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NIGC CONSULTATION MEETING 2015  
SAN DIEGO, CALIFORNIA  
APRIL 2, 2015

Transcribed by:  
Lauren Schechter, CCR

Job No. NJ2044696

1 >>CHAIRMAN CHAUDHURI: And comments  
2 relate to any one of those four items in order.  
3 Feel free to provide comments on any -- any of the  
4 items that you wish to speak to when your time  
5 comes. So Dan --

6 >>DANIEL LITTLE: Okay. I get to  
7 be the bad guy here. We're scheduled to be here  
8 from 3 to 5 today. I'm more optimistic. If we  
9 get through the agenda prior to that, we probably  
10 will end early. So there are additional  
11 complication dates scheduled. April 23rd in Rapid  
12 City, April 30th in Oklahoma City, and finally May  
13 20th in Minnesota. I think that's in conjunction  
14 with the Great Plains and Indian Gaming  
15 Conference. We'll probably set up a call-in  
16 number so if you can't attend or have additional  
17 things to add, you could call in for that one  
18 there.

19 Just a couple of reminders. This  
20 meeting is being recorded and will eventually be  
21 transcribed. So when you speak, we'd ask that you  
22 speak into the microphone. State your name and  
23 the organization prior to making your statement.  
24 And finally, this is an official government  
25 consultation -- government to government

1 consultation. And it's only open to tribal  
2 governments as represented to tribal governments.  
3 It's not open to members of the media or general  
4 public. So if you fall into that latter category,  
5 please excuse yourself from the room.

6 I think that's about it. I'll turn  
7 it back over to the Chairman and we can get  
8 started.

9 >>CHAIRMAN CHAUDHURI: Thank you,  
10 Dan. Two members of our team that weren't in the  
11 room but are helping staff outside are Frank  
12 Hernandez and Manny Sanchez. I wanted to extend  
13 my thanks to them as well.

14 So with that, we're going to start  
15 off with our general counsel Eric Shepard who is  
16 going to provide some background on our buying  
17 goods and services and services and proportions.  
18 He'll turn it over to some other members of our  
19 team from there.

20 >>ERIC SHEPARD: Thank you. Just  
21 to provide some background on the proposed Buy  
22 Indian goods and services regulation, the  
23 Commission is considering adopting Buy Indian  
24 goods and services regulations. We've nicknamed  
25 them BIGS regulations. They would provide a

1 preference to qualified Indian-owned businesses  
2 when the Commission purchases goods and services  
3 at fair market price. This is in keeping with the  
4 Commission's mission and is being done as a means  
5 of promoting tribal economic development and  
6 tribal self-sufficiency through increased  
7 employment opportunities and strong tribal  
8 governments. This proposed regulation is an  
9 attempt by the Commission to codify what the  
10 agency has been doing in practice for many years,  
11 to give preference as much as practical to  
12 qualified Indian-owned businesses when purchasing  
13 goods or services at fair market price.

14           The last time the Commission  
15 consulted on this proposed regulation was in 2011,  
16 and many tribes were unclear on the scope of this  
17 regulation and thought that this regulation might  
18 require tribes themselves to buy only Indian goods  
19 or services. We want to make it clear that the  
20 proposed BIGS regulations are for the Commission's  
21 own procurement of goods and services and do not  
22 mandate tribes to purchase only from Indian-owned  
23 businesses. They're purely for the NIGC.

24           These proposed regulations are  
25 almost identical to the bureau of Indian affairs

1 buy Indian act regulations on which the BIA  
2 previously held consultations. There is one key  
3 difference, that the authority and the BIA's  
4 regulations is derived from the buy Indian act  
5 itself while the Commission's authority is derived  
6 from the Indian gaming regulatory act. In the  
7 future it might become necessary for the  
8 Commission to seek delegated authority from the  
9 Secretary of the Interior to use authority under  
10 the buy Indian act because that act will provide  
11 for higher level of Indian preference. But for  
12 right now the Commission is seeking to proceed  
13 only under its authority provided the IGRA.

14 Second topic I wanted to introduce  
15 is the NEPA manual. There was consultation last  
16 year on the applicability of NEPA to management  
17 contracts. And this draft NEPA manual that's been  
18 circulated is basically the outcome of that  
19 consultation. NIGC is planning on adopting a NEPA  
20 policies and procedures manual that will include a  
21 categorical exclusion or CATEX for the approval  
22 management contracts. Previously, the NIGC  
23 determined that the approval of a management  
24 contract under IGRA constitutes a major federal  
25 action that requires review under the national

1 environmental policy act, or NEPA. That review  
2 takes the form typically of environmental  
3 assessment or an environmental impact statement  
4 both of which are extremely costly and time  
5 consuming. By adopting a categorical exclusion,  
6 tribes would not be required to prepare an EA,  
7 environmental assessment, or EIS, environmental  
8 impact statement, except in the case of  
9 extraordinary circumstances.

10 The policies and procedures manual  
11 the NIGC now seeks to adopt is limited in scope.  
12 In addition to setting forth procedures for  
13 applying for a categorical exclusion, it will  
14 define the extraordinary circumstances under which  
15 a CATEX would not be appropriate, and the policies  
16 and procedures to be followed in order to conduct  
17 a NEPA review. By adopting a new manual the  
18 Commission hopes to end the uncertainty  
19 surrounding NEPA and save tribes both time and  
20 money.

21 Andrew Mendoza is going to  
22 introduce the privacy act.

23 >>ANDREW MENDOZA: Thank you. The  
24 NIGC is proposing to make several revisions to its  
25 privacy act regulations. First and foremost,

1 proposed regulatory changes relate solely to the  
2 NIGC's internal processing and requests for  
3 information and will not affect the way tribes  
4 collect, store, or process information from  
5 applicants. The proposed regulations govern the  
6 NIGC's submission requirements for requests it  
7 receives from the public and how it processes in  
8 response to those requests. These changes will  
9 have negligible if any impact on tribes.

10 The NIGC has not updated its  
11 privacy act regulations since 1992 and as a result  
12 several of the provisions are out of date. With  
13 these proposed changes, the NIGC hopes to  
14 eliminate old and burdensome procedures and  
15 incorporate best practices it has learned over the  
16 years to increase the efficiency of its internal  
17 processes.

18 Changes include but are not limited  
19 to the consolidation of procedures governing how  
20 an individual may request access to information  
21 from the agency; the creation of policies for how  
22 the NIGC will process requests in conjunction with  
23 other federal agencies; streamlining the agency's  
24 procedures to coincide with its Freedom of  
25 Information Act regulations in 25 CFR part 517;

1 and the updating of the list of records that are  
2 exempt from disclosure under the act.

3 The proposed regulations will also  
4 create new provisions that will more clearly  
5 explain how the agency complies with specific  
6 aspects of the privacy act. This will include  
7 procedures for requesting accountings of record  
8 disclosures and providing notice to individuals  
9 and cases where it is required to disclose records  
10 in cases of emergency or pursuant to a court  
11 order. Thank you. I'll pass it on to Acting  
12 Chief of Staff Christinia Thomas.

13 >>CHRISTINIA THOMAS: Thank you.  
14 The final subject we're talking about is the Class  
15 3 Minimum Internal Control Standards. The NIGC is  
16 Class 3 Minimum Internal Control Standards or the  
17 MICS were promulgated in 1999 and then revised in  
18 July of 2002. The purpose of the MICS is to  
19 protect and preserve the integrity of Indian  
20 gaming. The MICS reduce the risk of loss to  
21 tribal gaming operations because they contain  
22 among other things standards and procedures that  
23 govern cash handling, accounting, documentation,  
24 game integrity, auditing, and surveillance. A lot  
25 has changed in the gaming industry, however due to



1 the CRIT decision, no revisions have been made to  
2 the Class 3 MICS. While the NIGC recognizes that  
3 it does not have the authority to promulgate Class  
4 3 MICS as regulations we feel there is still a  
5 need to have them. Many tribes still rely on the  
6 MICS and in some cases the MICS are part of tribal  
7 state compacts.

8           During our last regulatory review  
9 process we asked for comment on how we should  
10 proceed with regards to the Class 3 MICS. We  
11 received a lot of great responses. Some wanted us  
12 to implement new regulations while some wanted us  
13 to withdraw the regulations and do nothing. We've  
14 reviewed all the comments and the Commission  
15 decided that it's time to propose issuing the  
16 Class 3 MICS as guidance. These will be advisory  
17 only, and completely unenforceable by the NIGC,  
18 but will allow us to update the MICS and provide  
19 something for the tribes to rely on. The plan is  
20 to develop updated Class 3 MICS guidance, publish  
21 them for comment, consider all the comments and  
22 revise as necessary, publish guidance, and at the  
23 same time withdraw the regulation. Because it  
24 will be guidance instead of regulations, we will  
25 be able to be much quicker at adapting to changes

1 in the industry. We hope to have a draft of the  
2 guidance out soon.

3 >>CHAIRMAN CHAUDHURI: Thank you,  
4 Christinia. So before we get into the actual  
5 testimony, as I mentioned, we recognize that folks  
6 might have flights to catch. Does anybody have a  
7 prepared opening statement that they'd like to get  
8 on the record before they head out to the airport?  
9 Okay. Not seeing any hands, we'll just move right  
10 into the comment period.

