

UNITED STATES DEPARTMENT OF THE INTERIOR
INDIAN AFFAIRS

TRIBAL CONSULTATION ON DRAFT REVISIONS TO LAND
ACQUISITION AND CLASS III TRIBAL-STATE GAMING
COMPACT PROCESS REGULATIONS
"PART 151 AND PART 293 CONSULTATIONS"

Washington, D.C.

Monday, May 23, 2022

1 PARTICIPANTS:

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3 Assistant Secretary of Indian Affairs

4 MICHAEL WILLIAMS
5 Chief
6 The Yupiit Nation

7 BRIAN RIDLEY
8 Chairman
9 Tanana Chiefs Conference

10 ROBERT MCGHEE
11 Governmental Relations Advisor & Vice Chairman
12 Poarch Creek Indians

13 W. RON ALLEN
14 Chairman
15 The Jamestown S'Klallam Tribe

16 KELLY APPEGATE
17 Mille Lacs Band of Ojibwe

18 MARY PAVEL
19 The Skokomish Tribe of Washington State

20 WILL MICKLIN
21 CEO, Central Council of Tlingit and Haida Indian
22 Tribes of Alaska
23 The Ewiiapaayp Band of Kumeyaay Indians

24 TIM BEYER
25 Fee-to-Trust Contractor
26 Quinault Nation

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1 PARTICIPANTS (CONT'D):

2 JULIE SIESTREEM
3 Confederated Tribes of Coos,
4 Lower Umpqua and Siuslaw Indians

5 ROBERT PILOT
6 Ho-Chunk Nation

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8 Governor
9 Pueblo of Sandia

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11 Attorney, Federal Advocate
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1 P R O C E E D I N G S

2 (1:04 p.m.)

3 MS. WILBERT: Thank you all for your
4 patience. You have now been placed into the
5 consultation session. This is the last of four
6 virtual nationwide government-to-government
7 consultations hosted by the Department of the
8 Interior's Office of the Assistant Secretary for
9 Indian Affairs, prior to making proposed revisions
10 to two regulations. 25 C.F.R Part 151 Land
11 Acquisition and 25 C.F.R Part 293 Class III Tribal
12 State Gaming Compact Process. This is a
13 government-to-government consultation and it's
14 closed to the press. If you are a member of the
15 press, please sign off at this time with
16 consultation is scheduled to last three hours.
17 For optimum audio quality, please ensure that your
18 microphone remains on mute unless you would like
19 to speak. Please take a moment add your title and
20 affiliation to your name in Zoom. To do this,
21 click on the participant list, find your name,
22 click on the blue "more" button next to your name

1 and choose "rename." The session will be
2 recorded. If you do not consent to being
3 recorded, you may disconnect at this time. Closed
4 captioning is available in real time via the link
5 just placed in the chat. I will now turn the
6 meeting over to the Assistant Secretary for Indian
7 Affairs, Mr. Bryan Newland.

8 MR. NEWLAND: (Speaking Native language)
9 Good afternoon. Good morning, everybody joining
10 us out west. My name is Bryan Newland, I'm the
11 Assistant Secretary for Indian Affairs here at the
12 Department of the Interior. And I'm glad to be
13 with you today on this last consultation session
14 on our draft regulations for Part 151, the
15 Fee-To-Trust Process, as well as Part 293, of the
16 Gaming Compact Review Process. Ordinarily, we
17 start these consultations with a prayer from a
18 Tribal Leader. We did not have anybody available
19 to us today. So, we want to make sure we respect
20 those of you who want to have a moment of prayer
21 or reflection before we begin. So, we'll offer a
22 few moments of silence right now, for you to do

1 that.

2 Okay, thank you very much. As I
3 mentioned, we're doing this
4 government-to-government consultation and two sets
5 of regulations. We're doing it this way, not
6 because these two sets of regulations are linked
7 together but rather, we know that consultation
8 presents a burden and a challenge for those of you
9 joining us from across Indian Country. And so, we
10 wanted to make sure to consolidate consultations
11 where we can. So, we're going to try to keep some
12 order to the conversation by taking the
13 regulations in turn will focus the first 90
14 minutes of our time allotted today on the land and
15 the trust regulations. We'll have a very brief
16 break, and then we'll come back, and we'll discuss
17 the part 293 Gaming Compact Regulations. So, we
18 want to make sure we're also prioritizing comments
19 from our elected Tribal officials first, and then
20 designated officials from Tribal governments and
21 inter-Tribal organizations. And we'll also ask
22 that everybody work to respect everyone else's

1 time to be concise with your comments. And then
2 please wait for everyone else to have an
3 opportunity to speak before coming back and
4 speaking a second time. So, you all should have
5 received on March 28th, or shortly after a Dear
6 Tribal Leader Letter announcing these
7 consultations. In that Dear Tribal Leader Letter,
8 we set out six questions to frame the conversation
9 around our draft Fee-To-Trust regulations. And
10 those questions include whether the draft
11 revisions to the Fee-To-Trust application process
12 are made more efficient by these regulations. Are
13 there additional ways to make that process more
14 efficient? Do the draft revisions reduce the cost
15 of the Fee-to-Trust application process? Are
16 there additional ways that we can reduce cost?

17 The third question is, "did the draft
18 revisions -- are there additional ways rather to
19 increase certainty in the Fee-To-Trust
20 application process than what are included in the
21 draft revisions?" Question number four is, "notes
22 that the draft revisions proposed criteria for

1 evaluating applications involving land within the
2 boundaries of a reservation, land contiguous to
3 the boundaries of a reservation, land outside the
4 boundaries of a reservation and land for an
5 initial trust acquisition." Do the reservations
6 -- do the revisions, excuse me, sufficiently
7 account for the range of Fee-to-Trust
8 applications. The fifth question is, "the draft
9 revisions explain how the Secretary will determine
10 whether a statutory authority exists to acquire
11 land and trust status, including determinations
12 whether a Tribe was under federal jurisdiction in
13 1934." Do these criteria sufficiently explain how
14 the Secretary will evaluate that information?

15 And the final question that we have
16 posed to you is, "do the draft revisions
17 sufficiently consider the concerns of state and
18 local governments?"

19 So, with that, again, we want to make
20 sure that we're taking your feedback in doing --
21 having this conversation in as organized a fashion
22 as possible. We are also accepting written

1 comments all the way through the end of June.
2 After that time, the consultation period -- this
3 consultation period will close. We will take
4 those comments back in house, try to review them,
5 fold them in to the draft regulations where we can
6 develop a preamble and eventually get to a formal
7 Notice of Proposed Rulemaking in the Federal
8 Register notice. When we get to that point, we
9 will of course, be back out to engage with you all
10 again in formal government-to-government
11 consultation.

12 So, if you wish to speak, I would ask
13 that you use the "raised hand" function at the
14 bottom of your screen on Zoom that is located
15 under the "reaction" button. I will take Tribal
16 Leaders in the order in which you all raise your
17 hands. For those of you who are joining on the
18 phone, please press star nine to raise your hand.
19 And then you can press star six to unmute yourself
20 and I will identify you by phone number, because
21 that's what I have in front of me here. So, with
22 that, we'll go into Tribal Leader comments. I

1 will first turn to Mr. Ridley, followed by Mr.
2 McGhee and then Mr. Williams.

3 MR. RIDLEY: Thank you, Bryan. Good
4 morning. Good afternoon. My name is Brian
5 Ridley, and I have the honor of serving as the
6 Chief/Chairman of the Tanana Chiefs Conference. I
7 want to thank the Secretary, Assistant Secretary,
8 and entire Department of Interior for undertaking
9 this important rulemaking. My comments will be
10 limited to the 151 regulations, which govern
11 Fee-to-Trust acquisitions. TCC is a nonprofit
12 consortium of 37 federally recognized Tribes and
13 41 communities across interior Alaska. TCC's
14 mission is to help our Tribes succeed by serving
15 as the backbone of governmental services,
16 deployment, and infrastructure. TCC's communities
17 have been together to help elevate all of our
18 member's voices. I need to start by thanking the
19 Biden Administration, the Department of Interior
20 and Solicitor for issuing the M Opinion 37069,
21 which withdrew the 37064. The 37064 was issued on
22 the last day of the Trump Administration and it

1 unlawfully sought to prevent Tribes and Alaska
2 from placing fee land into trust status. I say it
3 was unlawful because the District Court for the
4 District of Columbia already ruled that the --
5 prohibiting land-into-trust for Alaska Tribes was
6 unlawful in the Akiachak Native Community versus
7 Salazar. The Department of Interior removed the
8 regulatory prohibition on land-into-trust in
9 Alaska in the wake of that decision when it issued
10 the 2014 regulations.

