

UNITED STATES DEPARTMENT OF THE INTERIOR  
INDIAN AFFAIRS

TRIBAL CONSULTATION ON PART 83 CONSULTATION  
1ST SESSION

Washington, D.C.  
Thursday, June 2, 2022

1 PARTICIPANTS:

2 BRYAN NEWLAND  
Assistant Secretary of Indian Affairs

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4 CHERYL ANDREWS-MALTAIS  
Chairwoman  
The Wampanoag Tribe of Gay Head Aquinnah

5  
6 CHRISTOPHER BEY

7 REGGIE TUPPONCE  
Tribal Administrator  
Upper Mattaponi Indian Tribe

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9 LORETTA TUELL  
Managing Principal  
Tuell Law

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11 LEBARON BYRD  
MOWA Band of Choctaw Indians

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

2 (3:01 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 first of two  
6 virtual nationwide government-to-government  
7 consultations hosted by the Department of the  
8 Interior Office of the Assistant Secretary for  
9 Indian Affairs on whether it should reconsider its  
10 prior decision to ban re petitioning under 25  
11 C.F.R Part 83. The regulations establishing the  
12 process and criteria for how the Department  
13 administratively acknowledges Indian tribes. This  
14 is a government-to-government consultation and  
15 it's closed to the press. If you are a member of  
16 the press, please sign off at this time. The  
17 Department will also host a listening session for  
18 present, former and prospective petitioners. This  
19 consultation is scheduled to last two hours. For  
20 optimum audio quality. Please ensure your  
21 microphone remains on mute unless you would like  
22 to speak. Please take a moment to add your title

1 and affiliation to your name in Zoom. To do this,  
2 click on the participant list. Find your name,  
3 click on the blue "more" button next to your name  
4 and choose Rename. The session will be recorded.  
5 If you do not consent to being recorded. You may  
6 disconnect at the time. Closed captioning is  
7 available in real time through the link in the  
8 chat. I will now turn it over to Assistant  
9 Secretary for Indian Affairs Bryan Newland.

10 MR. NEWLAND: Thank you so much (Speaks  
11 in native language) Good afternoon, everybody.  
12 My name is Bryan Newland. I am the Assistant  
13 Secretary for Indian Affairs here at the  
14 Department of the Interior. We have a number of  
15 folks joining us here from the Department as well  
16 for this government-to- government consultation on  
17 the Department's proposed regulations for federal  
18 acknowledgement at 25 C.F.R Part 83. Before we  
19 get started, we always want to make sure that we  
20 are conducting these consultations in a good way  
21 that's respectful of the practices of people  
22 across Indian country. So, we want to take a

1 moment right now of silence in reflection to allow  
2 folks to pray and bless us in this meeting.

3 (Speaks in native language) Thank  
4 you so much. And thanks again for  
5 joining us. This is the first of  
6 two consultations that we'll be  
7 holding for federally recognized  
8 tribes. Today's session is  
9 scheduled for two hours. And we  
10 will hold the second  
11 government-to-government  
12 consultation on June 6th, and we  
13 will also hold a listening session  
14 on June 9th, from three to five  
15 p.m. Eastern Time for present,  
16 former and prospective petitioners.  
17 These are the tribes that -- in  
18 groups that have not been federally  
19 recognized or in the process of  
20 seeking federal recognition. You  
21 can find the Dear Tribal Leader  
22 Letter posted on the BIA

1                   consultation website. And we'll  
2                   have the link in the chat box here.  
3                   So, a little background on how we  
4                   got to this point. Since 1994, the  
5                   Part 83 regulations have included  
6                   an express prohibition on  
7                   re-petitioning for Federal  
8                   Acknowledgement. In a 2014 Notice  
9                   of Proposed Rulemaking, the  
10                  Department proposed giving  
11                  previously denied petitioners an  
12                  opportunity to repetition, subject  
13                  to several conditions. However, in  
14                  the 2015 final rule, revising the  
15                  Part  
16                  regulations, the Department ultimately decided to  
17                  retain the prohibition on re-petitioning. In 2020 in  
18                  litigation that was filed by two previously denied  
19                  petitioners. Two separate district courts at Chinook  
20                  Indian Nation versus Bernhardt and Burt Lake Band of  
21                  Ottawa and Chippewa Indians versus Bernhardt held that  
22                  the Department stated reasonings for retaining the