11 Thank you for your patience while  
12 we worked through the background here, but this  
13 time is really your time. We very much value the  
14 comments we've received at these consultations and  
15 we'll just go in order of hands. Anybody that has  
16 comments at any point, feel free to raise your  
17 hand and we'll try to stay in the order that we  
18 see you. So with that, the floor is yours.

19 >> On the last sentence --

20 >> Sir, could you please state your  
21 name and organization?

22 >>HOMER SANDERS: Homer Sanders,  
23 Gaming Director, Gaming Commission Director, Lower  
24 Elwha Tribe. It's just the last few words,  
25 withdraw part 542 from the regulations. What does

1 that mean?

2 >> I'm sorry. I actually didn't  
3 hear the question. So when you get to be my age,  
4 you start losing your hearing. If you don't mind  
5 --

6 >>HOMER SANDERS: I'm looking at  
7 the hand out that's dated February 26, notice of  
8 consultation. And second paragraph from the  
9 bottom.

10 >> Right.

11 >>HOMER SANDERS: The last few  
12 words.

13 >> Right. So -- general counsel?

14 >> What the Commission is proposing  
15 to do is to after developing minimum internal  
16 controls for Class 3 gaming that will be published  
17 as guidance, withdraw part 542 from the federal --  
18 which is the Class 3 minimum internal control  
19 standards that are in the regulations. Withdraw  
20 those from the regulation book essentially so they  
21 would no longer be NIGC regulations. They would  
22 be NIGC guidance. Because the Colorado river  
23 Indian tribe decision says we cannot enforce that  
24 regulation and it has become stale. It is old.  
25 We went through -- and thanks to all the input

1 from tribes, I think developed much more workable  
2 Class 2 minimum internal control standards but  
3 were unable to update the Class 3 standards and  
4 would like to be able to do that.

5 >> Thank you.

6 >>CHAIRMAN CHAUDHURI: Thank you  
7 for that comment. Sir.

8 >>ASA WAHSINES: Good afternoon.  
9 My name is Asa Wahsines from the (inaudible)  
10 tribal council. This is my first time. It's  
11 pretty good, you know?

12 Just a couple of things. You know,  
13 I'm one person of 14 from our council. And our  
14 council takes the position that consultation is  
15 only going to (inaudible). I know in theory  
16 that's kind of what they want me to say. So I  
17 understand that, you know, the applications add  
18 up. But consultation is (inaudible). Taking that  
19 for what it is, I just want to get that on the  
20 record.

21 Secondly, with what's been proposed  
22 here, I'm just kind of curious how these are  
23 prioritized. I know there's a lot of history to  
24 this going back. But it evolved into that one  
25 change -- it's a general question. How are these

1 specific items prioritized? Because that can  
2 (inaudible) committee, and then we have an  
3 economic committee, and we sit down. And we  
4 network between the two committees, we're looking  
5 at our gaming audience, and we're having tribal  
6 gaming and we have a board of directors. And  
7 we're sitting down and we're going to (inaudible)  
8 for the NIGC. But we're sitting down together as  
9 two entities and trying to figure out what's good,  
10 what's bad, what do we add, what do we take out?  
11 That's how we prioritize our viewpoints. I'm just  
12 kind of curious how these are prioritized. Just  
13 so it can help me understand. Thank you.

14 >>CHAIRMAN CHAUDHURI: Thank you  
15 for that question. I think that's an excellent  
16 question. I'll make sure that I have not --  
17 there's an opportunity for both Dan and I to weigh  
18 in on that. Because the consultations from the  
19 Commission's standpoint are prioritized by the  
20 Commission itself. Right now Dan and I are the  
21 two Commissioners on the Commission. But we do  
22 that in conjunction with our partners. And we set  
23 those priorities in conjunction with tribes and  
24 tribal regulators, and input received from tribes  
25 and tribal regulators in a number of ways:

1 Through written comments, comments in formal  
2 consultations, but also through our day to day  
3 interactions with our partners. And so the topics  
4 that we're covering today have actually been  
5 topics that have been raised to us on a regular  
6 basis as needing to be prioritized. In addition  
7 to that, we're of the belief that you need to do  
8 something with your consultation materials with  
9 the comments that you receive once you have a  
10 consultation. And so we take active steps to  
11 listen at our consultations, and review comments,  
12 and try and develop priorities accordingly. So if  
13 we look at the list before us today, the idea of  
14 putting forth the regulation that deals with  
15 buying Indian goods and services comes directly  
16 from previous consultations with Indian country,  
17 with tribes and tribal regulators. That's the  
18 product of our coordination and our discussions.

19 Same thing with NEPA. We consulted  
20 on that matter last year and that helped shape the  
21 proposed approach that we're taking today. And  
22 certainly practical solutions regarding Class 3  
23 MICS in light of the CRIT decision. That comes  
24 from regular comments received from communities  
25 such as those represented here today. So we do

1 try to take a collaborative role -- play a  
2 collaborative role in shaping our policy hand in  
3 hand with tribes and tribal regulators. But  
4 that's how I see it from my perspective. I do  
5 want to give my fellow Commissioner an opportunity  
6 to add onto it.

7 >>DANIEL LITTLE: I would add three  
8 out of four with the exception of the privacy act  
9 were all included in the 2011 notice of inquiry  
10 that the Commission set out, where we basically --  
11 we basically went to the tribes and said what  
12 should we review? And from that we developed an  
13 agenda. Those three items were on that list.  
14 They were not completed for various reasons, and  
15 now we're going back and taking a look at that  
16 with additional discussions with all of you. So  
17 that's kind of the reasons why they're included  
18 today.

19 >>ASA WAHSINES: I appreciate the  
20 response. I am going (inaudible) get my  
21 understanding and my head around these issues so I  
22 can take it back to my table and explain it to  
23 them. Thank you. I appreciate it.

24 >>CHAIRMAN CHAUDHURI: Thank you,  
25 sir. If I could add one more item to that. We

1 absolutely value the comments received. So in  
2 addition to helping us prioritize future  
3 consultations, comments help us prioritize  
4 internal actions. Recently we announced the  
5 development of a technology division at NIGC.  
6 That was directly tied to some of the very helpful  
7 comments we received last year during our  
8 consultations on technology that highlighted the  
9 need to elevate the role of the unified technology  
10 policy within the industry. So thank you very  
11 much for your comment. We will continue to do  
12 everything we can to listen and incorporate  
13 comments received at these consultations.

14 >>GRANTHUM STEVENS: Granthum  
15 Stevens, Colorado River Indian Tribes. In regards  
16 to your nonmandatory Class 3 MICS will ultimately  
17 replace flat 42, with that impact on flat 42, how  
18 many compacts would that jeopardize or go into  
19 when we look at removing flat 42 when it does come  
20 up? Another part is if they're going to be a  
21 nonmandatory guidance of Class 3, I should say,  
22 then why have it? Why go through the process of  
23 both of them? I understand where you're coming  
24 from by the Commissioner when we had the  
25 conversation on flat 43 was being drafted. It was



1 the concern then in the wordings that when you  
2 utilize the words in there that said what the  
3 Class 2 and Class 3 MICS were, it was voiced then  
4 that you didn't have the authority to step into  
5 the Class 3 realm and you couldn't enforce that  
6 aspect into Class 3. Arizona has a state  
7 refertory body that oversees Class 3. So when  
8 this area comes up, it affects us as well.  
9 Because now what you're saying is that we have to  
10 look at 543 being introduced as our own compact  
11 and our own tendencies. And we've had this  
12 discussion before to where you don't have that  
13 jurisdiction when it comes to the people making  
14 any type of jurisdiction in Class 3. So with  
15 these happening with 542, I think it was also  
16 years ago that it was said that (inaudible) but in  
17 Oklahoma's compact, it refers to Class 3 MICS at a  
18 minimum being held to that standard of the 2005  
19 542 MICS. So if we're proposing to remove that, I  
20 mean, how many compacts and states are we going to  
21 look at being in jeopardy of having to go back and  
22 renegotiate compacts or having to step back and  
23 look at impacts financially as well as lobbying?

24 >>CHAIRMAN CHAUDHURI: I think --  
25 thank you for your comments. I think those are

1 some excellent points. So the impact on compacts  
2 that reference 542 MICS is something that we're  
3 very mindful of. And frankly, being responsive to  
4 the need to provide help, or to provide some  
5 guidance for those tribes and states who have 542  
6 regulations in their compacts is something that  
7 drove this consultation. But the -- we always  
8 have an eye on potential unintended consequence.  
9 However, I do want to make the point that the CRIT  
10 decision says what it says. It clearly says that  
11 we don't have the authority to issue or enforce  
12 Class 3 MICS.

13                   With that in mind, we also  
14 recognize that many states and tribes do their  
15 compacting process have referenced our MICS. So  
16 trying to provide appropriate assistance and  
17 guidance in the industry while staying mindful of  
18 the existing case law is what we're looking at.  
19 That's the purpose of today's consultation in  
20 terms of the best way to do that. But in terms of  
21 any details, I don't know if our general counsel  
22 or anybody else wants to add anything to it. But  
23 I think your question overall deals with  
24 unintended consequences and potential for  
25 unintended consequences. We're very mindful of

1 that. Thank you so much for your question. Yes,  
2 sir.