11 The ability to acquire land in the trust
12 is incredibly important for Alaska Tribes. The
13 exercise of sovereignty has two, components
14 sovereignty of the people and sovereignty of the
15 land. Having the ability to acquire land-into-
16 trust will unite these two components and allow
17 Alaska Tribes to exercise their sovereignty in the
18 same manner that lower 48 Tribes do. From a
19 practical standpoint, land-into-trust could
20 simplify land holdings for Alaska Tribes because
21 of the complicated land statuses issues within the
22 villages. We've had our Tribes miss out on

1 federal grant opportunities because agencies have
2 determined that land in our villages is not
3 eligible under the grant criteria.

4 Now, we've been able to work through
5 many of these issues, but it takes a lot of time,
6 energy and education to achieve it. Holding Trust
7 Land will make this process much simpler. TCC
8 appreciates the draft 151 regulations treatment of
9 initial acquisitions, and the creation of a new
10 section devoted to "initial trust land
11 acquisitions." Draft section 151.12 outlines the
12 procedures and criteria by which department will
13 process initial acquisitions. This is important
14 to TCC Tribes, and all Alaska Tribes because the
15 vast majority of Alaskan applications will be for
16 initial acquisitions. TCC would like to highlight
17 the fact that the section 151.12 directs the
18 Secretary to weigh certain acquisitions with more
19 urgency. Included in the list of reasons for
20 increased weight, are protection of subsistence
21 rights, protection of sacred and cultural sites,
22 and the facilitation of self-determination. These

1 will all be incredibly applicable to our Tribes.

2 Finally, I want to highlight the need to
3 increase public safety and Tribal court funding in
4 Alaska. With increased trust land acquisition
5 comes increased jurisdiction, and our Tribes will
6 need the tools and resources to succeed. The
7 Department needs to work with the Administration
8 to submit budget requests that accurately reflect
9 the needs in Alaska. Our Tribal Court and Public
10 Safety Funding shouldn't be reliant on one-time
11 grants. We need long term solutions that include
12 permanent and consistent funding. Again, I want
13 to thank the department for hosting this
14 consultation (Speaking Native language). TCC will
15 be submitting additional written comments next
16 month. Thank you.

17 MR. NEWLAND: Thank you, President
18 Ridley, it's great to see you again. I appreciate
19 your comments. And I look forward to getting your
20 written comments as well. All right, next, I'll
21 turn to Vice Chairman Robert McGhee.

22 MR. MCGHEE: Thank you. On behalf of

1 Poarch Band of Creek Indians, I want to thank the
2 Administration and of course, you Assistant
3 Secretary Newland specifically for taking on this
4 process to update the Part 151 Regulations. While
5 the Department's developing has helped advance the
6 Land-into-Trust Process, in light of the 2009
7 Carcieri Decision, codifying these changes to
8 rulemaking will provide more certainty and
9 stability to the process. The draft revisions are
10 a critical step towards clarifying the issue of
11 whether a Tribe was under federal jurisdiction for
12 purposes of the Indian Reorganization Act, which
13 has plagued the process for 13 years now.

14 While we generally support the draft
15 revisions, we ask that you consider clarifying
16 three items relating to the question of under
17 federal jurisdiction, Part 151.4a. First, we
18 recommend several clarifications to the draft, as
19 it relates to treaties. We asked of the evidence
20 of the continuing existence of a treaty
21 relationship, where the treaty is ratified by the
22 United States should be elevated to the category

1 of conclusion evidence that a Tribe was under
2 federal jurisdiction, not merely presumptive
3 evidence. And the same provision, and in the
4 provisions discussing the treaty still in effect
5 passed to that party. We urge the Department to
6 clarify that evidence of ratified treaties still
7 in effect in 1934, and evidence of the continuing
8 existence of a treaty relationship extend to the
9 successor Tribes to these treaties. This
10 clarification is supported by the Federal Court's
11 decisions and accounts for the variety of
12 historical circumstances, while ensuring
13 continuity between treaty Tribes and their
14 successors. Finally, this portion of the proposed
15 rule should also clarify that once a treaty
16 relationship is established, that relationship
17 endures, unless expressly abrogated by an act of
18 Congress. This rule should apply even if Congress
19 has partially abrogated certain specific treaty
20 rights. The Supreme Court McGirt noted that even
21 when Congress terminates some Tribal treaty
22 rights, such actions affect only those aspects of

1 the relationship that were specifically
2 terminated.

3 In other words, unless the entirety of
4 the treaty relationship is abrogated by Congress
5 in clear terms, the treaty relationship continues.
6 Second, the proposed rule should broaden and
7 clarify the provision relating to evidence that
8 the United States took efforts to acquire lands on
9 behalf of the Tribe in the years leading up to
10 passage of the IRA. In 2014, an opinion
11 acknowledged that any federal restrictions on the
12 use of the land or application of a wide range of
13 federal laws over the lands even held by an
14 individual Indian indicates that the Tribe was
15 under federal jurisdiction. The proposed rule
16 should reflect this point and clarify that this
17 provision applies to the full range of Indian
18 lands, including lands held for an individual
19 member of a Tribe, where it is clear that the land
20 was intended for and used by the Tribal Community.
21 Finally, the proposed rule should broaden the
22 draft revisions relating to the evidence that a

1 Tribe is recognized under 25 C.F.R Part 83 to
2 include similar provisions included in the earlier
3 versions of the Federal Acknowledgment
4 Regulations. Under the 1994 and the current 2015
5 acknowledgement regulations, Tribes are required
6 to prove that they have been identified as a Tribe
7 on a substantially continuous basis since 1900.
8 The 1978 regulations held petitioning Tribes to
9 the higher standard of historical times until the
10 present. Inclusion of all three standards as
11 presumptive evidence will provide clarity and help
12 avoid unnecessary litigation. In closing on behalf
13 of the Poarch Band of Creek Indians, I want to
14 again, thank you for starting this reevaluation.
15 This is a crucial opportunity (inaudible) the law,
16 strengthen the nation-nation relationship, and lay
17 the foundation for a greater Tribal government's
18 self-reliance. I appreciate this opportunity.
19 Thank you.

20 MR. NEWLAND: Thank you, Vice Chairman
21 McGhee. I appreciate that. So, just before I
22 turn it over to Mr. Williams, I want to ask a

1 clarifying question Vice Chairman. On the third
2 item, you had referenced the Part 83 Standards
3 under previous iterations of Part 83 as well
4 should be included in presumptive evidence. I
5 want to make sure I understand you.

6 MR. MCGHEE: Yeah, we were talking about
7 just from under the 1994 and the current 2015
8 acknowledgement regulations, you know, when the
9 Tribes tried to -- been identified as a Tribe on
10 substantially continuous basis since 1900. And
11 then the '78s when they were talking about how to
12 identify the higher standard historical times
13 until the present. But Bryan, short answer. Yes.

14 MR. NEWLAND: All right. Thank you.
15 All right, Mr. Williams, you're up. It's good to
16 see you again.

17 MR. WILLIAMS: Good morning. Can you
18 hear me well?

19 MR. NEWLAND: You betcha.

20 MR. WILLIAMS: Can you hear me?

21 MR. NEWLAND: Yes.

22 MR. WILLIAMS: Yeah, thank you very much.

1 My name is Chief Mike Williams, from the Village
2 of Akiak. And currently, the area Vice President
3 for National Congress of American Indians are
4 representing our member Tribes in Alaska. I just
5 wanted to put on record that. I fully agree with
6 Chief Chairman Brian with his comments on the
7 current status of Alaska Tribes, putting the lands-
8 into-trust and have that ability. We have
9 submitted a written consortium of Tribes with
10 Akiak Native Community, Beaver Village Council,
11 Craig Tribal Association, Inupiat Community of
12 Arctic, (inaudible) Tribal Council and Poarch
13 Creek Village Council, along with the Tribal
14 organization signatories, Chugachmiut, Tanana
15 Chiefs conference on November 5th, 2021. So, I am
16 not going to spend too much time in explaining our
17 situation in Alaska. But I want to make sure
18 that, Alaska Tribes are not treated differently.
19 Although we have our lands being managed by our
20 Native Corporations. We have some of that land
21 that we have, are considering to put the land-into-
22 trust. And I think that one acre and Craig Tribal