1 prohibition, as articulated in the final rule were  
2 arbitrary and capricious under the Administrative  
3 Procedure Act. Both courts remanded the ban or  
4 prohibition to the Department for further  
5 consideration. After a series of consultations and  
6 listening sessions last year, we incorporated feedback  
7 in drafted a new preamble to the Part 83 rule. And  
8 also, are formally proposing this rule to keep or  
9 retain the prohibition on re-petitioning under Part  
10 83. And we're now seeking the input of Tribal Leaders  
11 on this matter. So, at this time, we want to open the  
12 floor up to Tribal Leaders of federally recognized  
13 tribes. First, the designated representatives of  
14 federally recognized tribes. We, of course, welcome  
15 folks on the line to listen into the conversation and  
16 I just want to make sure that I'm emphasizing that  
17 today's session is a government-to-government  
18 consultation. And that because we know that this is a  
19 unique rule that impacts tribes that are seeking  
20 federal recognition, and we want to hear from those of  
21 you from those groups, that we are going to hold a  
22 listening session consistent with our consultation

1 policy on June 9th, and so I would ask respectfully,  
2 that if you are in in those categories that you wait  
3 until that date to provide us comments on the record.  
4 So, with that, we'll open the floor up, you can use  
5 the "raise my hand" function at the bottom of your  
6 screen and the "reactions" button. Or if you are  
7 joining us by phone, you can press star nine. And  
8 when we call on you, I'll designate you by number  
9 you'll need to press star six to unmute yourself.  
10 So again, want to make sure that elected leaders and  
11 designated representatives from federally recognized  
12 tribes have an opportunity to speak here regarding the  
13 Department's proposed rules.  
14 There are presently no Tribal Leaders or  
15 Representatives in the queue. Well, this might be a  
16 short consultation where I'm happy to stay on and our  
17 team is happy to stay on for the scheduled period.  
18 But we'll do another call for Tribal Leaders and  
19 Representatives who wish to speak. Chairwoman  
20 Andrews-Maltais.

21 MS. ANDREWS-MALTAIS: Hey there, how you  
22 doing? You know me, I just can't have you guys



1 hanging out there. You've invested so much time  
2 and energy and staff to be here to hear us. So,  
3 thank you for that. And I just wanted to get some  
4 more clarification on the deadlines for the  
5 written comments, because although we've provided  
6 verbal comments, I also wanted to be able to, I  
7 guess more definitively or clearly articulate some  
8 of the areas that I want to have a particular  
9 attention or weight being given to. So, with  
10 that, if we could just get some clarification on  
11 that, as well as most of the Tribal Leaders have  
12 done, would like to invite you to come up to  
13 Aquina in our homelands, to be able to see exactly  
14 the challenges that we face with regard to land;  
15 land acquisition. The process through which we  
16 are able to acquire land, and the considerations  
17 that really have to be weighted and considered  
18 because of the unique situations that we face,  
19 particularly here in the North, but most  
20 expressly, us as an island community where the  
21 cost of real estate is off the chain.

22 MR. NEWLAND: I'm finding that out

1 myself, Chairwoman with East Coast housing, but  
2 thank you for joining us. I'm glad to see you  
3 here. Glad to see you and --

4 MS. ANDREWS-MALTAIS: Thank you again.  
5 My mission's accomplished, more people have raised  
6 their hand.

7 MR. NEWLAND: All right.

8 MS. ANDREWS-MALTAIS: Thank you.

9 MR. NEWLAND: All right. So, we have  
10 two speakers in the queue, Christopher Bey and  
11 Reggie Tupponce. I hope I got your name right.  
12 So, I'll go with Christopher first.

13 MR. BEY: How you doing? Can you hear  
14 me?

15 MR. NEWLAND: Yes.

16 MR. BEY: Okay. I'm interested in  
17 trying to get my nation recognized federally, and  
18 so I need a little help with that. It's a kind of  
19 unique situation. I was misclassified as being  
20 African American and do a course of studying of my  
21 background and the Dawes rules and the records  
22 from the Bureau of Indian Affairs. I Located and

1 found out that I'm actually full-blooded Cherokee.  
2 And but before I found that out, I had already  
3 started organizing and created a governmental  
4 entity, which has not been federally recognized.

