, Cherokee Nations submitted very
7 specific comments on the consultation draft that
8 focused on the draft's proposal to eliminate the
9 longstanding requirement that the BIA must
10 consider jurisdictional problems and potential
11 land use conflicts in deciding whether to take
12 land into trust for a Tribe within another Tribe's
13 jurisdiction.

14 We also recommended that protecting a
15 Tribe's treaty rights in that situation should be
16 included as a consideration by the Secretary in
17 the fee-to-trust regulations as well.

18 The proposed rule includes nothing that
19 reflects our recommendations on these points, nor
20 does the preamble attempt to explain why the
21 proposed rule does not address any of our
22 recommendations. The failure to address any of

1 our recommendations on these points or to explain
2 why our recommendations were ignored is very
3 concerning to us.

4 We made those recommendations because
5 another Indian Tribe in eastern Oklahoma is
6 attempting to take land into trust within the
7 Cherokee Nation Reservation based on statutory
8 appropriations rider enacted by Congress 22 years
9 before the McGirt decision. That Congressional
10 rider says that no funds shall be used to take
11 land into trust within the boundaries of the
12 original Cherokee Territory in Oklahoma without
13 consultation with the Cherokee Nation.

14 The rider does not say the Secretary is
15 authorized to take land into trust within the
16 Nation's reservation so long as the Nation is
17 consulted, no matter what the jurisdictional
18 problems or land use conflicts or treaty right
19 violations may result from such a decision.

20 Taking land into trust for another Indian Tribe
21 will, in fact, result in all of that -- civil,
22 regulatory, and criminal jurisdictional problems

1 of enormous proportions, substantial land use
2 conflicts and serious violations of the Nation's
3 Treaty rights.

4 Furthermore, the rider has been construed
5 by the 10th Circuit to create an exception to the
6 regulation that protects every other Tribe from
7 such jurisdictional conflicts. Section 151.7 of
8 the proposed regulations, that requires a Tribe to
9 give its consent before another Tribe can acquire
10 trust land on the home Tribe's reservation. But
11 the Cherokee Nation virtually alone has had this
12 protection taken away from us.

13 For that reason, we are very concerned
14 about the proposed rules, elimination of the
15 requirement in the Part 151 regulations that the
16 BIA consider jurisdictional problems and potential
17 land use conflicts in deciding to take land into
18 trust for a Tribe in a situation where the Tribal
19 consent provision in Section 151.8 of the current
20 regulations has been interpreted not to apply.

21 These are not vague theoretical concerns
22 about intertribal jurisdictional conflicts that

1 are unlikely to manifest or unlikely to have real
2 consequences. We have already experienced on-the-
3 ground jurisdictional conflicts resulting from the
4 department accepting 76 acres of land on our
5 reservation into trust for the UKB before the
6 McGirt ruling came down, before the department
7 realized that Cherokee Nation's Reservation was
8 intact.

9 In fact, jurisdictional conflict has
10 already occurred on that tract of UKB trust land
11 that contains just government buildings. The
12 potential for conflicts that may require
13 intervention by law enforcement and/or result in
14 criminal charges would be much higher at any
15 gaming or other commercial facility which must
16 continuously attract patrons from the general
17 public to be economically successful.

18 In short, we are concerned that the BIA
19 will interpret the exclusion of these issues from
20 consideration in the fee-to-trust regulations to
21 mean that the BIA is free to ignore the real world
22 consequences of taking land into trust on the

1 Cherokee Nation's Reservation for another Indian
2 Tribe. Given that none of the Cherokee Nation's
3 requests were incorporated in the proposed rule,
4 we are, in fact, concerned that BIA's proposed
5 rule will benefit the UKB at the expense of the
6 Cherokee Nation's sovereignty.