1 Association, I think is a big example, that we are
2 able to acquire that. But it doesn't -- it
3 shouldn't cost so much money for that process,
4 because Alaska Tribes lack that money. And our
5 resources are very limited. And when we come from
6 the economically impoverished areas in the
7 country, it's very difficult to go through that
8 process unless we get some funding to start that
9 process. Many of the Tribes have not started that
10 process because of the lack of funding to do so.
11 But we appreciate the Native American Rights Fund
12 for helping in any way they can to help with that
13 process. But I believe that in a very short order
14 in the next few years, I am advocating for the
15 Alaska Tribes to do their best to put in
16 applications along with my Tribe, in the
17 acquisitions that we were able to get in the
18 recent years. It would have been very simpler if
19 we had reservations, much like the InnuIt island.
20 But we do not. All of the lands that were
21 acquired under the Alaska Native Claims Settlement
22 Act of 1971, are managed by our Native

1 Corporations whom are state chart. But anyway, I
2 just thank the Solicitor for reversing those
3 adverse effects to Alaska Tribes. And again, we
4 are no exception. And Alaska should not be an
5 exception to any of our brothers and sisters in
6 273 Tribes in the Nation, I just want to thank all
7 of you, Honorable Assistant Secretary Newland for
8 making your trip. And I was glad to see you in
9 Bethel, along with your team there in your recent
10 trip. And I just -- looking forward for you to
11 meet with the Alaska caucus in Anchorage during
12 the National Congress of American Indians, June
13 12, to 16. And we will settle that time for a
14 sit-down meeting with you so we can go over these
15 more in detail. And thank you very much for this
16 opportunity. Good morning.

17 MR. NEWLAND: Thank you so much, Chief
18 Williams, I appreciate your comments. And I'm
19 looking forward to being back up in Alaska in a
20 few weeks at NCAI. So, with that, I'll go to
21 Chairman Allen. And then we have nobody in the
22 queue after Chairman Allen if you wish to speak

1 please use the "raise hand" function at the bottom
2 of your screen. Or if you are joining us by
3 phone, please press star nine. And recall that we
4 are accepting written comments all the way through
5 the end of June. Chairman Allen.

6 MR. ALLEN: Good morning or afternoon,
7 Bryan. And I did -- I'll make my comments short
8 because we -- I haven't gone over all of our
9 recommendations that we'll be writing in. I just
10 want to compliment you and your staff, that you're
11 working hard at improving the process and the
12 timeliness of the process. I am very familiar
13 with that. We have a lot of applications out
14 there by various Tribes have been sitting in the
15 hopper for multiple years as you all know. So,
16 I'll -- in the timeline that has been proposed, so
17 that you have a deadline that you have to respond
18 to our application. Once we've completed each of
19 the areas -- each of the checkoffs with regard to
20 putting the land-into-trust. The thing that that
21 I wonder out loud is the identification of the
22 functions that you deem that aren't necessarily

1 inherent, and can be contracted out, so that the
2 Tribes can actually carry out the effort that
3 meets the standards and criteria that the Federal
4 Government would expect for any application. And
5 I think of surveying as one example, that might be
6 able to be done more timely, quite frankly. So, I
7 think that that is an important issue. And, you
8 know, I do not know, if the proposed regs reduce
9 the cost outside of that you're delegating the
10 authority to the regional offices. I'm not quite
11 clear what issues that may be required to be
12 reviewed by the Central Office. So, I'd be
13 curious of what your response is to that subject.
14 On the topic on the number six question, you know,
15 regarding concerns of the state, local government,
16 the -- this is age-old issues, in terms of the use
17 of the land, the loss of tax-based issues, quite
18 frankly, I'm not sensitive to their loss of
19 revenue by tax basis. But -- nor the issue of the
20 provision of public services, whether it's public
21 safety or fire protection, etc.

22 So, I know that they will raise those

1 kinds of issues that can cause some heat between
2 the Tribes and those local governments. But I
3 will remind the Administration that states don't
4 agree with other states about what -- how they use
5 their properties that adjoin them. That's true
6 also of counties and cities. So, I don't know why
7 the Tribes should be held to any higher standard.
8 So, if that's an issue that's getting raised, I
9 would react to that all governments don't
10 necessarily agree on those particular issues.
11 Outside of that, I don't have any additional
12 comments other than I think that this is going in
13 the right direction, and hope that these new regs
14 will be put into place very timely after you
15 received the final comments. So, thank you,
16 appreciate your hard work, and on this very
17 important subject matter. So anyway, I'll leave
18 it at that. Oh, one last thing on the gaming regs
19 293. The one issue that I hope that you will keep
20 -- that you will look at very closely and I know
21 that you are well aware of this from your
22 homelands. We have to be careful when Tribes

1 pursue land to be put into trust for the purpose
2 of gaming. Particularly if their -- if the
3 reservation shop -- our gaming -- reservation land
4 shopping for the purposes of gaming, to create a
5 disadvantage to a sister Tribe. Gaming has
6 created a new kind of value system in our world.
7 And I'm particularly concerned about that. I
8 don't want you to be put into a patronizing
9 position. But on the other hand, there has to be
10 some sort of balance. So, that we don't use this
11 process to undermine a sister Tribe's opportunity
12 that comes from the gaming industry. So, that's
13 all I have for now. And I look forward to continue
14 to engage with you on this topic. Thank you.

15 MR. NEWLAND: Thank you so much,
16 Chairman Allen. I -- It's great to hear from you
17 and I appreciate your comments. I look forward to
18 your Tribe's written comments as well. And your
19 comments in particular on question number six are
20 very helpful. I saw we had a question or a hand
21 up from Mille Lacs Band. It went down. Just
22 wanted to note that if you did wish to make a

1 comment. Right now, we have no speakers in the
2 queue.

3 MR. APPLGATE: Yes, good afternoon.
4 This is Kelly Applegate with the Mille Lacs Band
5 of Ojibwe and I just wanted to make a few comments
6 about the Fee-to-Trust Process. Right now, Mille
7 Lacs has several Fee-to-Trust land acquisition
8 applications that have been at the BIA for quite
9 some time. Three of those applications, out of
10 the three of them, one of them has been there for
11 about six and a half years. And we don't really
12 have a clear determination of when there's going
13 to be some resolution to the decision on that one.
14 That would take about 3200 acres of truck -- of
15 acreage into trust for the Band. We filed that
16 application on December 15th of 2015. The BIA
17 Regional Office issued its decision on March 3rd,
18 2017. The County appealed that. Mille Lacs --
19 I'm sorry, Morrison County on the 23rd of 2017.
20 Which then it enacts the IBIA and then through
21 there, the IBIA reviews it. And basically, what
22 we're asking is that the regional BIA offices, to

1 meet the strict timeframes for reaching a decision
2 on the Fee-to-Trust processes and provide
3 necessary resources to meet that requirement. And
4 take action to fill the third administrative judge
5 seat on the IBIA, which has been vacant for more
6 than a year. Even now as the IBIA is getting more
7 a backlog of land acquisition appeals growing.
8 And then we ask you to reform the rules that
9 govern IBIA cases. And look at these decisions
10 that are coming in and making sure that that
11 administrative law judge is appointed so it can
12 handle the backlog of appeals that are coming into
13 the IBIA. So, with that, that's my comments I
14 have for right now and (Speaking Native language)
15 For the time. Thank you.

16 MR. NEWLAND: (Speaking Native language)
17 Kelly, thank you so much. And thanks for focusing
18 on the timeline for getting these applications
19 result and the appeals process. I just want to
20 address those specifically. One of the things
21 that we've done within our existing regulations is
22 to try to set very clear benchmarks for reviewing

1 and making decisions on Fee-to-Trust applications.
2 We've set a target for our team to reduce the
3 average time for disposing of the Feet-to-Trust
4 application down to one year or less. So that's
5 the target that we're shooting for. And we're
6 also developing some internal metrics on acreage
7 as well and how much we expect to move into trust
8 on a year-to-year basis. The administrative
9 appeal's process, as you know, has a big impact on
10 the land-into-trust process. We just completed
11 consultation on draft changes to our
12 administrative appeals regs. That's 25 C.F.R Part
13 2, and that is part of our regulatory agenda that
14 we're moving forward. Those changes address some
15 of the timelines as well as a process for when the
16 Assistant Secretary will take jurisdiction over
17 those appeals in a timeline of process for that.
18 We've also been working with the Department's
19 Office of Hearing and Appeals on improving their
20 process. That's an ongoing conversation. You may
21 or may not know that the Office of Hearings and
22 Appeals, which includes the IBIA, is separate and

1 independent from the Indian Affairs Bureaus, but
2 we are working with him because of their impact on
3 this. So, thanks for raising that, Kelly. That's
4 a -- that's an important component of land-into-
5 trust that we're working to address as well. So,
6 in the queue here, I've got Mary Pavel, Will
7 Micklin. And then Chairman Allen had his hand
8 raised a second time. I want to make sure their
9 Tribal Leaders can get in if they wish to comment.
10 So, go ahead Mary.