5 MR. NEWLAND: So, Christopher, what I  
6 will do -- Thanks for taking time to join us today  
7 and asking your questions. I'll ask our team from  
8 the Office of Federal Acknowledgement to drop an  
9 email and a phone number in the chat box here to  
10 -- sorry about that -- contact them with some of  
11 your technical questions.

12 MR. BEY: Okay.

13 MR. NEWLAND: Thank you.

14 MR. BEY: Thank you.

15 MR. NEWLAND: So, leave me -- maybe you  
16 could put that information in the chat box. So,  
17 with that, thank you, Christopher. I will --

18 MR. BEY: You want me to put my email  
19 address in the chat box? Or are you saying  
20 they're going to put information from me?

21 MR. NEWLAND: They're going to put their  
22 contact information in the chat box for you.

1 MR. BEY: Okay, thank you.

2 MR. NEWLAND: Thank you. I'll now turn  
3 it over to Reggie Tupponce. I hope that's the  
4 correct pronunciation.

5 MR. TUPPONCE: You're close, it's  
6 Tupponce. My name is Reggie Tupponce. I'm  
7 enrolled in Upper Mattaponi, which is one of the  
8 six tribes that received federal recognition in  
9 2018 through legislation. I also serve as the  
10 Vice President for the southeast region for NCAI.  
11 And I represent my tribe on the board of  
12 (inaudible). I previously served on NCAI back in  
13 2007 to 2009 and was the co-chair of the Federal  
14 Acknowledgment Task Force for NCAI for about three  
15 years. Our tribe in particular actually filed  
16 their Letter of Intent in 1979. And we worked a  
17 little bit off and on it and found it to be very  
18 onerous. We're a small tribe; didn't have a very  
19 high education level at that time, and very little  
20 money, and it has gotten more onerous and more  
21 expensive, obviously, since that time, we'll be  
22 providing comments on it. I do support the

1 ability for tribes to reapply. We'll articulate  
2 that in our written comments. And then I'll  
3 probably have more with that. We're going out to  
4 NCAI next week. And I will be attending the  
5 taskforce meeting there and talking to some of the  
6 various tribes. A lot -- many are in the  
7 southeast region somewhere in the Northeast, and  
8 then throughout the country, and get their ideas  
9 and their comments and probably, you know, add  
10 that, you know, within ours as we provide our  
11 comments, but I just wanted to -- since Cheryl  
12 started off there, I wanted to make comment and  
13 say that, you know, we're not ignoring it. That  
14 we are looking -- as a newly recognized tribe is  
15 important for me to support the other tribes that  
16 are trying to fight their way through the process.  
17 I've watched as each tribe has gotten recognized  
18 before us do the same. So, I feel like it's our  
19 turn to help give a hand up to the other tribes.  
20 Thank you for your time, and we will be submitting  
21 written comments.

22 MR. NEWLAND: Thank you, Mr. Tupponce.

1 Appreciate that. I'll make sure I get your name  
2 right from here on and I look forward to that  
3 NCAI. Of course --

4 MR. TUPPONCE: I appreciate it.

5 MR. NEWLAND: -- your written comments.  
6 Thank you. All right. For those wishing to  
7 speak, you can use the raise "my hand" function at  
8 the bottom of your screen you click on the little  
9 smiley face emoji down there that says reaction  
10 and you can raise your hand in there or if you're  
11 on the phone, you can press star nine.

12 There are presently no Tribal Leaders or  
13 designees in the queue. I'll note that you can  
14 provide written comments as well. You can submit  
15 those to [consultation@bia.gov](mailto:consultation@bia.gov) all the way up until  
16 midnight on Wednesday, July the 6th.

17 And just to emphasize for those of you  
18 joining us here, who are not here on behalf of a  
19 federally recognized tribe, but on behalf of a  
20 petitioner, or a former petitioner that was  
21 denied. We will make sure that -- hear from you  
22 in a listening session on June the 9th and

1 consider your written comments as well. I See,  
2 Loretta Tuell, has your hand raised. Hi.