7 I respectfully remind the Department of
8 the Interior that it is the Federal Trustee of the
9 Cherokee Nation as well as of other Tribes, and
10 any action that the Department of the Interior
11 takes, the Cherokee Nation's Treaty rights and our
12 territorial sovereignty over our reservation must
13 be considered and protected regardless of anything
14 else. If the department is going to consider an
15 application of a foreign Tribe to take away and
16 into trust within our reservation, it must, as our
17 Federal Trustee, consider the Nation's Treaty
18 rights and potential intertribal jurisdictional
19 and land use conflicts that the trust acquisition
20 would inflict upon us.

21 Accordingly, we ask again that the fee-
22 to-trust regulations make clear that the BIA must

1 consider jurisdictional problems, potential land
2 use conflicts, and the need to protect treaty
3 rights before taking land into trust for a Tribe
4 within another Tribe's reservation, particularly
5 where the consent requirement of the current
6 Section 151.8 has been held not to apply.

7 In our written comments, we will provide
8 you specific language and justifications for
9 writing the final rule in a way that requires
10 consideration of jurisdictional and land use
11 conflicts and, above all, protects the Tribe's
12 treaty rights.

13 Thank you for considering our comments as
14 always.

15 **BRYAN NEWLAND:** Thank you, Attorney
16 General Hill, and I appreciate you emphasizing
17 that.

18 I want to just make one point, and I look
19 forward to your written submission. The change
20 from the language that's in the current Part 151
21 regulations on consideration of jurisdictional
22 conflicts was more aimed to mitigate and minimize

1 some of the challenges to land-into-trust
2 applications, particularly on reservation
3 applications in many other reservations that are
4 aimed at, you know, like a township saying we've
5 got governing prerogative over a sovereign Tribe
6 with respect to what happens on the reservation.
7 So that was the intent there. But recognizing
8 that in a lot of places, particularly Cherokee
9 nation, but also elsewhere, there are different
10 unique circumstances where Tribes are neighbors or
11 in close proximity, have overlapping ancestral
12 homelands, and Tribes have different interests and
13 perspectives on fee-to-trust applications. So,
14 that's all to say that's what underlies the change
15 from the current regulations, and we'd be happy to
16 review the comments the Cherokee Nation sends us.

17 **SARA HILL:** Thank you so much for the
18 time and for the clarification, Assistant
19 Secretary.

20 **BRYAN NEWLAND:** Thank you. It's good to
21 see you.

22 **SARA HILL:** Good to see you too.

1 **BRYAN NEWLAND:** All right. Our next
2 speaker is Michelle Lee.

3 **MICHELLE LEE:** Good morning or good
4 afternoon where you are. My name is Michelle Lee,
5 formerly Michelle Lupina. I got married recently.

6 I just have -- I want to thank you --

7 **BRYAN NEWLAND:** Congratulations.

8 **MICHELLE LEE:** Thank you. Thank you. I
9 want to thank you and your advisors and staff for
10 the wonderful improvements to the regulation.
11 Fee-to-trust is a very important part of the work
12 that I do in California, and I'm speaking today on
13 behalf of the Dry Creek Rancheria, Moroccan
14 Rancheria, the Potter Valley Tribe, and my own
15 Tribe, the Pit River Tribe from Northeastern
16 California, who all have pending and developing
17 fee-to-trust applications.

18 The one thing that has -- one issue that
19 has still caught my attention in this draft is
20 that in Section 151.3 in the policy reasons for
21 the Secretary to take land into trust, the
22 language does -- it's actually 151.3 B3. It's a

1 substantial list that includes, you know, these
2 additional reasons for taking land into trust such
3 as protecting sacred sites, cultural resources,
4 and so on. But this language does include
5 economic development and Indian housing, and I
6 noted that in the other related sections in 151.9,
7 151.10, 151.11, and 151.12, the phrase economic
8 development and Indian housing is not included in
9 the priorities, and I wasn't sure if that was an
10 oversight or if it is an intentional omission.
11 But many of the applications that I am working on
12 and are pending and are developing are for Tribal
13 housing, and they are, of course, most important
14 to the Tribes in California that have very limited
15 land bases and our growing Tribal populations are
16 in great need of Tribal housing programs.