11 MS. PAVEL: Oh, thank you, Assistant
12 Secretary, appreciate the time. And again, I want
13 to echo the appreciation of you and your staff and
14 your work on this important issue. As you know, I
15 work with the Puyallup Tribe of Indians, and as
16 you know, from your visit with them, their
17 territory on reservation, you know, being in the
18 industrial community, Pierce County is subject to
19 legacy pollution. And, you know, we had
20 discussions about that, and I wanted to visit a
21 little bit about the regulations and how the
22 Secretary will conduct environmental -- review of

1 environmental conditions, because it seems so to
2 -- the way that 15B2 says, "the Secretary may
3 require the elimination of any such issues of
4 concern prior to taking the land in trust status."
5 Is that a opening -- a window for opportunity that
6 perhaps the Secretary wouldn't require a full
7 compliance with 602DM? Or what does that mean for
8 Tribes like Puyallup who have, you know, all of
9 the City of Tacoma is a superfund site, as you
10 know. And, you know, the sites that they would
11 like to have taken into trust absent and after
12 Congress. You know, right now, we're not -- the
13 Department can't take the, you know, some key site
14 land into trust. So, just wondering, a little
15 clarification on B2. 15B2.

16 MR. NEWLAND: Thank you, Mary. That's
17 -- That actually has gotten a lot of attention in
18 our conversations and I appreciate you recognizing
19 our team here who has done some heavy lifting.
20 You know, Kathryn Isom-Clause, Stephanie
21 Sfiridis, Rose Petosky, Sam Kohn and Maria
22 Wiseman, from our office, as well as the Bureau

1 staff and the Solicitor's folks. Maria Wiseman in
2 particular has been really doing a lot of work on
3 the DM issue. One of the things that you know
4 very well, is that our existing regulations do not
5 prevent the Department from acquiring land-into-
6 trust, if there are environmental issues as a as a
7 legal matter, but in practice, that's often been a
8 bar that has made it difficult for Tribes like
9 Puyallup to move land-into-trust. And we're open
10 to language -- draft language that will meet our
11 obligation to at least account for environmental
12 issues and liabilities, without creating this
13 unwritten bar on moving land-into-trust. That's
14 something I'm very interested in. Because I think
15 that's an area where environmental laws and
16 efforts to make sure we're being good
17 environmental stewards have actually been
18 weaponized, so to speak, to prevent Tribes from
19 reacquiring land. So, we're giving this one a lot
20 of thought and open to regulatory language. And
21 we'll add -- one of the things in the draft regs
22 that we're trying to do is avoid the need to

1 constantly update those phase-one site
2 assessments. We do have to account for
3 environmental liability somehow, even if it
4 doesn't prevent us from moving land-into-trust.
5 And so again, if you have ideas on a language that
6 helps us to do that, we're open to considering it.

7 MS. PAVEL: Okay, thank you. I
8 appreciate that.

9 MR. NEWLAND: Thank you. Next up, we
10 have Will Micklin.

11 MR. MICKLIN: Thank you, Mr. Assistant
12 Secretary. Will Micklin, Vice President, Central
13 Council Tlingit-Haida Indian Tribes of Alaska
14 original Tribe in Southeast Alaska and CEO of
15 Ewiiapaayp Band of Kumeyaay Indians in East San
16 Diego County. So, I'll be brief. We have
17 extensive written comments that we'll be
18 submitting probably today. Just as highlights,
19 number one, just to thank you for NDA department
20 for taking an extensive look at Fee-to-Trust
21 regulations. Perhaps some of the most important
22 regulations benefiting the interest of Tribes.

1 And these do, we believe, make the process more
2 efficient and therefore less costly for Tribes,
3 that will be a significant benefit if in fact,
4 these changes that we're discussing are
5 implemented. The cost as you know, in the
6 Fee-to-Trust process, really accumulates on the
7 front end and the back end of the process.
8 Improving the responsiveness of the Bureau to
9 Tribes and their applications will be a
10 significant factor in reducing cost. So, for
11 that, we thank you for commitments that the
12 Department is making to the proposed revisions to
13 regulation. And on the back end, it really blends
14 into the other of the six questions about criteria
15 and authority. So, I'll just say that it's --
16 what would really be beneficial is a very
17 particularized implementation of the definitions
18 for interested party and standing that are
19 predicated on injury in fact and zone of interest.
20 And these are in alignment with your proposed
21 revisions in two CFR -- 25 C.F.R 2. And we
22 provided comments on that, we do propose that they

1 language in 43 C.F.R 2. I believe it is be
2 utilized that are implied or stated in 25 C.F.R 2
3 that pertain to these areas in order to focus
4 appeals -- in the process and appeals to get BIA
5 and Department decisions to what is really
6 applicable and available. If in fact those
7 standards were imposed, we find these are being
8 frequently applied to the applications. As to the
9 other area, we think is important is, need. And
10 we just want to be sure that the criteria for need
11 are not inadvertently narrowed. We noticed that
12 housing and economic development are not terms
13 proposed and revision, long used in the regulation
14 since 1980. We understand the effort, but we also
15 suggest that when criteria is listed, even though
16 they are examples, they are often relied upon, so
17 that their addition may be as meaningful as their
18 implication. In the proposed revision. We just
19 want to be sure that it is not inadvertently
20 narrowed. And to that effect, we think -- we
21 otherwise think simplification is important. The
22 Indian Organization Act is clear in its intent on

1 conveying lands for the interest of Tribes of
2 Indians, and that's codified in 25 USC 5108. And
3 the -- so, statutory authority, its codification
4 in the United States Code, all of those are
5 explicit. And so, limitations to that authority
6 ought to be infrequent and narrow. And support
7 the mandate, which is to convey plans to the for
8 the interests of Tribes. And so, we have
9 suggestions in that area.

10 And also, contiguity. Continuities
11 become an expensive issue for Tribes with the
12 Amendments 20 years ago to the CFR. The
13 definition was not added, even though in what was
14 added was 25 C.F.R 292.2 in 2008. And that's been
15 the standard for contiguity. It has not been
16 uniformly or consistently or even rationally
17 interpreted either by the Bureau or the Board in
18 fact. And there's been some egregious decisions,
19 we think that contiguity -- the definition of
20 contiguity is essential. And we have suggestions
21 in that area. We think your proposal is
22 significant and meaningful and on point. So, I'm

1 not going to go farther than that we do have our
2 comments that were -- will shortly transmit. But
3 I do want to be clear that this is an important
4 step. And that meaningful part will be the actual
5 processing and approval of, or at least
6 consideration of applications. Alaska Tribes
7 often bring this up. I'm sure you nor we want to
8 hear a lot more of it. Folks -- Alaska Tribe's
9 asking for applications to be processed. We are
10 hopeful that with the disposition of these
11 revisions that there will be the opportunity for
12 the Department to clear a raft of long-standing
13 applications from Alaska Tribes, for our
14 Fee-to-Trust, to be approved by the Department.
15 So, we thank you and look forward to working with
16 you further. Thank you.

17 MR. NEWLAND: Thank you Will, appreciate
18 that. I just want to go back to one comment in
19 particular that you made about interested party.
20 In terms of who can comment on an application. I
21 think everybody on this consultation knows that
22 sometimes Tribal application can garner comments

1 from a broad audience, including people on the
2 other side of the country, that you're saying,
3 "What's your interest in our Fee-to-Trust
4 application here." That's something we're paying
5 attention to appreciate your very specific
6 recommendation to point to our appeals
7 regulations. I think certainly our own staff
8 within the BIA Organization could benefit from
9 some clarity about who should be provided an
10 opportunity to comment and weigh in on
11 applications. That's something that we've noted
12 for further discussion as we continue to develop
13 this reg. So, thanks for commenting on that.
14 Again, I want to emphasize that, you know, we do
15 welcome suggestions on specific language, even red
16 lines that are attachments to your written
17 comments. Those are always helpful. I assure you
18 that your comments, both from the transcript here
19 and written comments, they do get poured over - our
20 team breaks them out and goes over them. And we
21 really are making sure that we're taking
22 everybody's collective wisdom here and experience

1 in it and incorporating those into the regulation.
2 So, the more specific you can be with us on your
3 written comments and suggestions for language, the
4 better off we'll all be. So, I appreciate that.
5 So, we have no additional new speakers in the
6 queue. I'll recognize Chairman Allen.