3 >>JOE HIBDON: Question.  
4 Pertaining to -- at least to me, it's going to  
5 have an effect on the compacts with the states  
6 because Class -- right now Class 542 is regulated  
7 on a -- you're going to change that, not  
8 regulating it. But on the other hand, if you do,  
9 where's that going to put the compact for the  
10 state? Because if they said they're not going to  
11 want to regulate it, now the state is going to  
12 want to regulate it. You get what I'm saying? We  
13 don't want that to happen. We'd rather have what  
14 we have here is better because you know darn well  
15 when you go for a compact with the state, they're  
16 going to try to get everything they can out of it.  
17 Right now with our MICS, we have at least the  
18 regulation on there, even though like you say,  
19 what you don't have maybe the power to get  
20 guideline for us. If you take that away, we don't  
21 have the guideline. Pretty soon the state is  
22 going to see that. This is where the problem  
23 lies. It's not only for this. In the future,  
24 which we're talking about right now, is Internet  
25 gaming. We're running into that right now. The

1 San Isabel is pushing to try and get it, and the  
2 state is saying no, we want to control it. We're  
3 running into this now. That's why poker is 542.  
4 Right? And if we -- if we let this go, the state  
5 is going to come in and say hey, we want to put  
6 that on ours, we're in control of it. This is  
7 where we would rather see it as regulations from  
8 you than going to the state. Because once the  
9 state gets it, they're going to change things the  
10 way they want. At least that's my understanding.  
11 If you guys can speak so I understand, that's what  
12 I suggest because it does affect your compacts.

13 >>CHAIRMAN CHAUDHURI: Thank you,  
14 Commissioner. And maybe I missed it. But do we  
15 -- just for the transcript, did we get your name  
16 and title before?

17 >>JOE HIBDON: Joe Hibdon, Ricon  
18 Gaming Commission.

19 >>CHAIRMAN CHAUDHURI: Thank you,  
20 sir. Excellent points all around. At any point,  
21 members of the team, feel free to weigh in. But I  
22 think Class 3 MICS gets, you know, kind of tied up  
23 into other Class 3 discussions. And right now  
24 when we're talking about guidance, we're not  
25 talking about other roles that NIGC may or may not

1 play in terms of Class 3. We're solely limited to  
2 looking at the MICS that were issued in light of  
3 relevant case law. And while recognizing the fact  
4 that many compacts do reference these MICS that  
5 haven't been updated for a long, long, long time.  
6 So finding the appropriate sweet spot is what  
7 we're here to talk to you about.

8 >> Just to follow up a little bit.  
9 The challenge for the Commission is that after the  
10 CRIT decision it can't issue new Class 3 MICS. So  
11 it can never update them. It can't change them.  
12 A lot has changed -- I think everyone knows that a  
13 lot has changed in the Indian gaming industry in  
14 the last 13 years, which is the last time the MICS  
15 were updated in 2002. And so in an effort to  
16 address your concern, which is if we just walk  
17 away and we don't have anything out there in terms  
18 of guidance or regulations on Class 3 MICS, the  
19 state might try to occupy that space. Doing what  
20 we can do given the CRIT decision which is  
21 proposing to issue those as guidance so there is  
22 -- before it's withdrawn from the regulatory  
23 books, there's new Class 3 guidance out there on  
24 the MICS that folks can rely on, can refer to, and  
25 that can be updated as time goes on.

1 >>GRANTHUM STEVENS: Granthum  
2 Stevens, Colorado River Indian Tribes. What  
3 you're saying, in that case, if there are going to  
4 be guidances, what you're looking at is not really  
5 a generalized tribal casinos. What you're looking  
6 at is more industrial best practice standard. Is  
7 that what I'm getting out of that Class 3 MICS?

8 >> They would look much like  
9 existing MICS. I mean, look like regulations, but  
10 they wouldn't be regulations. They wouldn't be in  
11 the code of federal regulations. They wouldn't be  
12 enforceable.

13 >>GRANTHUM STEVENS: So they'd  
14 basically mirror exactly what let's say Nevada's  
15 gaming control board is.

16 >> I think the exact -- we're not  
17 quite at the point where we're having a  
18 conversation about what goes into the MICS or how  
19 they exactly look. But just this concept that  
20 they'd be out there as guidance rather than  
21 regulations that are on the books.

22 >>GRANTHUM STEVENS: Well, 542 is  
23 looked at between Nevada as well as Atlantic City.  
24 And pretty much 80 percent of what came out of the  
25 original 542 is out of Nevada's laws anyway. So

1 what you're turning around and saying now  
2 (inaudible) Class 3, then we're looking at a best  
3 practice industry standard which would majorly  
4 mirror Nevada's gaming control board.

5 >>CHAIRMAN CHAUDHURI: I think it  
6 is fair to say it's probably too early to talk  
7 about the actual language of the guidance. That  
8 would be done through active dialogue with  
9 regulators and regulatory partners, tribal  
10 partners. But what we're talking about today is  
11 the idea of putting guidance up, withdrawing the  
12 current 542 to comply with the law, and doing that  
13 in a way that is update -- up-to-date regarding --  
14 in terms of the developments of the industry that  
15 occurred since the last time 542 was revised.

16 >> Just addressing the issue about  
17 following what Nevada does. While the commercial  
18 industry does do a good job, this industry -- the  
19 Indian gaming industry has evolved a lot in the  
20 last 25 years. And we have incredible expertise  
21 not only with the Commission but with the tribal  
22 community and partners that we have. So however  
23 we come up with Class 3 guidance would come  
24 probably closer -- it would probably come from you  
25 all versus from any other existing state

1 regulatory body.

2 >>GRANTHUM STEVENS: Exactly. I  
3 mean, what we're looking at now, I'll say it too,  
4 Nevada does a great job. But I think our job as  
5 regulators, we do a better job. We know our  
6 industry. We know what our casino does. We know  
7 what laws we need to have in place, what our  
8 minimums have to be. So we're going to put  
9 something out there that is not going to have as a  
10 nonmandatory thing, then why go through the  
11 process? If it was up to me, I'd say since I have  
12 the authority of Class 3 and only certain tribes  
13 are asking for this, then let them ask and not let  
14 the rest of us go through the process of going  
15 through this. So it would be no. I mean, if you  
16 don't have it for Class 3 and it's only certain  
17 tribes that are after it, then let them ask you  
18 for that guidance. Or as most people know in this  
19 room, we reach out to the person next to us. We  
20 ask them how do you look at this?

21 >>CHAIRMAN CHAUDHURI: Thank you  
22 for your comment. Just to dove tail on that,  
23 along those lines, a lot of the work -- it is  
24 absolutely accurate and appropriate to say a lot  
25 of the work has been done by tribal regulators



1 regarding Class 3 MICS anyway. I mean, we  
2 recognize the fact that almost universal in the  
3 industry tribes have adopted their own MICS,  
4 regardless of what other case law there may have  
5 been, and regardless of the validity of our 542  
6 regulations in the books. Tribes have adopted  
7 their own MICS. And so we definitely recognize  
8 the groundwork that's already been done. I can't  
9 speak to the final language of the guidance, but I  
10 would be surprised if the final guidance didn't  
11 recognize a lot of the work that's already been  
12 done. It's nobody's intent to recreate the wheel.

13 >>JASON ANDREWS: Jason Andrews,  
14 Gaming Commissioner Big Sandy Rancheria. I have a  
15 question. In lieu of the Colorado Gaming Tribe  
16 decision regarding Class 3 MICS, the question I  
17 have is in California, after that decision, the  
18 state gave each agency the belief there was  
19 (inaudible) regulatory situation. I'm not saying  
20 we're all just running wild. Obviously the tribes  
21 felt that was not the case. So at some point they  
22 adopted several -- several tribal agencies adopted  
23 a gaming ordinance, MICS, gave Class 3 regulatory  
24 authority to the NIGC. So withdrawing those MICS,  
25 how does the NIGC feel -- are those ordinances now

1 -- is that mandatory authority going to be  
2 devalued because now you're withdrawing the NIGC  
3 MICS so therefore those in that section of that  
4 ordinance becomes invalid?

5 >>CHAIRMAN CHAUDHURI: Thank you  
6 for that question. Frankly it's one of the  
7 reasons we're here today to talk. When we're  
8 talking about compacts, the reference are 542  
9 MICS. A lot of those compacts are in the state.  
10 And elsewhere. But you know, it's very relevant  
11 regarding many of the compacts here.

12 So as I said before, the CRIT  
13 decision says what it says. And if folks are  
14 looking despite CRIT's clear ruling that we don't  
15 have the authority to issue or enforce Class 3  
16 MICS, if folks are still looking at our MICS that  
17 are up there and are very outdated, the question  
18 becomes what can you do to provide appropriate  
19 guidance for those states and tribes that still  
20 look to our regulations.

21 In terms of how things would play  
22 out for a given compact, I mean, if anything was  
23 potentially challenged I'd defer right now -- I  
24 mean, I'm never comfortable speculating. But not  
25 to put our general counsel on the spot here, but

1 if he has anything to weigh in on.