17 So, with that, those are my comments, and
18 I thank you for this time.

19 **BRYAN NEWLAND:** Thank you, Michelle. I
20 would welcome any written submissions you have as
21 well. I know a lot of folks take time to come
22 give their oral comments, so I want to give that

1 due consideration. But that was not intentional.
2 We're not -- we're not trying to underweight the
3 importance of housing development or economic
4 development.

5 As I tried to explain earlier, one of the
6 goals we have is to make sure that we're going
7 beyond the current framework when providing
8 justification for the Bureau to put land in the
9 trust. So, if it looks like the language has
10 somehow undermined our ability and our authority
11 to put land in a trust for housing or economic
12 development, we want to correct that and would
13 welcome a written submission with more detailed
14 language.

15 **MICHELLE LEE:** Absolutely, we'll be
16 preparing a written comment addressing that and
17 pointing that out so that that can be clarified in
18 the next and final draft. Thank you very much,
19 Assistant Secretary.

20 **BRYAN NEWLAND:** Thank you, and thanks for
21 taking time with us after your wedding.
22 Congratulations again.

1 **MICHELLE LEE:** Thank you.

2 **BRYAN NEWLAND:** All right. Additional
3 comments? I don't see anyone in the queue.

4 We also have our consultation on the
5 Tribal State Gaming Compact proposed regulations.
6 We've bifurcated that, but in the same time block.
7 So, if -- if we don't get more comments on the
8 land-into-trust regulations, what we'll do is take
9 a short break and then switch over to the proposed
10 Tribal State Gaming Compacts. But if we have
11 others on the line who wish to speak and make
12 comments directed at our land-into-trust
13 regulations, we're happy to stay on the line and
14 hear those.

15 One more call for comments. I want to be
16 respectful of your time, so I won't subject you to
17 sitting here and staring at me in silence. Last
18 call for comments on part 151 proposed
19 regulations. Going once, going twice, okay.

20 So, it's 2:50 Eastern time. What I'm
21 going to do is I'm going to go on mute and turn
22 off my camera for just a few moments and let our

1 team change out and our Office of Indian Gaming
2 come online and get ready to present on the draft
3 -- excuse me -- the proposed revisions to 25
4 C.F.R. Part 293. So, if you wish to participate
5 in that consultation, just hold on the line for
6 another 3 or 4 minutes, and we'll be right back
7 here.

8 [Break]

9 **BRYAN NEWLAND:** All right. We are back
10 from our break. So those of you who are up
11 getting coffee or stretching your legs, if you
12 want to come back, we will start the portion of
13 our consultation to discuss the department's
14 proposed regulations at 25 C.F.R. Part 293. And
15 to do that, I'm going to ask the Director of the
16 Office of Indian Gaming, Paula Hart, to walk us
17 through a brief overview of the regulations, and
18 before Paula comes on, I want to note again the
19 folks who have been involved in this rulemaking
20 effort who are here are Deputy Assistant Secretary
21 Kathryn Isom-Clause, our senior counselor
22 Stephanie Sfiridis, our senior counselor Rose

1 Pitosky who is not on the line, and I also
2 neglected to mention our senior counselor Sam Come
3 [phonetic], along with Maria Wiseman who have been
4 instrumental on behalf of our office and the
5 Assistant Secretary's hallway in putting these
6 regs together. And of course, Paula Hart and Phil
7 Bristol and their team in the Office of Indian
8 Gaming are familiar to all of you, and they have
9 been instrumental in pulling this together.

10 So with that, Paula, I'm going to throw
11 it over to you to walk through this presentation,
12 and then we'll open the floor up to comments.