7 MR. ALLEN: Thank you, Bryan, again.
8 I'm coming back for a second bite of the apple
9 here. So, it dawned on me -- I grabbed a couple
10 of my notes on this subject matter. Some have
11 told me that they were concerned that the language
12 in the proposed updated regs would potentially
13 exclude housing or economic development. And I
14 don't think that that's your intent. But I would
15 certainly urge you to take a look at that. How
16 somebody might interpret it that way. To state
17 obvious to you, both are high priorities and needs
18 in any country and should not be restricted. You
19 know, as long as it's inside our, you know,
20 traditional unseeded territories, you know. So
21 that that is a big issue. Another area I'd like
22 to have you explore is, in terms of outsourcing,

1 and potentially allowing the Tribe to outsource,
2 is the environmental review. So certainly, back
3 to my surveying example, as long as it regs
4 identify the standards, that is expected by the
5 Federal Government, then that's all we need to do.
6 Is meet those standards when we conduct that step
7 in the application process. And the same would be
8 true for the environmental review. So, it's not
9 necessary who does it, it's the standards that we
10 need to have conducted in the review itself. And
11 somebody can challenge that, I understand that.
12 But they can challenge anybody, no matter who's
13 doing it. So, it's just a matter of how fast you
14 can get it done by experts in the field. So, I
15 just want to throw those additional suggestions
16 out. And I'll make sure I include those in our
17 written comments. So, thank you for recognizing
18 me again.

19 MR. NEWLAND: Thanks, Chairman Allen.
20 And we've had several folks note your concern
21 about housing and economic development, and you're
22 absolutely correct, that's not our intention to

1 exclude those from purposes. On that point, I
2 wanted to clarify that one of our goals is to make
3 sure that we are not using the land-into-trust
4 process solely for development purposes. That a
5 lot of Tribes want to acquire lands in trust
6 status, to simply have it as part of their land
7 base for conservation purposes, recreation,
8 hunting, and fishing, protection of cultural
9 resources, sacred places, you name it. And the
10 regulations as they're drafted today presume that
11 land is only to be put into trust for some sort of
12 development. And we wanted to make sure that
13 folks who are sitting in these chairs years from
14 now are, you know, making sure that they're
15 approving applications that are for development,
16 so that we're promoting Tribally led conservation.
17 And that's an important priority of ours. But
18 that concern is certainly been noted by our team.
19 And, you know, we're going to make sure that
20 that's something as we continue the rulemaking
21 process that we're mindful of. So right now, we
22 have no speakers in the queue. If you are a

1 Tribal Leader, representative who wish to speak,
2 you can use the "raise my hand" function at the
3 bottom, it is under the "reaction" button in Zoom,
4 or you can press star nine, if you are joining us
5 by phone. Please make sure that if I call on you
6 by number that you also press star six to unmute
7 yourself. So, I see we have a hand up from Tim
8 Beyer from Quinault.

9 MR. BEYER: (Speaking Native language),
10 Assistant Secretary. Good to see you again. This
11 is certainly a much livelier discussion than the
12 first consultation, a couple of weeks back, good
13 to hear so many voices. And again, thank you, for
14 you and your staff, in the time and energy put
15 into this transition, this opportunity to
16 streamline the regulations. Again, back to --
17 perhaps to complement the best of what Chairman
18 Allen has been speaking to or Commissioner
19 Applegate to the questions one or two dealing with
20 efficiency and cost. I believe the devil is
21 somewhat in the details, right? When you get into
22 things like 1518 sub-9, where it talks about any

1 additional information requested by the Secretary.
2 I would just ask that the Department be very
3 thoughtful as these trickle down, as these
4 regulations trickle down to the BIA, as far as a
5 matter of process in implementing 151. As you're
6 likely aware, in the last couple of weeks, in late
7 April, there was a new national policy memorandum
8 that came out of the division of real estate
9 services that change the way that land description
10 reviews are done. And on Quinault we were about a
11 week shy of completing seven land description
12 reviews with the old process of a certified
13 federal surveyor when we were caught with this new
14 policy that took immediate effect with no
15 transition period. I understand now there is a
16 transition period that allows us to complete the
17 process, which we have with our CFed and now is in
18 the hands of the BLM. But once the BLM certifies
19 that land description review, it also has to go
20 through the new BIA process, which likely could
21 add months to that Fee-to-Trust process. With an
22 already both undertrained to BIA staff to do the

1 new process, as well as a understaffed strike
2 team. So again, I'd just be very thoughtful as
3 you implement changes to 151 as it transitions to
4 that BIA process, that perhaps transition periods
5 be recognized. Opportunities as Chairman Allen
6 said, if you tell us what the standard is, let us
7 -- let's hit the standard, if it works to do it
8 with a CFed, and the BLM, and it makes it more
9 expedient. Whether it's a transition process, or
10 after, give us multiple tools that allow us to
11 make this both efficient, and cost efficient. So
12 again, I, you know, I appreciate the effort at
13 streamlining that land description, review
14 process, and taking that perhaps cost away from
15 the Tribes. But waiting also has a cost. And you
16 know, there's a number of things when it talks
17 about additional information, as it trickles down
18 to BIA process that talks about cultural resource
19 or resource surveys or requiring 50-year chain of
20 title reports, which could make sense with a
21 complex land description. But with an aliquot
22 part or a lot block? Do you really need a 50-year

1 chain of title? So those are just a couple of
2 suggestions. But again, thank you, thank you for
3 the time of you and your staff in this process.

4 (Speaking Native language)

5 MR. NEWLAND: (Speaking Native
6 language). Thank you so much, Tim, I appreciate
7 that. And we're very mindful that whenever we're
8 developing new regs, that people who are far or
9 policies -- that folk who are far along under the
10 existing ones are sometimes affected. The draft
11 regulations section 151.17 do address this in
12 terms of applications that are far along under the
13 existing regulations. So, getting we're open to
14 other language on that. Outside of the regulatory
15 context, we are looking for ways to shave time in
16 this process and to make it more efficient. We've
17 heard a lot about land descriptions and surveys is
18 being a choke point, if you will, in the
19 Fee-to-Trust process. And that was the genesis
20 for that national policy memo is a way to try to
21 get around that choke point in to speed up the
22 Fee-To-Trust process, make it more efficient.

1 Tribes will land in fee. You probably already
2 have title insurance or pay taxes on it and have
3 recorded property descriptions somewhere. So, we
4 want to make sure that we're not overcomplicating
5 that. But again, Tim, I hear you how that
6 affected you and we'll make sure that our team
7 follows up.

8 At this time, we don't have any hands
9 raised here. I appreciate those of you who shared
10 comments with us today. And also, just a note
11 that we're not -- well we're not fishing for
12 compliments. We -- our team does appreciate them,
13 and off course it also helps with the
14 administrative record for those who are supporting
15 the rule making to note that. And off course if
16 you don't support the rule making, or you want to
17 see it change significantly, we want to make sure
18 we hear that too. But having a clear record in
19 the rule making process is important. Which I
20 know we have a number of attorneys on the call
21 which I know you will appreciate. So with that,
22 we'll hold for just a second and see if anyone

1 else has comments on the Part 151 regulations.

2 All right, I see Nicci Lehto from Prairie Island.

3 MS. LEHTO: Yes, thank you, good
4 afternoon. Since you said that, I just wanted
5 extend our appreciation, the Prairie Island Indian
6 Community. I am a Tribal member, and also their
7 Federal Government Relations Specialist. I wanted
8 to, you know, say (Speaking Native language) thank
9 you to you Assistant Secretary Newland and also to
10 your Department, for not only your continued work
11 in Tribal Consultation consideration but also all
12 of those that you noted that have worked so
13 extensively to streamline this process. As the
14 closest community in the entire nation, to live
15 next to a nuclear generating and storage facility,
16 these regulations are of great importance to our
17 community. And I was wondering, because in the
18 previous consultations you have noted that there
19 may be an in-person consultation opportunity at
20 NCAI. Is that still being considered? Because
21 that opportunity will be very very valuable to
22 value our community, I'm sure. Others and Tribal

1 Nations. So again, thank you for you time and
2 attention and also the continued work that you're
3 doing.

4 MR. NEWLAND: Thank you for that Nicci.
5 I do appreciate that, not for myself but for our
6 team. But also again, it helps have a very clear
7 record that, you know, Tribes are supporting this
8 effort in this rulemaking. With respect to NCAI,
9 I don't have -- I apologize, I don't have that
10 information. I know that we are working, if not,
11 on a formal consultation session. We may be
12 looking at a listening session. I know that we've
13 done that at the recent NIGA conference in
14 California and the -- I know we've got folks out
15 at the Reservation Economic Summit in Las Vegas.
16 I'll come back to that question. I'll check with
17 our team offline here. But I know that we were
18 working on that. You know it's always a balance
19 with these consultations where we're trying to
20 make them accessible to everybody. Not every
21 Tribe can afford to fly to these regional hubs or
22 national events and pay for staff to attend, you

1 know, speak for five to ten minutes. But I also
2 know that there is value to being there in person
3 as well. So, we try to make sure that we're being
4 accessible for everybody. So, I'll wait to hear
5 back from our team on that question. But I will
6 answer it Nicci when I get an answer. Are there
7 any comments or questions on the Part 151 process?
8 We have a hand raised from Julie Siestreem.
9 Apologies if I got your name pronounced wrong.