2 >> (Inaudible).

3 >> The ordinances, yeah. The 15 or  
4 16 tribes in California that have adopted the 542  
5 as their MICS.

6 >> This is going to have an impact  
7 on the California Gaming Control Commission where  
8 there are specific sections (inaudible) and they  
9 don't have to comply to this.

10 >> Right. Assuming this process  
11 goes forward we would work with everybody in that  
12 situation to recommend maybe updating the  
13 ordinances to incorporate the new MICS guidance by  
14 reference instead of 542. But we'd be happy to  
15 have that conversation.

16 >>CHAIRMAN CHAUDHURI: Thank you  
17 for the clarification. We're looking at folks to  
18 include language both in -- I mean, in the  
19 compacts but we're also mindful of folks that have  
20 language in their ordinances. It's the ordinances  
21 in California that apply. Thank you.

22 >>STEPHEN HART: Mr. Chairman, if I  
23 might. My name is Stephen Hart. I'm here as an  
24 attorney for the (inaudible) Indian village. I  
25 want to thank everyone for their comments today

1 because they've been very insize I have. With  
2 regard to the CGCC number 8, that's the discussion  
3 that we're having here, under the California  
4 regulations which are promulgated pursuant to the  
5 compact provisions, the state did go ahead as the  
6 gentleman has noticed and promulgated regulations  
7 that would deal with making what they called  
8 tribal minimum internal controls mandatory in the  
9 state and something that had to be enforced.  
10 There were several different ways of that -- of  
11 going through that process.

12 One, as some tribes suggested, they  
13 wanted to have their ordinances changed, and they  
14 did go ahead and get ordinances amended. And they  
15 added language that said that the 542 would be  
16 enforceable and would be something that the NIGC  
17 could and should enforcement that gave California  
18 some confidence that the MICS would be enforced in  
19 that area.

20 Others went forward and allowed  
21 really kind of adoption of state minimum internal  
22 controls. And then again there's a way for  
23 enforcement.

24 Then the third, which a number of  
25 tribes did, including Commissioner Joe HIB Don

1 from Ricon. What Ricon did and a number of tribes  
2 did is adopt what they call a tribal safe harbor,  
3 and a tribal gaming process. Tribal gaming  
4 association process. There -- and this is why I  
5 think that in some respects this is very helpful  
6 what you're doing -- there the tribes said we will  
7 adopt our own MICS, but they will be at least as  
8 rigorous as the 542 MICS were. You know, I was  
9 looking at the 542 MICS the other day because with  
10 Jamul fortunately is building a nice facility now  
11 and soon will be able to be operating gaming. I  
12 looked at the MICS and I thought to myself I don't  
13 think the surveillance systems work this way  
14 anymore. I don't think that the machines are like  
15 this anymore. So I don't know what it means  
16 really to adopt minimum internal controls at least  
17 as rigorous. So I'm thankful in that respect. I  
18 recognize as the gentleman from Colorado River  
19 Gaming Tribe has pointed out that it's not a  
20 perfect solution. But this is perhaps one of  
21 those circumstances where good is good, and we  
22 don't have to have it be perfect. Perfect is the  
23 enemy of the good. But to have some standards now  
24 that we can really look at and compare while we  
25 are drafting our own minimum internal controls,

1 and to get guidance and assistance from the NIGC  
2 instead of trying to promulgate or enforce MICS  
3 against us. I think those are improvements, and  
4 I'd like to thank the Commission for kind of  
5 walking this difficult tight rope. I think you've  
6 got fire on one side and ice on the other. But I  
7 at least want to thank you for doing that.

8                   And I have just one question. If I  
9 -- it's for the general -- chief of staff, I'm  
10 sorry, chief of staff Christinia. You said soon  
11 -- is that soon like six months soon or soon like  
12 30 days soon?

13                   >>ERIC SHEPARD: I think soon is  
14 just soon. There's no specific time line. So let  
15 me just be clear that there's not a specific time  
16 line. We're going through consultation on this  
17 concept of whether this concept is something that  
18 makes sense. And after that there will be another  
19 process to actually develop the guidance. So soon  
20 is probably a very, very relative term.

21                   >>I can make a comment as a  
22 political appointee, that Eric may want to stay  
23 away from. My good friend and committee confirmed  
24 but not yet Senate confirmed colleague that he can  
25 say. But there's a political reality. That is

1 we're in the fourth quarter of this  
2 administration. I think most of us can honestly  
3 say -- I know I can say that this has been one of  
4 the most positive administrations in recent  
5 history for the good of Indian country. The many  
6 wonderful things that the President has done and  
7 his administration has done as far as settling the  
8 key issues that have been stemming within Indian  
9 country for many years is remarkable. I know I  
10 want to see us try to finalize some of these  
11 things before the next administration starts. And  
12 that will take place in a little less than two  
13 years. So soon is relative. But I know from my  
14 personal opinion I would prefer us to try to get  
15 this done prior to the end of this administration.

16 >>CHAIRMAN CHAUDHURI: Thank you  
17 very much.

18 >>ERIC SHEPARD: I just want to say  
19 thank you so much for your comments, Steve. I  
20 don't know about the question, but for the  
21 comments. But as to the question, I just wanted  
22 to add to that again. It is a tight rope. But we  
23 have heard at almost every public setting the need  
24 to address the circumstance in which tribes under  
25 their own rules reference the MICS. So we're very

1 mindful of that. We see it as an important piece  
2 of strengthening the regulatory structure of IGRA  
3 to provide that guidance, and we're certainly not  
4 going to slow any movement down on that for  
5 anything else but to listen. So we want to move  
6 as quickly as possible. But to move in  
7 conjunction with the comments that we've received  
8 from our regulatory partners. So with that, no  
9 specific timeframes in mind. Okay.

10 >> One more comment when I get the  
11 eyes of Barbara, I listen. However, I want to  
12 say, Barbara, honestly we want to do it correctly.  
13 I'm not going to jeopardize time over doing it  
14 correctly. While I do say I want to get this done  
15 prior to my term which is up next year, we want to  
16 do this correctly. And that correctly includes  
17 making sure that we hear and listen to what you  
18 all have to say.

19 >> With that, actually -- again,  
20 thank you for that comment. We'll move to the  
21 back of the room quickly because there's one  
22 person who has been waiting a couple of times  
23 here. But we'll move -- move to Ms. Echo-Hawk --  
24 and what's Barbara's last name?

25 >> Collier.



1 >> Here it is. And then continue  
2 from there. So then we'll come back. So Ms.  
3 Echo-Hawk, it's always good to have distinguished  
4 alumnus.

5 >>LAEL ECHOHAWK: Lael Echo-Hawk  
6 here on behalf of the Coquille Tribe in Oregon,  
7 and the (inaudible) Tribe (inaudible). First I  
8 just want to say I'm really very, very happy to  
9 see the Indian act on an agenda item. I'm very  
10 excited to see the CATEX for the management  
11 agreement. Those are things that Indian country  
12 has been talking about for a long time. It's  
13 great to see that. That we're moving forward with  
14 the privacy act, it's good that we're catching up  
15 to the rest of the world and making sure that our  
16 regulations are top notch that we know that -- we  
17 know that in Indian country that they are.

18 I'm also excited about the Class 3  
19 MICS, and I know that (inaudible) that we worked  
20 with, this is something that we've been talking  
21 about for a long time. And we appreciate this  
22 Commission now sort of putting this out there and  
23 I know it's going to be a very controversial  
24 issue. As we're hearing from California, it's  
25 something -- the issue with regard to whether or

1 not the NIGC can enforce 542, we know that in  
2 Indian country that as a result of CRIT they  
3 cannot. But there are these issues that certain  
4 tribes have. But I think using your training and  
5 technical assistance authority, the Indian gaming  
6 regulatory act, putting out the guidance will be  
7 helpful. And I understand my friends from CRIT,  
8 their concerns with regard to 542. So I think  
9 that moving forward under guidance framework,  
10 under I think your training and technical  
11 assistance authority, under IGRA is appropriate  
12 and a good step in getting Indian country, our  
13 regulations caught back up.

14 I know that there is some concern  
15 from those tribes that reference 542. I know the  
16 chief of staff's office and the office of general  
17 counsel will try to help those tribes address  
18 those issues and those ordinances. So my question  
19 is, after I say all that, how are you going to  
20 begin promulgating the guidance and under  
21 consultation framework is Commissioner little  
22 going to take --

23 >> Only if you come this time --

24 >> LAEL ECHO-HAWK: -- with  
25 developing these very technical standards?

1 >>CHAIRMAN CHAUDHURI: Thank you.

2 Two part thank you. Thank you for the comments  
3 and thank you for the question. So the  
4 development of the regulatory updates to 543 I  
5 wasn't around for. But I know how helpful that  
6 was to, again, strengthening the regulatory  
7 structure of the industry. And that was done in  
8 active conjunction with a committee.