3 MS. TUELL: Hey, how's it going? I just  
4 was going to ask a question for clarity. I  
5 haven't had a lot of time to really study this,  
6 but I try to at least put the consultations on the  
7 calendar. And I was looking for some clarity in  
8 the letter. It says that you want to retain or  
9 potentially retain the prohibition, the ban, and  
10 it stays earlier in the prior band, there was some  
11 rationale. Are you using the same rationale for  
12 the potential or is it new rationale? I'm just  
13 looking to find out what the underlying rational  
14 basis for the decision to potentially keep the  
15 band is? And if you've thought about that, or  
16 what direction we should know when or not  
17 commenting?

18 MR. NEWLAND: Yeah, we've given that a  
19 lot of thought and attention. And the difference  
20 between this part 83 as proposed, and the part 83  
21 regulation that was proposed back during the Obama  
22 Administration is largely in the -- or almost

1 entirely in the Preamble. Because the Court's  
2 rulings in those cases, spoke to the -- in the  
3 courts, the termination, the inadequate  
4 explanation for the Department's reasoning. And  
5 so that's contained in the new Preamble, which you  
6 can access online.

7 MS. TUELL: Oh, maybe I guess I just  
8 didn't see that part in the consultation. I only  
9 see the letter, but not the attachments for the  
10 new language. Is that in the consultation page?

11 MR. NEWLAND: Yes. And it looks like  
12 we've got to link them in the chat box for now,  
13 too.

14 MS. TUELL: Okay because I couldn't see  
15 that part. I was missing the disconnect. Thanks,  
16 I appreciate it.

17 MR. NEWLAND: Loretta let me just make  
18 sure that we've got that -- but we can provide you  
19 and others with a link to the rule itself.

20 MS. TUELL: Yeah, I didn't see that  
21 part. So, I was sort of floating around wondering  
22 what the rationale was or what your reasoning was?



1 Just one other question too, and I'm assuming it's  
2 in there, that you're not looking to at all  
3 anyway, change the underlying authority of the  
4 Assistant Secretary to make decisions based on his  
5 discretion based on specific fact changes or  
6 background in any action that you have, regardless  
7 of this rule. It doesn't trump your discretion.

8 MR. NEWLAND: The rule itself is  
9 substantively the same as what was promulgated in  
10 2015. So, I see Maryanne in the in the chat is  
11 noting that she's having trouble accessing the  
12 language to the rule. We'll make sure to get  
13 that. I thought that was on our website, but  
14 we'll get that to you as quickly as possible.

15 Okay. All right, I want to make sure  
16 I'm providing an opportunity for folks to submit  
17 their comments or ask questions. We have no  
18 speakers in the queue, I'll have this open for a  
19 few moments. Make sure we're not missing anyone.

20 MR. BYRD: (Speaks in native language)  
21 this is Lebaron Byrd with the MOWA Band of Choctaw  
22 Indians. Did you say you were going to have the

1 listening session for -- consultation session for  
2 our State Tribe on June the 9th?

3 MR. NEWLAND: Correct sir.

4 MR. BYRD: Okay, so same time?

5 MR. NEWLAND: That will be three to five  
6 p.m. next Thursday.

7 MR. BYRD: Three to five of --

8 MR. NEWLAND: Eastern time. Eastern  
9 time.

10 MR. BYRD: Okay, thank you.

11 MR. NEWLAND: And it's great to see you  
12 again. Hope you're doing well.

13 And Loretta and others, Stephanie  
14 Sfiridis from our office has included a link to  
15 the proposed rule in the chat, in the Federal  
16 Register. All right, I will do a last call for  
17 speakers and comments.

18 Going once, going twice. Okay. I want  
19 to thank everybody for joining us today, this  
20 afternoon on this government-to-government  
21 consultation. We will be back here again on  
22 Monday, June 6th from two to four p.m. Eastern

1 time. Of course, we welcome your written comments  
2 at any time up until midnight on July the 6th.  
3 You can submit those to consultation@bia.gov. For  
4 those of you who are joining us from state  
5 recognized tribes and groups that have a pending  
6 petition, or had previously denied petition, we  
7 want to make sure that we hear from you, and we  
8 will welcome your written comments and look  
9 forward to speaking with you next Thursday June  
10 9th, at three to five p.m. I want to thank you  
11 all very much for your time. Wish you are well in  
12 good health, and we will see you again. That  
13 concludes the consultation.

14 (Whereupon, at 3:22 p.m., the  
15 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)

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Notary Public for the District of Columbia