10 MS. SIESTREEM: Good morning, Bryan
11 Newland. Thank you so much for bringing us
12 together and thank you for the work that you're
13 doing for all of us. We spoke to you earlier
14 before Christmas. It was about a small property
15 that we have out here for the Coos Lower Umpqua
16 and Siuslaw Tribe. I'm the Vice Chair on the
17 Tribal Council. And at that time, we were
18 speaking about this small piece of property that
19 was given to -- we were able to get. But there
20 was confusion as far as like it was a quick land
21 deed. And at the time, you spoke about it being
22 something that you were working with other Tribes

1 as well as far as trying to work out the paperwork
2 and that kind of thing. One of the things they
3 said today that I was very happy to hear, was that
4 you're trying to cut the time and the process down
5 to one year or less. So, I just wanted to say
6 again, (Speaking Native language), thank you, and
7 your team for the work that you're doing for us.
8 And we're looking forward to the solutions as they
9 get finalized.

10 MR. NEWLAND: Thank you Vice Chair. And
11 I remember our conversation. I don't want to get
12 in front of a large audience with specific issues
13 that some of you had brought forward. But we are
14 working on that one and have not -- it has not
15 escaped our attention. And we haven't let it fall
16 off. And I do appreciate your words of support.
17 So, just to confirm that we do have a listening
18 session, not a formal consultation, but a
19 listening session at NCAI scheduled on Monday June
20 13th, from 3:30 to 5 p.m. local time at NCAI. So,
21 those of you who are going to be there, I will see
22 you there. Okay, are there any other comments on

1 the draft Part 151 regulations? Seeing none, we
2 will take a very brief recess, allowing you to
3 refill your coffee, to get a snack or just stretch
4 your legs and then we will be back in five
5 minutes, to talk about the draft Part 293 regs.
6 Thank you for everybody who has participated,
7 we'll be back at 2:15 Eastern time.

8 (Recess)

9 MR. NEWLAND: All right, we're back.
10 Thank you everybody for bearing with us.
11 Appreciate your attendance today, your
12 participation in all these consultation sessions
13 as well as your comments, your feedback, your
14 written feedback and suggestions. So, we are
15 going to move into a discussion now of the
16 Department's draft regulations at 25 C.F.R Part
17 293 pertaining to Tribal State Gaming Compacts.
18 The Indian Gaming Regulatory Act, thus power in
19 the Secretary to review and approve Tribal State
20 Gaming Compacts under a 45-day timeline. For the
21 past, I don't know 30 years. Plus the
22 Department's standards for how we review these

1 compacts has really developed over this
2 administrative body of law in decision letters and
3 has not been spelled out in regulations very
4 clearly, which has created some problems for folks
5 who've negotiated gaming compacts with states in
6 understanding the rules of the game, before you
7 all reach agreements with states. And so, we have
8 worked to clarify those standards to take the
9 decisions the Department has made in the past, and
10 to put them into regulations at Part 293. The
11 draft that you have before you, is our best
12 attempt to do that so far, and we're looking for
13 your feedback on that process. I do want to
14 extend my gratitude to Paula Hart, Phil Bristol,
15 Troy Woodward and folks in our Office of Indian
16 Gaming on their work as well as the Office of the
17 Solicitor and the brilliant counselors and
18 advisors we have in our office here at the
19 Department. So, the Dear Tribal Leader Letter
20 that we sent out for this consultation on March
21 28th, included seven questions to help frame this
22 conversation. That set of questions includes, "do

1 the draft revisions increase certainty and clarity
2 in the Secretary's compact review process." Are
3 there additional ways to increase certainty and
4 clarity? The second question is, "do the draft
5 revisions provide sufficient guidance to parties
6 engaged in compact negotiations?" Are there ways
7 to provide additional guidance? Question three
8 is, "should the draft revisions include provisions
9 that facilitate or prohibit the enforcement of
10 state court orders related to employee wage
11 garnishment or patron winnings?" The fourth
12 question is, "should the draft revisions include
13 provisions that facilitate or prohibits state
14 court jurisdiction over the gaming facility or
15 gaming operations?" "Should this apply to all
16 claims or only certain types of claims?" Question
17 Five is, "should the draft revisions include
18 provisions that identify types of meaningful
19 concessions that a Tribe may request from a state
20 other than protection from state licensed
21 commercial gaming in essence exclusivity for which
22 a Tribe could make revenue sharing payments?"

1 "How would such provisions affect contract
2 negotiations?" Question number six was, "should
3 the draft revisions include provisions that
4 facilitate statewide promote wagering or internet
5 gaming?" And question seven was, "should the
6 draft revisions include provisions that offer or
7 require the submission of electronic records?"

8 So, with that, of course, we welcome
9 your comments and other parts of the draft
10 regulations. We want to make sure that we're
11 opening the floor up first to elected Tribal
12 Leaders and designated Tribal representatives and
13 representatives of Inter-Tribal organizations.
14 So, our first -- actually before I call on our
15 first person, I want to remind everyone that in
16 order to raise your hand, you can use the "raise
17 hand" function at the bottom of your screen on
18 Zoom, it's under the "reactions" tab. Or if
19 you're joining by phone, you can press star nine
20 to raise your hand and then star six to unmute
21 yourself when called upon. So, our first comment
22 will come from Vice Chairman McGhee.

1 MR. MCGHEE: Thank you once again.
2 Thank you for the opportunity. Part 293 is
3 originally promulgated, was strictly a process
4 regulation that did not contain any substantive
5 provisions containing criteria on when to approve
6 or disapprove a compact. This draft revision
7 changes this approach by broadening the scope of
8 secretarial review, and adding a new subpart "D"
9 that includes substantive provisions addressing
10 the appropriate scope of a compact. We support
11 the new approach with offering the following
12 comments regarding one of the proposed revisions.
13 Our Tribe, as you may be aware, currently operates
14 only Class II gaming at its gaming facilities, and
15 does not have a Class III gaming compact with the
16 state of Alabama. Proposed new section 293.26 may
17 compact or amendment -- permit a Tribe to engage
18 on any form of Class III gaming activity is of
19 particular interest to our Tribe because it
20 appears to take a position that if one form of
21 Class III gaming is permitted in the state, that
22 all forms of Class III games are subject to a

1 compact negotiations, (inaudible). We strongly
2 support this approach, which has been called the
3 class-based test, and has been adopted by the
4 Second Circuit in Mashantucket Pequot Tribe versus
5 Connecticut in 1990. And the 10th Circuit in
6 Northern Arapaho Tribe versus Wyoming in 2004.
7 Unfortunately, the Ninth Circuit in Rumsey
8 Rancheria versus Wilson in '93, and the Eighth
9 Circuit and Cheyenne River Sioux Tribe versus
10 South Dakota, the following year adopted the Game
11 Best Test. Whereas by a standard by the Ninth
12 Circuit, a state need only allow Indian Tribes to
13 operate games that others can operate, but need
14 not give Tribes what others cannot have. The
15 Department's adoption in the Part 293 draft
16 regulation of the Class Based Test will
17 undoubtedly help Tribes located in other circuits
18 negotiate broader scope of gaming provisions, and
19 Class III compacts for compact amendments. This
20 proposed amendment is welcome. That said we note
21 that the language used in the draft is a little
22 unclear. And we will submit as a part of our

1 written comments proposed language to clarify the
2 intent of this section. Once again, thank you,
3 Assistant Secretary Newland for the opportunity to
4 comment on these draft proposed amendments. I
5 appreciate it.

6 MR. NEWLAND: Thank you, Vice Chairman
7 McGhee and I look forward to seeing your suggested
8 draft language for how we can clarify that
9 language. It is our intent to support that
10 broader reading of the IGRA in the "clarify that
11 here." So, thank you for your comment.

12 MR. MCGHEE: Thanks.

13 MR. NEWLAND: This time, we have no
14 speakers in the queue. As with our Part 151
15 regulations, we are accepting written comments on
16 the draft Part 293 regulations until June 30th, of
17 this year. You can submit those written comments
18 to consultation@bia.gov. I see a hand raised from
19 Robert Pilot.