9 In terms of -- I think this goes to  
10 timing -- I wasn't here. That's what I recall.  
11 In terms of timeframes, now, there are different  
12 ways to skin a cat. We recognize the need to move  
13 quickly, as quickly as possible to address this  
14 real need for guidance in the industry. But doing  
15 that -- we also understand doing that hand in hand  
16 with our partners is key. Now, I don't know what  
17 the best framework for moving forward is. This is  
18 the start of it. We're open to various ideas.  
19 But we also do have one eye on moving as  
20 expeditiously as possible while at the same time  
21 receiving appropriate input each step of the way.  
22 So whether or not it's a committee or continued  
23 dialogue through consultation, I'm not in a  
24 position to weigh in on that at this point. But  
25 if my fellow Commissioner who was here for the 543

1 work would like to weigh in on this --

2 >> I'd certainly like to -- I'm  
3 from Connecticut. So we don't skin cats. Just a  
4 little funny story. As many of you know, Lael  
5 worked for the Commission and was instrumental in  
6 our initial regulatory review process. I do like  
7 to give Lael credit for giving us the idea that  
8 file down the notice of inquiry process. I feel  
9 that was one of the most helpful processes that  
10 we've done because we really heard from tribes.  
11 You all did a wonderful job mapping out our agenda  
12 and our road map to, you know, make some major  
13 changes to our agenda.

14 But Lael made a huge family  
15 sacrifice to come to the east coast and to come to  
16 DC and help the Commission. Unfortunately we lost  
17 her just after she convinced the Commission to do  
18 a tribal advisory committee, and for myself to be  
19 that appointee to the advisory committee, she left  
20 town. But it was a long process. It was a  
21 difficult process. It was a very interesting  
22 process. And at the end of the day, I think we  
23 got a wonderful product that primarily came out of  
24 the tribes. And that's where we stand with the  
25 Class 2. So it was a great process.

1           It took a long time, and it took a  
2 huge financial investment from the tribes. That's  
3 one of the things we have to be mindful of. We  
4 want to make sure tribes aren't having to layout a  
5 lot of money to update these Class 2 guidances --  
6 Class 3 guidance, I'm sorry. Like the Chairman  
7 said, we're here. We're at the starting point and  
8 we actually want to hear what you all think we  
9 should do.

10           >> And one last reason that I'm  
11 hedging my bets in terms of not saying we're going  
12 to do it through a tack approach. The 543 process  
13 is very different from the 542 process. As I  
14 mentioned before, because of the hard work that's  
15 been done already in Indian country in terms of  
16 development, tribal Class 3 MICS already, there is  
17 already work that's been done that we're not  
18 creating -- I mean, we're not creating this  
19 guidance from the ground up. And so it is helpful  
20 to draw some parallels. But what worked for one  
21 review, or for one process won't necessarily work  
22 for this one. Again, we want to be as expeditious  
23 as possible while at the same time listening as  
24 much as possible. So hopefully I hedge my bets  
25 enough to give us flexibility down the road.

1 Anybody want to advocate for tack?

2 >>BARBARA COLLIER: Lael, at least  
3 you weren't excused of giving the stink eye.

4 >> You know I love you.

5 >>BARBARA COLLIER: And I love you.

6 Barbara Collier, Quapaw Tribal Gaming Agency.

7 Once again, the NIGC is creating more work for  
8 regulators. And not purposely. Some of the  
9 changes we do need. We do need some technological  
10 wording changes throughout most of the documents  
11 that we have created in the past.

12 I can go back a long ways. Some  
13 things have worked. Some things have not worked.  
14 Positively when we were redoing the technical  
15 standards many years ago, we had working groups  
16 from all avenues of gaming: Regulators,  
17 operators, manufacturers, NIGC. And that working  
18 group together created a wonderful document. As a  
19 regulator, I testified before the NIGC of how  
20 we've felt it would work. NIGC had even hired a  
21 technical advisor at the time to give them some  
22 guidance on what they were doing.

23 Most of us as regulators felt at  
24 that time it was a very, very positive move. NIGC  
25 was happy. We were happy. Regulators and

1 operators and manufacturers all came together with  
2 a good, cohesive plan and document.

3           So in my feeble mind thinking I  
4 thought boy, that's a good plan. It really  
5 worked. Why will they not continue doing that?  
6 But they didn't until as we know a couple of years  
7 ago a working group was formulated. And we had  
8 some -- as regulators and operators, there were  
9 some other groups formulated in between time for  
10 different things that had come up, different  
11 regulations. And the last one was not so  
12 successful.

13           I'm having a hard time, other than  
14 what little needs to be updated in the document,  
15 why the guidance on Class 3? You just all said --  
16 and correct me if I'm wrong, if I understood wrong  
17 -- that you're going to create this document and  
18 you're not going to publish it as a rule. So then  
19 there will be no comment period? Or will there be  
20 a comment period? Even though it's not going to  
21 be a rule? It's just going to be a guidance  
22 document?

23           What if the guidance document is  
24 not something that we as regulators, the front  
25 line people that operators, actually day to day do

1 agree with? Just let me finish and then you can  
2 answer me. I know you probably have maybe a plan  
3 but it hasn't been brought up yet.

4           The Class 3, as far as ordinances,  
5 we have combined -- we just went through a  
6 nightmare at one of our casinos, even with an  
7 extension, trying to get through all of the  
8 policies and procedures marrying 542 and 543.  
9 Then auditors are coming trying to decide what  
10 they're going to audit to. You know, your first  
11 part of your audit might be part of one, and the  
12 last part of your audit might be part of one. It  
13 has created really a nightmare for me as a  
14 Director to know what guidance to give my people  
15 on how to do it. Some tribes just kept 542 as it  
16 was and 543, and I really don't know how they did  
17 it. We combined everything that we thought should  
18 be addressed. And even reviewed our ordinance and  
19 our MICS and our ticks -- our ticks which are more  
20 stringent than our MICS, than your MICS. And even  
21 had to revise our ordinance to cover some of the  
22 things, which sounds like maybe some of these  
23 folks might have to do.

24           Compacts now. The State of  
25 Oklahoma has raised their ugly head. I'm not sure



1 whether you all are aware of that. Once again, 35  
2 gaming tribes in Oklahoma are having to deal with  
3 a brand new set of gaming regulators at the state  
4 capital. We no longer deal on a one to one day to  
5 day basis with people that are our equal, which  
6 were the state finance department and the auditors  
7 who were hired by them to come and audit us. We  
8 are now dealing with legal counsel, and no  
9 defamation there to legal counsels. But we are  
10 now dealing directly with legal counsels to the  
11 Governor's office that know nothing about gaming.  
12 Admittedly know nothing about gaming. And are  
13 being -- there were -- they're not at this time  
14 because it's been put on hold -- but they had  
15 already addressed auditing six -- I believe six  
16 different tribes, sending NOV's which they don't  
17 have the authority to do per the compact,  
18 requiring them to remove machines within three  
19 days which they don't have the authority to do per  
20 the compact. And addressing or not addressing  
21 what we have already designated as the laboratory  
22 has designated it as a qualified compacting game  
23 addressing those games stating that they were not  
24 qualified under the compact gains. So we're being  
25 attacked already by the state. Of course we don't

1 have to renegotiate until 2020. But making  
2 changes now to a compact that is already being  
3 attacked, and they're already wanting to change  
4 it, will be something that we just don't want to  
5 do at this time.

6 I can only speak for myself and my  
7 own tribe. But the 34 other tribes so far we have  
8 joined forces to, you know, stay together in what  
9 we've decided to do. So far the group of tribes  
10 that have met, probably 15 at most out of the 35,  
11 have decided to do nothing because they don't have  
12 the authority to do what they're doing. The only  
13 thing we've decided to do or we recommended as  
14 some of us that have been around a long time,  
15 besides your lab letter and your authority through  
16 that to operate your machines, have an internal  
17 policy which shows what you do when you get the  
18 software and the machines, your shipping  
19 regulations and all of the rules and regulations  
20 that you have to place your machines on your  
21 floor.

22 So with those two documents, we're  
23 only hoping that we have enough to keep them from  
24 trying to make any changes at this time. So I for  
25 one would like to know, you know -- I can see some

1 change needed. I really don't know what removing  
2 542 at this time would do as has been mentioned to  
3 some tribes. But there are things out there that,  
4 you know -- I said all that to make you aware, you  
5 know. The 35 tribes in Oklahoma are looking at  
6 this. That's what's coming down our pike.  
7 California apparently has ordinance problems.  
8 Some of these -- Colorado River has their problems  
9 with change. I'm curious as to how many really  
10 tribes want to change the document at this time  
11 versus how many that may not want to change. I  
12 mean, maybe you're doing this for naught at this  
13 time.

14 Even though it's been on the burner  
15 for a while, maybe now is not really the good  
16 time. I don't know. I'm not you so -- I'm not  
17 trying to tell you what to do or what not to do.  
18 But I'm just telling you what position that we're  
19 going to be in if you would make some severe  
20 changes such as what you might be doing.

21 >>CHAIRMAN CHAUDHURI: Thank you  
22 so much for your comments, Ms. Collier. I don't  
23 know you well enough to call you by your first  
24 name.

25 >>BARBARA COLLIER: You can call

1 me.

2 >>CHAIRMAN CHAUDHURI: Very well  
3 taken. Let me just add, this by no means -- I  
4 just say this.

5 >>BARBARA COLLIER: Just say it.