13 **PAULA HART:** Okay, thank you, Bryan. As
14 with the 151 regulations, this is our final
15 consultation on our 293 regulations. Written
16 comments are due by midnight, Wednesday, March
17 1st. Consultation, the site here is for
18 consultation for the BIA for comments to be
19 submitted.

20 I'm going to introduce my Deputy, Phil
21 Bristol, who has been working with the team,
22 Stephanie, Kathryn, and Rose on this proposed

1 rule, and we'll go through the schedule. Next
2 slide, please.

3 **PHIL BRISTOL:** It helps if I take mute
4 off. In response to comments we received on the
5 consultation draft, we've made some changes to the
6 proposed rule, including updating the definitions
7 of amendment, extension, gaming facility, and
8 added definitions for gaming spaces, meaningful
9 concessions, and substantial economic benefit.

10 We have provided clarification of when
11 ancillary agreements or documents are amendments
12 which need to be submitted to the Secretary for
13 approval.

14 We have provided clarification as to when
15 the Tribe and State submit a gaming compact for
16 review and what documents need to be included with
17 that submission package.

18 We have updated the provision on when the
19 45-day review period begins to require the Office
20 of Indian Gaming to provide an E-mail
21 acknowledgement when a compact is received by E-
22 mail and the date of the 45th day.

1 We have updated the requirement that
2 after the 45-day review period, if no action is
3 taken on a gaming compact, the Secretary will
4 issue a letter informing the parties that the
5 compact or amendment has been approved by
6 operation of the law. Next slide, please.

7 The proposed rule also clarifies that a
8 Tribe may submit to the department any agreement
9 or document that a Tribe is concerned may amend
10 its compact for a determination within 60 days if
11 it is an amendment requiring Secretarial review
12 and approval under IGRA.

13 It provides that if any gaming compact or
14 amendment requires that the Tribe adopts standards
15 equivalent to state law or regulations, the
16 parties must show that these mandated Tribal
17 standards are both directly related to and
18 necessary for the licensing and regulation of the
19 gaming activity.

20 The proposed rule provides different
21 examples of factors that are and are not directly
22 related to the operations of gaming activities.

1 It includes a new provision that the
2 Secretary must also consider whether the Tribe is
3 a primary beneficiary of the gaming when analyzing
4 whether the revenue share is lawful.

5 We've added a section allowing gaming
6 compacts to include statewide remote wagering or
7 internet gaming similar to the justification in
8 the Seminole letter.

9 And we have added a section addressing
10 the effects on pending requests and final agency
11 decisions already issued under the existing Part
12 293 regulations and future requests.

13 Next slide, please.

14 **PAULA HART:** Okay. As we said, written
15 comments are due by midnight on March 1st. This
16 is where you can go send them to in order to get
17 your comments in, and hopefully we will have some
18 commenters on this session today.

19 As Bryan said earlier, you can raise your
20 hand, and we'll take comments now.

21 **BRYAN NEWLAND:** Thank you, Paula, and
22 thank you, Phil, for walking through those.

1 If you wish to raise your hand, you can
2 use the reaction button at the bottom of your
3 screen. There's a raise hand tab in there. And
4 if you're on the phone, you can press *9 to raise
5 your hand and when we call on you, you will need
6 to press *6 to unmute.

7 Okay. We have our first hand raised.
8 It's Chairwoman Cheryl Andrews-Maltais, and then
9 we'll go to Vice President Micklin.

10 CHERYL ANDREWS-MALTAIS: Well, me first
11 this time. Thanks again, and hi gaming team.
12 Paula, good to see you, as always. Thank you very
13 much for looking into these regulations and
14 particularly with the revenue share. That's
15 always a concern for Tribes that are gaming,
16 Tribes that are looking to game, ensuring that,
17 you know, the deals that are being put forward for
18 the Tribes, that it is actually going to be
19 beneficial to the Tribes. And there have been so
20 many over the years that have not been beneficial
21 to the Tribes or adequately provided the Tribes
22 with as much revenue as they need. So, it's

1 really, really great to see that as part of a
2 consideration and being on the record.