20 MR. PILOT: (Speaking Native language)
21 Good afternoon Assistant Secretary Newland,
22 Department of Interior personnel and Tribal

1 Leaders. I'm Representative Robert Pilot from
2 District Four, speaking on behalf of our
3 legislator, the governing body of the Ho-Chunk
4 Nation. I'd like to make a few comments regarding
5 the changes proposed for 25 C.F.R Part 293. The
6 Ho-Chunk Nation does not have a single situs land
7 base reservation. The Nation has very small
8 tracts in trust and fee. Land holdings scattered
9 throughout the southern half of the state of
10 Wisconsin, which is part of our Aboriginal
11 territory. We currently do conduct gaming at
12 three Class III facilities, two ancillary
13 facilities and one Class II facility.

14 All these facilities are on pre-October
15 1988 trust land, and are the main source of
16 revenue for our government services we provide to
17 our approximately 8000 Tribal members. The nation
18 did receive final approval within the last week
19 for our fourth Class III facility, which has been
20 part of our gaming compact since the original
21 compact in 1992. Thank you Assistant Secretary
22 Newland for the final approval, placing the Beloit

1 parcel into trust. This is the Nation's only
2 trust land transfer through the two-part
3 determination process and is the second one to be
4 approved by the state of Wisconsin. The Nation's
5 gaming compact and our relationship with the state
6 has a somewhat sordid past. But overall, we have
7 had a pretty good relationship with the state and
8 the Nation feels comfortable with the deals we
9 have struck through the negotiations with the
10 State for our compact and amendments to the
11 compact. As you know, Tribes are at a
12 disadvantage when negotiating gaming compacts with
13 states because of the Seminole Supreme Court
14 decision. The compact the -- to compound this
15 disadvantage in Wisconsin, the state Supreme Court
16 struck down the State's waiver of sovereign
17 immunity and Tribal gaming compacts. There are
18 many dynamics at play during gaming compact
19 negotiations that are specific to each state that
20 may not be apparent to the Department. Often
21 Tribes need some flexibility to strike a deal and
22 Tribes are sophisticated enough to understand what

1 is best for them, certainly better than the
2 Department. This brings me to a couple of
3 concerns the Nation has with some of the proposed
4 changes to the Part 293. The Nation will submit
5 more detailed written comments before the June
6 30th, deadline. But we wanted to raise these
7 concerns verbally during the consultation process
8 as well. Specifically, the Nation is concerned
9 with section 293.23, B and C. These newly created
10 provisions appear directly -- impact current
11 provisions contained in the Nation's gaming
12 compact. Section 293.23 addresses whether certain
13 provisions in the compact or amendment directly
14 relate to the operations of gaming activities.
15 Section 293.23B addresses Tribal infrastructure
16 projects and economic development activities that
17 are funded by gaming revenue. The Ho-Chunk Nation
18 has a provision in this compact exactly on this
19 point. The Nation requests this provision in the
20 past amendment of the State agreed to it. This
21 provision benefits the Nation and we do not
22 understand why the Department would want to insert

1 itself into the area that could jeopardize
2 provisions beneficial to Tribes. Section 293.23C
3 is a list of items that this administration has
4 determined are not directly related to gaming
5 activities and therefore should not be in gaming
6 compacts. The Nation feels that this section
7 293.23C1 limiting third party Tribe rights to
8 conduct gaming is ambiguous and will lead to
9 purely subjective decisions by the Department.
10 The Nation has provisions in its compact that
11 requires the state to indemnify the Nation for
12 lost revenues and the Governor approves a new off-
13 reservation casino for another Tribe. This would
14 be accomplished by reducing the Nation's annual
15 compact payment to the state, in no way prohibits
16 the Governor from approving off-reservation casino
17 for another Tribe. This provision has been
18 described by the Department under previous
19 Administrations, as creating a disincentive for
20 the state to concur, a secretarial two-part
21 determination. This sounds exactly like the new
22 provision 293.23C1. The Ho-Chunk Nation is simply

1 trying to minimize the impact if another Tribe
2 were to build a casino near one of our facilities.
3 Doesn't the Nation and other Tribes in similar
4 situations reserve adequate sovereignty to
5 negotiate some small protection for their
6 investment in their gaming facilities? To provide
7 some perspective, the state of Wisconsin's annual
8 budget is 60 billion dollars. The annual gaming
9 compact payment from all Tribes in the state
10 totals just point one percent of the entire
11 budget. Clearly, this is a cost that can be borne
12 by the state. Why would the Department take away
13 a protection for a Tribe that relies on gaming
14 revenue to provide essential government services
15 to our Tribal members and pit one Tribe against
16 another? We can appreciate the Department's
17 obligation to Tribes, but there are 574 federally
18 recognized sovereign Nations and each Tribe's
19 entitled to solutions that will fit the needs of
20 their Tribal government. This provision, if
21 adopted, will impinge upon one Tribe's sovereignty
22 in favor of creating an opportunity for another

1 Tribe's in reservation shop. Please consider
2 dropping this provision for the proposed
3 rulemaking. As I stated earlier, the Nation will
4 provide more detailed written comments addressing
5 these concerns. (Speaking Native language) thank
6 you very much for this opportunity to speak. It
7 is greatly appreciated. (Speaking Native
8 language)

9 MR. NEWLAND: Thank you, Councilman
10 Pilot. I appreciate your comments today. All
11 right. I see a hand raised from Stuart Paisano.

12 GOVERNOR PAISANO: Good afternoon,
13 Assistant Secretary Newland. Greetings from the
14 Pueblo Sandia located in the heart of New Mexico
15 in the Land of Enchantment. I would like to
16 comment on a few things with regards to the
17 proposed rulemaking. And we will also be
18 submitting some additional comments in writing by
19 your expected deadline. The first one I would
20 like to comment on behalf of the Pueblo of Sandia
21 is, "do the redraft revisions increase certainty
22 and clarity in the Secretary's compact review

1 process? The Pueblo of Sandia has some concerns
2 with regards to expanding the scope of review and
3 approval by the Department to include any dispute
4 resolutions, settlement agreements or arbitration
5 decisions that are deemed to interpret a compact.
6 In our 2015 compact with the state of New Mexico
7 that provides for binding arbitration to resolve
8 the interpretation and, or applicability disputes,
9 as well as reaffirms any other remedies otherwise
10 available. In approving the compact the Secretary
11 has already authorized these remedial processes
12 and by extension their results. However, the
13 proposed revisions will require that any
14 adjudication that interprets the scope or
15 applicability of the Compact, or that clarifies
16 the rights of the parties will in effect subject
17 the compact to the authorization by the Secretary.
18 For example, what happens if the Secretary does
19 not concur with the Arbitrator's determination?
20 If the Secretary would not have time to approve a
21 dispute remedy authorized by the Compact itself,
22 what would that mean for the integrity of the

1 future of our contract negotiations here in the
2 state of New Mexico? We also believe that the
3 revised rule will generally increase the frequency
4 of which compacts must come before the secretary
5 for review and the authorization. The other area
6 I'd like to comment on is should the draft
7 revisions to the 25 C.F.R Part 293 include
8 revisions that facilitate statewide remote
9 wagering or Internet gaming. Pueblo of Sandia
10 does support these draft revisions to Part 293,
11 which recruits provisions that facilitate
12 statewide remote wagering, or Internet gaming.
13 High-Capacity digital infrastructure continues to
14 transform the nature of gaming from which Tribes
15 greatly rely on for economic viability. As such,
16 the Pueblo of Sandia must be able to commercially
17 compete in this growing digital industry to
18 include the mobile gambling industry. We believe
19 the draft revisions to Part 293 should recognize
20 the Tribal interest in participating in statewide
21 remote wagering and Internet gaming by including
22 provisions designed to guide good faith compact

1 negotiations, and mutual stipulations for access.
2 So again, Assistant Secretary Newland, we will
3 provide some additional written comments to the
4 Department, and on behalf of the Pueblo of Sandia,
5 I truly appreciate you allowing me to make some
6 comments.