6 >>CHAIRMAN CHAUDHURI: It's true.  
7 The decisions -- the CRIT decision says what it  
8 says. We didn't issue the CRIT decision. And  
9 recognize still the need to have appropriate  
10 guidance. So in addition to comments and  
11 questions, we're here to listen to recommendations  
12 as well. So if there are actual suggestions  
13 regarding how to walk that fine line -- I mean,  
14 we're very mindful and thankful regarding some of  
15 the potential unintended consequences that might  
16 be flagged. But in terms of providing a  
17 sufficient guidance, if there are recommendations  
18 that anybody wants to propose, we're all ears.  
19 But just to be mindful of everyone's time, I just  
20 want to keep things moving on as much as possible.  
21 Did you have something you wanted to add to that?

22 >> Yes. Along those lines, like  
23 the Chairman said, we are here to learn. Barbara,  
24 thank you very much for those comments. What  
25 other implications, if we were to leave part 542

1 alone and just adopt guidance? Because while, you  
2 know, we've seen magnificent regulations and  
3 California and Oklahoma and many communities have  
4 way above and beyond any of our regulations, there  
5 are -- we have 240 plus tribes that do -- that we  
6 do regulate, and a lot of them do need some  
7 guidance here. The question I have is are there  
8 any ramifications if we just put guidance out  
9 there and leave 542 alone? Is there any long-term  
10 potential problems? I don't know. Those are  
11 things I'd love to hear maybe not today, maybe in  
12 comments or future consultations.

13 >>CHAIRMAN CHAUDHURI: Thank you,  
14 Dan. Okay. Thank you.

15 >>ELLIOT MICHOLLIN: Elliot  
16 Michollin, Seminole Tribe of Florida. I really  
17 want to express appreciation for all the comments  
18 that have been expressed today. I think there are  
19 really two different issues that you're thinking  
20 about with regards to the MICS. One is what would  
21 the content of the guidance be, and what would the  
22 process be going forward. But I think a lot of  
23 the comments we've heard today are about what  
24 would be the effect of the role? I think -- I  
25 really have two questions.

1                   First is have you as the NIGC  
2 looked at all the compacts to see how they cross  
3 reference, whether they cross reference either  
4 just 25 CFR part 543 -- do they reference MICS as  
5 they were in place at the time the compact was  
6 enacted, and ratified and approved? Because some  
7 of the compacts do that. They're kind of frozen  
8 in time. And what other effects, like with regard  
9 to the ordinances that were discussed earlier? I  
10 think it would be a good exercise (inaudible).  
11 Also once those have been identified to consult  
12 specifically with them to get their views on how  
13 just simply withdrawing the MICS all together from  
14 the books would affect them going forward.  
15 Particularly because the last thing you want to do  
16 is give the state leverage to come back to tribes  
17 and use it as a wedge point to insist on compact  
18 re-negotiations. I think that's what everybody  
19 wants to avoid.

20                   I guess the second part of my  
21 question kind of goes with the first. I think  
22 tribes need to think about that with that analysis  
23 themselves. And I noticed that your comment --  
24 you're going to have to put consultations the last  
25 on May 20th. You have asked for written comments.

1 These are deadline for comments on first phase,  
2 initial phase, concept phase for consideration  
3 different (inaudible)? What kind of concrete  
4 guidelines do you have in terms of doing our  
5 homework and getting back to you?

6 >>CHAIRMAN CHAUDHURI: Two-part  
7 question regarding the specific compacts and how  
8 they reference these issues. And the second one  
9 is timeframe.

10 I think regarding timeframe, maybe  
11 we can tackle that first. If Eric can kind of go  
12 into our timeframes regarding the comments.

13 >> Eric Shepard: The notice did  
14 not set a specific timeframe for comments. So we  
15 will have to put one up to let folks know at least  
16 30 days ahead of when we're going to close the  
17 comment period. I really hope to get as many  
18 written comments as possible. So I think the  
19 Commission has got to decide how long it's going  
20 to stay open. That will be coming shortly, or  
21 maybe even after the last consultation period.

22 We have looked at the compacts and  
23 identified the different -- there are as you said,  
24 Elliott, many, many, many ways that it's  
25 addressed. And I think we really hope to hear

1 from tribes about how they think they're going to  
2 be impacted by this change, how it might impact  
3 their compacts. We're not the experts on each  
4 individual tribe's relationship with the state or  
5 how they think their compact is going to be  
6 affected. So we would like to hear that from  
7 folks.

8 >> Thank you for those comments.

9 >>CODIE GRIGSBY: Codie Grigsby,  
10 Gun Lake Tribal Gaming Commission, Commission  
11 Chairperson. A couple of my fellow colleagues  
12 here already said it. I was thinking it already.  
13 Why not just leave 542 kind of frozen in time  
14 because of that decision and still have the  
15 technical guidance as best practice? With that, a  
16 little bit of background on myself. I was  
17 recently appointed, so I have been in gaming for a  
18 while but new in this position. I also come from  
19 an IT background, information technology  
20 background. So in that sector, you are always  
21 looking at industry best practices. There's no  
22 specific standards always. They have something  
23 that you can refer to even if it's just an RFC, or  
24 request for comment, that most people adopt and  
25 that's how they do it is the best way. So I



1 believe in best practice guidance. I know we at  
2 our Commission try to exceed that. So I guess I'm  
3 really not understanding the need to withdraw.  
4 Thank you.

5 >>CHAIRMAN CHAUDHURI: I think  
6 that's a very, very good question. So in terms of  
7 just flagging potential concerns, there are  
8 different ways -- I guess I got called on the  
9 phrase skinning the cat. But there are ways to  
10 get to the same point. And there are pros and  
11 cons to each. As Commissioner Little mentioned,  
12 in addition to today's comments and any in person  
13 comments, we are very much looking forward to the  
14 written comments that we hope we receive on this  
15 regarding the different potential approaches. So  
16 the proposed approach about pulling 542 down,  
17 issuing the guidance in its place, that was done  
18 with one eye towards the actual language, you  
19 know, of the legal authority, the case law that  
20 we're dealing with. But there may be some very --  
21 there may very well be merit to, you know -- who  
22 knows -- leaving out the language up there,  
23 issuing best practices, guidance. Those are the  
24 types of comments that we very, very much like to  
25 receive. I don't know if you guys want to weigh

1 in on the various ways to skin that cat. But  
2 there was -- there was some -- I believe there was  
3 some discussion in house regarding different  
4 approaches. That was one of the potential  
5 approaches.

6 You know, if there are preferences  
7 there, please submit them. Comments are what's  
8 talked about today. Down sides to that approach?

9 >>ERIC SHEPARD: I think the  
10 primary concern was confusion and having two sets  
11 of standards out there for the same form of gaming  
12 might be confusing frankly. But if there's more  
13 value in keeping them out there, I think we'd like  
14 to hear that from folks. Or how would that work?  
15 It would be helpful to know if you think that  
16 would cause confusion to have both best practices  
17 guidance and then a different set of standards  
18 actually written into the regulations.

19 >>JOE HIBDON: Joe Hibdon, Ricon  
20 Gaming Commission. There's one thing -- I want to  
21 thank you for this opportunity that you've given  
22 us because you're right, it's about working  
23 together with the input to be able to get things  
24 down. Steve Hart got it exactly right. A lot of  
25 regulations are antiquated and stuff like that.

1 But as we evolve they're going to (inaudible)  
2 always have to make changes. As long as we all  
3 work together and listen about that, we could  
4 change that. Because we're going to evolve, we're  
5 going to get better, and more regulations and  
6 guidelines. But we can get some change for that  
7 reason so we don't have this antiquation and then  
8 all of a sudden we're doing the same thing that we  
9 don't need to do. We need to move ahead. I don't  
10 know how you do that. It's going to be pretty  
11 hard to do but that's what we need to do. Just  
12 like IT, it's nice to have an IT guy out there to  
13 explain. It's not no more of the old machines  
14 that are antiquated. You have to step up.

15 >> To your point, we do know that  
16 the way we get there, to any conclusion, is we  
17 work with you all. Talk to you. That's what  
18 we'll continue to do until we come to a conclusion  
19 that we think works for everybody.

20 >>RICHARD TELLOW: Richard Tellow,  
21 Jamul Indian Village. We attended the last year's  
22 consultation. It's very helpful. We appreciate  
23 it and everybody's comments. I just wanted to  
24 talk a little about the CATEX and make a statement  
25 that the Jamul Indian Village definitely supports

1 the NIGC's efforts to get these policies adopted.  
2 I think it would be a great thing for the  
3 management contract process. Thank you.

4 >>CHAIRMAN CHAUDHURI: Thank you,  
5 sir. Thank you again for your input last year.  
6 As we said, we listened very closely to the input  
7 received last year. That shaped our proposed  
8 approach. So many thanks.

9 >> Thank you.

10 >>CHAIRMAN CHAUDHURI: Yes, sir.