3 With that being said, I'm not really
4 sure, because I haven't read them closely enough,
5 to, I guess, determine whether or not that would
6 be something to assist the Tribes should there be
7 any litigation down the road, just something to
8 think about having that on record, even if a Tribe
9 decides to go forward even though it's not -- it's
10 been deemed not as beneficial to the Tribe.

11 I would also like to thank you for the
12 online gaming, you know, or sports wagering. One
13 of the challenges that we have are the states that
14 have actually been very active in omitting Tribes
15 and the National Indian Gaming -- not the -- the
16 IGRA from their legislation. Our draft stands out
17 where the IGRA identified and then it was removed
18 deliberately as a way of forcing Tribes to
19 probably have to litigate that out of pocket
20 expense in fighting for our rights to game.

21 So, by being able to have a section in
22 there that clearly reminds everyone that as long

1 as the state offers that particular form of
2 wagering or gambling or gaming, that a Tribe is
3 also eligible to have that as part of their
4 compacts with any state and that -- I don't know
5 if you can put it in there -- that no state law is
6 given 101 on the supremacy clause that, you know,
7 no state's legislation should be able to bar or
8 otherwise inhibit a Tribe's ability to offer
9 online wagering as part of their compact simply
10 because a state either omitted by design or
11 omitted by accident that a Tribal gaming would not
12 be incorporated into or the Indian Gaming
13 Regulatory Act is not referenced or not
14 incorporated into their state acts by either
15 direct or by indirect referrals.

16 And that's pretty much it for me.

17 **BRYAN NEWLAND:** Thank you, Chairwoman. I
18 appreciate your comments.

19 Vice President Micklin.

20 **WILL MICKLIN:** Thank you, Assistant
21 Secretary Newland. Thank you for the opportunity
22 to speak. I always try to go behind Chairwoman

1 Andrews-Maltais whenever possible. So, thank you.

2 I have just general limited comments. As
3 you -- as this publicly known Central Council is
4 actively contemplating a Class 2 project, which
5 doesn't fall under Part 293. There are parallels
6 there that the status of our project is really due
7 to problems with NIGC and NIGC relies on BIA
8 Indian Gaming Department for its determinations in
9 collaboration and that's been an issue that Alaska
10 Tribes are treated differently under Class 2 than
11 lower 48. That's another matter that we'll have
12 to contemplate in discussion with your office.

13 As to Part 293, you know, my concerns are
14 as the CEO of the Ewiiapaayp Band of Kumeyaay
15 Indians, my concerns are sort of intangible as to
16 the 293 language. Our issues have been in our
17 inability or the lack of weight in negotiating
18 with the state. So, provisions that we would
19 otherwise not accept but due to economic need and
20 the alternative -- lack of alternatives in
21 disagreeing with the state in negotiation for a
22 Tribal State Gaming Compact, many Tribes in that

1 position agree to provisions that then raise the
2 question of whether or not the department should
3 disapprove of those comments given that Tribes
4 have agreed to those provisions, even though they
5 may be a cynical provision stretching the
6 boundaries of Part 293 and yet accepted by Tribes
7 because of their lack of -- their lack of leverage
8 in negotiation.

9 The alternative to accepting questionable
10 provisions is no compact, and the burden of Tribes
11 in litigating states in bad faith litigation in
12 federal court and then subsequently trying to get
13 the Secretary to provide a compact, that's a
14 daunting provision that may Tribes don't have the
15 resources to pursue and if the alternative is the
16 department disapproves of the compact, they are
17 equally out of economic opportunity. So I know
18 that's a difficult question and one that I think
19 requires further reflection, but I wanted to raise
20 that point substantively, and part 293 -- and I
21 think it's in .21 -- is the -- the consequences of
22 or remedy for breach of a compact is suspension or

1 termination of the compact.