7 MR. NEWLAND: Thank you so much for your
8 comments this afternoon. I do appreciate them.
9 In response to your concerns regarding arbitration
10 decisions. Those are well received by me and our
11 team just to help better illustrate our intent of
12 including those in the draft. There have been
13 arbitration decisions in some instances that have
14 effectively rewritten the Party's obligations
15 under --

16 MS. GUNN: How do I tell which one it
17 is? I only have one, so --

18 MR. NEWLAND: Oh, Lisa, you're -- there
19 you go. Sorry.

20 There have been arbitration decisions
21 that have interpreted the compacts in a way that
22 have imposed new obligations on parties that were

1 not included in the document originally submitted
2 to the Department for review. And we want to make
3 sure that anything that is substantively modifying
4 or changing obligations to regulate class three
5 gaming do come before the Department. At least,
6 that was the intent here. But we understand your
7 concerns about, you know, what are the -- this is
8 an area where the Department hasn't weighed in
9 forcefully in the past. And so, needing clarity
10 on the consequences and then addressing also, what
11 happens for the minor arbitration provisions. And
12 will that overwhelm the Department's review
13 process? So, that's something that I flagged here
14 for us to continue our conversation. Look forward
15 to your written comments.

16 GOVERNOR PAISANO: Perfect. Thank you
17 again Assistant Secretary, and I failed to state
18 my title. I'm the current Governor of the Pueblo
19 of Sandia. We're in New Mexico and we truly
20 appreciate you allowing us the opportunity to post
21 some comments.

22 MR. NEWLAND: Thank you, Governor, I

1 appreciate it. All right. Our next speaker is
2 Will Micklin.

3 MR. MICKLIN: Thank you, Mr. Assistant
4 Secretary Newland. Will Micklin, Vice President
5 of Central Council of Tlingit and Haida Indian
6 Tribes of Alaska. CEO of the Ewilaapaayp Band of
7 Kumeyaay Indians. We thank you for your attention
8 to Part 293. It is important. I think the
9 importance of this review is due to the -- in
10 large part, to the imbalance in waiting between
11 the influence of a state or and Tribes in a
12 compact negotiation where the great majority of
13 Tribes, particularly those with small to mid-size
14 facilities or that have proposed projects, to
15 develop facilities really don't have the weight in
16 negotiation to defend their interests without the
17 backstop of Part 293 providing clarity for the
18 compact negotiation process. This manifests
19 itself in a number of ways. One example is from
20 293.2, where you're considering the definition of
21 gaming facility. States are on to this. We are
22 chasing the definition of gaming project rather

1 than gaming facility. And in this instance,
2 stated interests seek to bifurcate the two terms
3 avoid the oversight of the Department in Part 293
4 in order to use that term to limit projects or add
5 costs to environmental costs to projects or
6 trigger revenue payments for inter-governmental
7 agreements for activities that are really not
8 essential to the gaming activity that gaming
9 facility would prohibit. So, we -- in our writing
10 that we will submit today, the Ewiiapaayp Band of
11 Kumeyaay Indians provide some suggestions on how
12 to approach that particularly with regard to the
13 key terms in 293.2. The -- I'm not going to cover
14 all of these. Just a sampling of these. The
15 remedies for breach, it's very difficult for a
16 remedy to be termination of a compact. That's
17 always been an issue where Tribes have their
18 financial interest dependent on the revenues
19 earned from the gaming enterprise. And yet if the
20 state the other party breaches, the remedy is no
21 gaming enterprise. That's really not an
22 acceptable outcome to breach.

1 So, we have some suggestions in that
2 area. The lawfulness of revenue sharing that a
3 grower prohibits under 25 USC 2710D4, is a very
4 important issue that states seek to mandate
5 inter-governmental agreements with local
6 government is a -- is really a key issue in
7 negotiations and, you know, frankly, many Tribes
8 have a difficulty in having a way to persuade the
9 State that the agreements are disguised tax. The
10 consequences, Tribes like Ewiiapaayp agree to
11 terms that it can obtain, and then hopes for
12 appropriate review. Now we are hopeful that the
13 revisions to Part 293 will provide sufficient
14 clarity so that the states will be reluctant to
15 test those boundaries, by submission of a mutually
16 agreed compact, agreed under duress with Tribal
17 parties to see if they can avoid a disapproval or
18 gaining approval. The -- of course, the conundrum
19 there is that a disapproval is contrary -- is
20 adverse to Tribal interests, and not necessarily
21 adverse to States interests, who by their terms
22 often seek to limit gaming and disapproval of a

1 compact is limiting the gaming enterprise. So,
2 that is win-win for the state. So, that's a
3 conundrum. There not easily solved, but a greater
4 clarity and definition to the Part 293 as you are
5 attempting to these -- this draft, is I think --
6 we think effective and appropriate, and hopefully
7 successful. The last thing I'll mention is that,
8 with the Supreme Court striking down the
9 Professional and Amateur sports Protection Act,
10 four years ago, since that time, there's been 125
11 billion in sportsbook betting, online wagering is
12 on the horizon. There's referendums, three
13 initiatives in the state of California for online
14 sports betting. Actually two, I think, one,
15 including trials, one without. That would in
16 effect be, if successful, violate the exclusivity
17 for Tribes. We really think that this ought to be
18 a part of 293. It is inevitable and it is going
19 to either help or harm, Tribal interest. And we
20 simply need whatever assistance the Department can
21 provide, in negotiating, what activities -- these
22 type of activities that take place in in states in

1 which Tribes are located in order to negotiate or
2 defend what we can. Silence on this matters is
3 not going to be helpful. It is here and needs to
4 be dealt with. So, we have some suggestions in
5 that area. So, again, we appreciate you're
6 looking at this. Ewiiapaayp was in negotiation
7 with the State of California for over two years
8 for its pending compact now awaiting decisions on
9 other identical compacts that were disapproved or
10 in litigation. So, this process has become
11 incredibly long in duration. And that's not in
12 anyone's best interest, even Tribes like
13 Ewiiapaayp that are non-gaming Tribes that
14 benefit from compacting and gaming in the State as
15 a revenue sharing beneficiary Tribe. So, we have
16 interests to protect in this area. And so, we
17 have comments that we provide in support of our
18 non-gaming interests that we think are best
19 defended through a compact approved by the
20 Department. So, thank you, and we look forward to
21 working with you further in this area.

22 MR. NEWLAND: Thank you, Will and I

1 appreciate your comments on particularly this --
2 yourself and the Governor noting the importance of
3 addressing Internet gaming in these regulations.
4 Having that feedback is helpful as well. We know
5 this is a pressing issue. There have been a lot
6 of different approaches to this. And as we've
7 said on the record before, in other forums, we
8 want to make sure that we're preserving the
9 ability of Tribes to continue to regulate their
10 own conduct of gaming. As well as to conduct
11 gaming under IGRA rather than the regulatory
12 umbrella of state law. So, thank you for that.
13 Presently there are no speakers in the cue. If
14 you wish to speak, you can raise your hand under
15 "raise hand" function, under "reactions" at the
16 bottom of your screen. Or if you're joining by
17 phone, you can press start 9. Again, we will be
18 having a listening session at NCAI on Monday June
19 13th, up in Anchorage. I will see you there if
20 you plan to be there. And we will accept written
21 comments all the way until midnight on June 30th
22 at consultation@bia.gov. So, I will call for a

1 minute or two, to see if there are any Tribal
2 Leaders or representatives who wish to address the
3 Part 293 regulations. If not, we can adjourn
4 early and await your written comments. Again, our
5 schedule for these regulations is the same time
6 frame as under the Fee-to-Trust regulations. We
7 will immediately work to review Tribal comments,
8 develop a preamble to this rulemaking, as we work
9 toward a Formal Notice of Proposed Rulemaking in
10 the Federal Register at a later date. That's all
11 impacted by how many comments we receive. Okay.
12 I will give a last call for speakers. I don't
13 want to preempt anybody with another hour on our
14 schedule. But if not, we can adjourn early.
15 Going once, going twice. Okay. I want to thank
16 everybody again for joining us today for taking
17 time out of your busy days. I know how
18 challenging it is to run a Tribal government. To
19 manage your affairs on behalf of your clients
20 (inaudible) and people (inaudible). And I am
21 grateful for those of you who took time to join us
22 today. Especially grateful to those of you who

1 have submitted written comments or provided
2 comments and direction. This is enormously
3 helpful to us and of course, I want to make sure I
4 acknowledge the brilliant team we've got here in
5 the Office of the Assistant Secretary for Indian
6 Affairs, the Office of Indian Gaming, the
7 Solicitor's Office, the BIA Trust Services and
8 Realty folks. This is -- the work that we're
9 discussing today is really a result of their
10 efforts and is a labor of passion for all of them.
11 And so, I acknowledge that. We'll conclude our
12 consultation session today, I want to wish you all
13 well. Now please be safe, enjoy the beginning of
14 summer and we will speak again soon. Thank you.

15 (Whereupon, at 2:50 p.m., the
16 PROCEEDINGS were adjourned.)

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CERTIFICATE OF NOTARY PUBLIC

DISTRICT OF COLUMBIA

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

(Signature and Seal on File)

Notary Public for the District of Columbia