11 >>ASA WAHSINES: Asa Wahsines,  
12 (inaudible). I just want to comment on how you  
13 skin cats! You know, sounds like these are long  
14 overdue in terms of government function. It's  
15 always good to update our policies and procedures.  
16 Moving forward (inaudible) agencies and tribes  
17 that's recognized. But at the same time, in  
18 Washington we're lucky. We have a pretty good  
19 relationship with the state government, the  
20 Governor. We just passed a compact where 26 of  
21 the 29 tribes were (inaudible). So you know,  
22 that's pretty good. But that's in Washington  
23 State. So now, you know, we have a state  
24 government that believes in tribes and what  
25 they're doing. But at the same time, these

1 comments kind of could potentially open up a can  
2 of worms. Like I said, we have a Congress that's  
3 really against the current administration. So you  
4 spoke yesterday about how there's a report coming  
5 out issued by Senator McCain. Senator McCain lost  
6 the last election or the first election. So I'm  
7 kind of worried that if we go down the road of  
8 commenting and open up that potential, parties  
9 could intervene and make more regulations that  
10 weren't intended. So unintended consequences of  
11 this are there. I want to make that clear that  
12 even though we do have a good relationship,  
13 there's always those forces that want -- the IRS  
14 wants to be involved. Crazy Congressmen, tea  
15 party get involved (inaudible). So I just want to  
16 make that clear that even though we have that  
17 (inaudible), there's others that are anti-gaming.

18 >>CHAIRMAN CHAUDHURI: Thank you.  
19 Those are great comments. Let me just speak  
20 generally about, I guess, some of our directions  
21 at the agency. I'm going to speak from my  
22 personal perspective. But I think we're all on  
23 the same page.

24 So there are people who believe  
25 that, you know, you can never have enough

1 regulation in Indian gaming. And I understand and  
2 respect that perspective. Ultimately they want to  
3 make sure that public confidence is preserved, and  
4 the industry is protected, and the laws enforced.  
5 I get that. And I respect that. I am a firm  
6 believer of doing whatever we can do to ensure  
7 sound regulation so that folks who may otherwise  
8 want to make changes that may or may not be good  
9 for Indian country, you know, understand that the  
10 Indian gaming industry is the most regulated  
11 gaming industry in the world. I think sound  
12 regulation is the best way to protect the  
13 industry. So when we're talking about issuing  
14 appropriate guidance given in light of case law,  
15 or when we're talking about ways to address our  
16 internal approaches to NEPA, we have not only  
17 sound regulation but sensible regulation at the  
18 same time. So I very much appreciate your  
19 comments. You mentioned the JAO report. I think  
20 some good things are going to come out of that.  
21 But again, through collaborative work with our  
22 partners, our regulatory partners, I think  
23 together we can continue to make the case that the  
24 industry is soundly regulated as you can get. I  
25 think that protects everybody's interests, even

1 the ones that on the surface may say that you can  
2 never have enough regulation. I don't know. I  
3 probably said way too much. But all to the point,  
4 thank you.

5 >> I appreciate your comment. It's  
6 something that we do take very seriously about  
7 those unintended consequences and the action that  
8 we make. Thank you for reminding us of that and  
9 that's important, and we do think about that  
10 often.

11 >>FEMALE VOICE: (Inaudible). I  
12 think my question that hasn't been answered, and  
13 Barbara asked a lot of questions that I was  
14 thinking about, so thank you, Barbara. Are there  
15 policies and procedures, does NIGC have a manual  
16 for when they're issuing guidance? I think that's  
17 important for us to understand what your internal  
18 processes are so that we can actually understand  
19 the process and the timeframe (inaudible). What  
20 can we use as a guideline so we know where you're  
21 at in the process and keep us updated on that?

22 Also if you're still in the process  
23 of receiving the comments and maybe not making a  
24 firm decision on whether or not to issue on the  
25 guidance, if there's comments that say no, we

1 don't want that guidance, we want it to be frozen  
2 in time, my question is are you going to not move  
3 forward with those guidance change or issuing the  
4 guidance? That's my question.

5 >> Not having received all the  
6 comments, I can only say I can't imagine us not  
7 taking all comments absolutely seriously. And if  
8 there's a resounding push for a different  
9 direction, all I can say is we'd listen very  
10 closely to that. But without seeing the comments  
11 it's hard to speculate what the review would be.

12 Now, this isn't a formal  
13 regulation. So we're not under the same notice  
14 and comment structure that we would be in terms of  
15 passing regulations. So it's not quite the same.  
16 But we certainly would be mindful of the impact in  
17 the industry of these types of guidance being  
18 issued. And even notwithstanding rules that may  
19 or may not apply, we'd still make sure that there  
20 was every effort taken to provide sufficient  
21 timeframes for input, sufficient back and forth.  
22 But with that, if there are any specific rules  
23 that we need to be mindful of, maybe our general  
24 counsel can discuss that. Sorry to throw you  
25 under the bus so much. But it's kind of fun!



1 >> Eric Shepard: It's a very good  
2 question. We don't have specific rules for how we  
3 promulgate bulletins or guidance at the NIGC  
4 because it's not a formal regulation. It doesn't  
5 go through that process. And it's not  
6 enforceable.

7 The Commission -- I don't want to  
8 speak for the Commission. Maybe I shouldn't do  
9 that. I think what you've heard the Commission  
10 say, and what they're committed to doing through  
11 this process, is working through consultation to  
12 develop the document which is not something that  
13 the Commission would normally do with guidance.  
14 That's normally developed internally and then gets  
15 posted on our website. But this would be  
16 something different from that. It would be much  
17 more collaborative in the way it's being  
18 developed.

19 >> Thank you.

20 >>FEMALE VOICE: I guess my  
21 question is what assurances could the tribes have  
22 that that will be the process? Because even  
23 though it isn't enforceable (inaudible), it still  
24 has potential to have those same impacts in Indian  
25 country and I think we've already discussed

1 ordinances and different regulations (inaudible)  
2 and the compacts. Is that something that the NIGC  
3 is going to issue to the leadership of an outline  
4 of the process, and then with comments and  
5 concerns will be addressed as if it were a  
6 regulation?

7 >>CHAIRMAN CHAUDHURI: Well, we  
8 recognize the importance of this issue, and as has  
9 already been pointed out, depending on the subject  
10 matter -- I don't want to get too -- depending on  
11 what type of guidance we're looking at, our agency  
12 and other agencies have taken various approaches.  
13 And I think it is good to have built in  
14 flexibility because sometimes guidance may be a  
15 very simple one, very narrow subject. And so we'd  
16 be -- speaking for myself, I'd be very hesitant on  
17 issuing kind of cut and dry approach regarding  
18 guidance in general. But I think we recognize the  
19 importance of this issue and this 542 guidance  
20 that we're contemplating. So we're taking active  
21 steps. I mean, at the very outset of this we  
22 understood the importance of going to consultation  
23 and alerting all of you that this is something  
24 we're thinking about. This is something we'd like  
25 to provide guidance on. But before getting too

1 far down the track, we want to hear from you.

2 So whatever guidance we come up  
3 with for this process, I don't know how helpful  
4 that will be because the bulletins and guidance  
5 that our agency has issued in the past have been  
6 on a variety of subjects. They may not all lend  
7 themselves to this type of process. But we  
8 recognize the importance of this one. I don't  
9 know if you want to add --

10 >> No. That's why we're here  
11 today. We want to learn.

12 >> Thank you for that last  
13 question. I think going back to when I was  
14 speaking, and I apologize for being rude too.  
15 This is Barbara Collier, quapaw tribe. I wanted  
16 to tell you I felt like the standards, the need  
17 for the privacy policy and the buy Indian act are  
18 very good positive moves on your part to kind of  
19 bring those into your rules and regulations along  
20 with what we already meet those through the Bureau  
21 of Indian Affairs and Department of the Interior  
22 and other departments that we work hand in hand  
23 with often.

24 I'm not trying to put words in your  
25 mouth, Celeste, but I think too as I was, you

1 know, it is a guidance document. We realize that  
2 announcements and notifications and things like  
3 that that you've put out in the past didn't really  
4 require us to have any input in them. The  
5 decision -- and they were mostly minor things.  
6 Something changed, and you put out a notification  
7 on it and so forth. With this I think what we're  
8 saying -- what she's saying, we would like to have  
9 some comment period. And we do -- I do have a --  
10 and I apologize for not having it prepared  
11 already, but we've been working on 542 and 543  
12 until yesterday -- have a statement prepared that  
13 we will be sending you. But you know, it would be  
14 more of an assurance -- just an assurance that  
15 possibly later on even though you are meeting  
16 people in consultation and tribes together that we  
17 would see a document, what you propose to create  
18 as guidance. And then we would know more about  
19 actually what physically was going to be in that  
20 document so we would be able to say if we approve  
21 on a part of it or disapprove part of it, or we  
22 agree with this section. Like maybe the  
23 technology portion, updating that, or adopting  
24 that. Will it be confusing for tribes? Yes. I  
25 think the answer to that is yes, it will be,

1 unless it's very specifically stated you can  
2 choose to work with this or you can choose to work  
3 with what you have, or you can work with both of  
4 them on a plain, you know, according to how you  
5 can set your guidelines internally. But I do  
6 think it will be very difficult. I don't look at  
7 your task lightly. I think it will be hard for  
8 you to accomplish that as well as include all of  
9 the tribes' difficulties that they're having with  
10 ordinances and compacts and -- yeah, we sure don't  
11 want to go because this man might be getting along  
12 with his Governor but we sure aren't getting along  
13 with ours. So at this point in time, you know, it  
14 would be -- to some tribes it will be crucial.