2 Truly, the only alternative provided in
3 Tribal State Gaming Compacts, if the state or the
4 Tribe defaults in its provision, the alternative
5 is suspension or termination of the compact, which
6 removes from the Tribe it's likely in most
7 instances its sole or substantial source of
8 economic revenues. So the only remedy being
9 suspension or termination of a compact for breach
10 after cured provisions have been exhausted is
11 really not an adequate remedy and the consequence
12 should be some more speedy, expedient process for
13 providing relief for a Tribe in that instance,
14 particularly when it's the state that is in breach
15 and there really is no speedy process for a Tribe
16 once the state has breached the compact, the
17 alternative being default -- being suspension or
18 termination. The time between getting a Tribe's
19 efforts to remedy that through the current process
20 is just exceedingly long and doubtful. That type
21 of uncertainty makes it an unavailable option and
22 we think that should take some reflection on some

1 means to remedy this other than just terminating
2 the compact.

3 So, those are my comments. Thank you
4 very much.

5 **BRYAN NEWLAND:** Thank you, Vice
6 President, I appreciate that, and we have an
7 appreciation for some of the challenges you've
8 highlighted there. I'll leave it at that.

9 Are there any other attendees today who
10 wish to comment on the proposed amendments to 25
11 C.F.R. Part 293? We are also accepting written
12 comments on both sets of these regulations as well
13 as our administrative appeals regulations at 25
14 C.F.R. Part 2 all the way until midnight on March
15 the 1st. Our goal is to complete these rulemaking
16 efforts this year and put these rules into effect.

17 I'll also draw your attention to our
18 Tribal consultation website on the BIA's website
19 to keep track of all the different rulemakings
20 that we have going on. I know that there are a
21 lot of parallel tracks at the moment, and if you
22 missed any of the consultation sessions on any of

1 these and the comment period is still open, we, of
2 course, want to make sure you have an opportunity
3 to submit those written comments.

4 Are there any other speakers who wish --
5 or attendees -- who wish to address the proposed
6 rulemaking at C.F.R. Part 293? I'll go to a last
7 call for comments. We'll stay all the way until 5
8 p.m. if there's enough speakers. But we don't
9 have to sit here with dead air if nobody wishes to
10 comment. So, last call. Going once, going twice,
11 okay.

12 I want to thank all of you for taking
13 your time with us today sharing your expertise and
14 your viewpoints with us. We really appreciate it.
15 Our team really makes an effort to review all of
16 the comments, both oral comments and submitted
17 written comments for these rulemakings. We do
18 read them and they do influence the text of the
19 rules into the greatest extent that we can, we're
20 trying to make sure that these regulations reflect
21 our unique trust relationship between the United
22 States and Tribes. And so, we are always trying

1 to make sure that Tribes have a say -- a strong
2 voice in the federal policies that impact them.

3 So with that, we will conclude our
4 consultation. We did have a question in the chat
5 I just want to address that says any thoughts on
6 the timing when the rules may be final. Again,
7 that's really -- that is going to be dependent on
8 how many Tribal and public comments we get. The
9 more comments we get, the more comments we have to
10 review for potential incorporation into the rule,
11 but also to address in a preamble, and that
12 affects the timeliness. But it's our goal to
13 finish the rulemaking this year and put these
14 rules into effect this year so that we can use
15 them here in the first term of President Biden's
16 administration.

17 So, thank you all very much for joining
18 us today. That will conclude our consultation. I
19 look forward to seeing you again soon and wish you
20 all good health and safety. Take care.

21 [Whereupon the meeting was concluded]

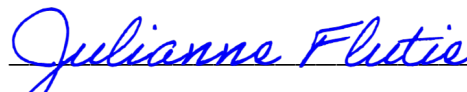
22 [Off the record.]

C E R T I F I C A T E

I, JULIANNE FLUTIE, Court Reporter, hereby 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 3rd day of February 2023.



JULIANNE FLUTIE