15           So I appreciate all the comments  
16 that everybody has made today. I've been around a  
17 long time and heard lots of comments. This is  
18 really the first time I think that I have ever  
19 really seen NIGC going towards this effort to  
20 create something as well as welcome the comments  
21 that the tribes are making. Not that you always  
22 didn't, but I feel like that you are really trying  
23 to set the policy straight and get it workable so  
24 that we can all work together with it as it needs  
25 to be, and not necessarily as it is now. Thank

1 you.

2 >>CHAIRMAN CHAUDHURI: Thank you  
3 so much, Ms. Collier. Again, we're not making a  
4 process that will take away from flexibility for  
5 other bulletins and guidance and things like that,  
6 but independently we've already talked about  
7 issuing a discussion document when we get there,  
8 and soliciting input regarding that. So I don't  
9 think there's anything -- and Dan, you can add to  
10 this as well. But that frankly was our plan.

11 I just don't want to get in the  
12 habit of being locked into one approach when, say,  
13 we need to update our address or (inaudible).  
14 This is a major, major thing. And we want to  
15 treat it with appropriate respect.

16 >> DANIEL LITTLE: In continuation  
17 of past practices, we're here to talk to you first  
18 before we get discussion drafted. I would be  
19 embarrassed to show up at this meeting with one  
20 already. I think it would be very disrespectful  
21 to the process we've been working under the last  
22 five years that has been successful. I anticipate  
23 us providing discussion draft allowing me to take  
24 a look at it, give us the input, show us -- I  
25 mean, you've always done a great job at providing

1 very, very valuable input before we move forward.

2 So I definitely anticipate doing that.

3 >>CHAIRMAN CHAUDHURI: Ms.  
4 Collier, I also want to thank you for your  
5 comments regarding the other topics of  
6 consultation. Let me also say just because we  
7 think we've incorporated comments or input into  
8 proposed plan of action doesn't mean we always get  
9 it right. So we're very excited about the buy  
10 Indian goods and services regulation. But feel  
11 free to add input on that. But if you're  
12 supportive of that, that also helps us know that  
13 there is support for that. Same thing with the  
14 NEPA. Same thing with the privacy act. So I know  
15 one topic is on the mind of many, many folks. But  
16 I appreciate you touching on the other three as  
17 well. Thank you.

18 Ms. Hughes?

19 >>JENNIFER HUGHES: Hi. Jennifer  
20 Hughes for the (inaudible). Unfortunately  
21 President Shelly could not be here this afternoon,  
22 nor could their watchman, the CEO. But they did  
23 ask us to express their points for the record.

24 The Navajo nation has been very  
25 successful and it's gaining industry. The nation

1 has four casinos. Three are in New Mexico, one is  
2 in Arizona. Casino provided over a thousand jobs  
3 for Navajo people and revenue for the Navajo  
4 nation. In addition, the nation has invested its  
5 own funds and development of its casinos, and it  
6 hopes the NIGC will continue to develop  
7 regulations that further promote growth and  
8 success for the tribe's gaming industry. So with  
9 respect to talking about today, there has been  
10 MICS, there is support and guidance (inaudible).  
11 The current standards are updated as we've heard  
12 from others. A new guidance version of standards  
13 will be useful for tribes as they seek to update  
14 their system of internal controls. It will be  
15 helpful to tribes that download the (inaudible) to  
16 Class 2 and Class 3 to have similar standards.  
17 But for today, the issue of withdrawal of part 542  
18 on compacts and ordinances is an issue that has to  
19 be examined and resolved. But in putting together  
20 the guidance, the nation will recommend tribal  
21 advisory committee similar to the one that was for  
22 the 543.

23 As far as NEPA, the nation's  
24 support is in support of that (inaudible) the  
25 policy. It is -- it seems that it would make the



1 processes more efficient so the nation is of  
2 course in support of that as well as in support of  
3 the privacy regulations. When it comes to buy  
4 Indian regulations, the nation is also in support  
5 of the changes. The nation itself has a buy  
6 Navajo ordinance that it supports and enforces for  
7 the Navajo nation and it supports any effort by  
8 the NIGC to support Indian owned businesses and  
9 small businesses. So I think in line with the  
10 others here today, the nation will submit its  
11 comments. But we just wanted to get those on the  
12 table today.

13 >>CHAIRMAN CHAUDHURI: Thank you  
14 so much, Ms. Hughes. I want to make sure  
15 everybody has the opportunity to be on record, and  
16 everybody that wants the opportunity to speak. At  
17 the same time there's no law against finishing  
18 early. So anybody else wish to provide additional  
19 comments, ask additional questions?

20 We've got some closing -- wait.  
21 I'm sorry. There was one?

22 >> I don't know if this thing is  
23 on.

24 >> It's always on.

25 >>HOMER SANDERS: I forgot to.

1 Homer Sanders, Lower Elwha Gaming Commission,  
2 Director. I forgot to (inaudible) I'd be remiss  
3 -- I think my information is correct. I just  
4 wanted to congratulate Chairman Chaudhuri on his  
5 recent Senate confirmation.

6 >>CHAIRMAN CHAUDHURI: Thank you,  
7 sir. It's close. It's through committee. The  
8 full Senate is in recess. But I very much  
9 appreciate that comment. Very close.

10 >> Thank you for inviting me to  
11 this consultation.

12 >>CHAIRMAN CHAUDHURI: Thank you.  
13 Deeply appreciate it.

14 >> Hi. (Inaudible). I think it's  
15 very important for all tribes, even those unable  
16 to attend today, to really submit written  
17 comments. I know there are a lot of people in  
18 this room. (Inaudible) has had the opportunity to  
19 speak on behalf of their tribe or nation. It's  
20 very important when you do come across these sort  
21 of changes in regulations and so forth how vital  
22 it is, especially for the NIGC, to really grasp  
23 what the tribes' impacts are. And it's very, very  
24 important to spread the word that each nation,  
25 tribe, submit those. The one motion I would like

1 to make is that this hand out here that was handed  
2 out, it's only printed on pages. So if you're  
3 taking this back to your tribe, do note that the  
4 middle pages are missing. I tried to (inaudible).

5 >>CHAIRMAN CHAUDHURI: That was  
6 our approach to trying to split it down the  
7 middle! Fine line we're trying to walk here. But  
8 thanks for catching it. Thank you for pointing it  
9 out.

10 >> The only reason is (inaudible).  
11 As busy as we are, and as (inaudible) it is to  
12 read all the documents (inaudible) we do rely on  
13 our state commissions to do the research and  
14 gather information for us. So with that being  
15 said, it's very, very important to get those  
16 (inaudible) at least be able to aid the NIGC with  
17 the impacts that each tribe may have. Thank you.

18 >>CHAIRMAN CHAUDHURI: Sir.

19 >> Good afternoon, Chairman. And  
20 thank you for doing (inaudible) on behalf of  
21 Indian country. (Inaudible).

22 >>CHAIRMAN CHAUDHURI: Great.  
23 Thank you very much, sir. With that -- I'm going  
24 to try and wrap it up.

25 >> You want me to say something

1 quickly?

2 >>CHAIRMAN CHAUDHURI: Sure. No.  
3 We still have a chance of finishing before five,  
4 right?

5 >> Despite the odd even pages here,  
6 I just want to thank our staff for getting across  
7 one key point. That is last time we did the buy  
8 Indian go around, most of the comments we got were  
9 you can't make us buy Indian, thinking that -- I  
10 guess apparently we did not convey our message  
11 well enough. I want to thank them because it's  
12 clear this is just for us to buy Indian. I think  
13 it's important. I want to thank them for all the  
14 great work they do getting all this information  
15 out to you. Today we got a lot of very good  
16 information here. Thank you. Honestly from the  
17 bottom of my heart, thank you very much. This is  
18 helpful. This is the end of a long week. You're  
19 still here. I appreciate that. We will take the  
20 comments you provide us. Chairman, I want to  
21 thank you for reminding folks -- I know many of  
22 you may not have the authority right now to speak  
23 on behalf of your communities. Take the  
24 information, go back, and if you want, submit some  
25 written comments. That's very helpful to do and

1 we definitely encourage and appreciate that.

2 Safe travels home. Thank you for  
3 your time. It's very much respected and  
4 appreciated.

5 >>CHAIRMAN CHAUDHURI: Thank you.  
6 I don't think I have anything more to add. Just  
7 thank you. Just many, many thanks. We mean what  
8 we say when we say we're here to listen. We can't  
9 do it without this dialogue. So thank you. Safe  
10 travels. (Applause)

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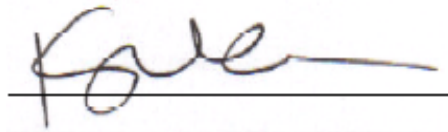
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C E R T I F I C A T E

I, LAUREN SCHECHTER, do hereby  
certify that the foregoing is a true and accurate  
transcript of a tape recording in this matter.

I do further certify that I am  
neither of counsel nor attorney for any party in  
this action and that I am not interested in the  
event nor outcome of this litigation.



A handwritten signature in blue ink, appearing to read "Lauren", is written over a horizontal line.

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Certified Court Reporter for the State of  
New Jersey

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